

**RESIDENTIAL, COMMERCIAL, AND CITY FACILITIES SOLID WASTE SERVICES
AGREEMENT**

between

THE CITY OF ELOY, ARIZONA

and

WASTE MANAGEMENT OF ARIZONA, INC.

This Agreement is made on MARCH 24, 2025 between: **THE CITY OF ELOY**, an Arizona municipal corporation, hereinafter referred to as "City," and **WASTE MANAGEMENT OF ARIZONA, INC.**, a California corporation, hereinafter referred to as "Contractor."

RECITALS

WHEREAS, City issued a Request for Proposals for Residential and City Solid Waste and Recycling Services (hereinafter "the RFP"); and,

WHEREAS, Contractor submitted a proposal in response to the RFP on or before January 3, 2025; and

WHEREAS, City received and evaluated proposals from several proposers in response to the RFP; and,

WHEREAS, City and Contractor have engaged in negotiations regarding the RFP; and

WHEREAS, City has the power to execute this Agreement on behalf of City; and,

WHEREAS, Contractor has the power to execute this Agreement on behalf of Contractor; and,

WHEREAS, City desires to hire Contractor to provide those services specified hereinafter; and,

WHEREAS, Contractor desires to provide those services specified hereinafter; and,

NOW THEREFORE, City and Contractor do hereby agree as follows:

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, City and Contractor agree as follows:

AGREEMENT

SECTION 1: RECITALS INCORPORATION

The foregoing recitals are true and correct and hereby incorporated herein by reference.

SECTION 2: DEFINITIONS

As used herein, the following defined terms, phrases, words, and their derivations shall have the meanings as set forth in this section. When not inconsistent with the context, words used in the present tense shall include the future, words importing persons shall include firms and corporations, words used in the plural shall include the singular, words used in the singular shall include the plural, words used in the masculine gender shall include the feminine gender, and word used in the feminine gender shall include the masculine gender.

2.1 *Application Programming Interface (API)* — The two-way interface used by the City of Eloy users of CIS Infinity or Route Manager systems to track service orders for solid waste equipment changes associated with CIS Infinity customer/accounts.

2.2 *Act of Default or Default* — Act of Default or Default shall mean any failure to timely, fully and completely comply with one or more material requirements, obligations, performance criteria, duties, terms or conditions, as started in this Agreement. City may, in its sole discretion, accept substantial compliance, which is an act of default, in lieu of full compliance by waiving such act of default solely by an instrument in writing.

2.3 *Agreement* — Agreement shall mean this document, including any written amendment thereto as agreed upon by City and Contractor.

2.4 *Appliances* — Appliances shall mean a household piece of equipment used for a particular purpose. Examples of appliances include, but are not limited to, items that operate with Freon such as refrigerators/freezers, washer/dryers, stoves, dishwashers, microwaves, water heaters, etc. Equipment containing Excluded Waste (as defined below), hydrocarbons or other aerosol propellant, refrigerant, or organic solvent consisting of one or more of a group of chlorofluorocarbons and related compounds are not are subject to collection in this Agreement. Refrigerators/freezers or other equipment that uses Freon or other refrigerant will be accepted if Freon or other refrigerant has been removed from the equipment and the resident can demonstrate with the paperwork from a third party to CONTRACTOR that the Freon or refrigerant has been properly evacuated.

2.5 *Audio/Video Equipment* — Audio/Video Equipment shall mean televisions, stereos, radios, amplifiers, projectors, satellite and cable equipment, video equipment, VCR's, CD player, Video game equipment, surveillance equipment, cameras, broadcasting equipment, communications equipment, and other electronic equipment of a similar nature.

- 2.6 *Backdoor* — Backdoor shall mean a location at the front, side or rear of a Residential Service Unit acceptable to both the Resident and Contractor for Municipal Solid Waste Services and Recycling Services. The City reserves the right to designate the location for Municipal Solid Waste Services and Recycling Services if (i) the Resident and the Contractor cannot agree on an acceptable location or (ii) the location agreed upon by the Resident and the Contractor presents or may present health and safety hazards.
- 2.7 *Bag* — Bag shall mean a non-dissolvable plastic sack with a capacity of up to approximately thirty-five (35) gallons designed or intended to store Municipal Solid Waste with sufficient wall strength to maintain physical integrity when lifted by the top.
- 2.8 *Batteries* — Batteries shall mean alkaline batteries, nickel cadmium batteries, lead acid batteries, lithium batteries, and other electronic equipment of a similar nature.
- 2.9 *Beyond Contractor's Control* — Beyond Contractor's Control shall mean events that materially and adversely affect Contractor's ability to perform the obligations under the Agreement and are not due to Contractor's fault or negligence and could not be avoided by Contractor's exercise of commercially reasonable efforts. Allowable events include temporary landfill closure or extreme hazardous weather conditions.
- 2.10 *Brush* — Brush shall mean cuttings or trimmings from trees, shrubs, or lawns and similar materials.
- 2.11 *Bulk Waste* — Bulk Waste shall mean Municipal Solid Waste as set forth in page 21 paragraph 2 of the CONTRACTOR proposal, which is included herein as Appendix D.
- 2.12 *Bulk Waste Services* — Bulk Waste Services shall mean the collection and disposal of Bulk Waste by the Contractor and the collection and recycling of Bulk Waste pursuant to this Agreement.
- 2.13 *Bundle* — Bundle shall mean Green Waste securely tied together forming a package that may be easily handled, not to exceed four (4) feet in length or fifty (50) lbs. in weight.
- 2.14 *Business Day* — Business Day shall mean any day, Monday through Friday, from 8:00 AM, until 5:00 p.m. local Arizona time.
- 2.15 *Cart* — Cart shall mean a receptacle with wheels with a capacity of up to approximately ninety-six (96) gallons designed or intended to be mechanically dumped into a loaderpacker type truck and approved for use by the City.
- 2.16 *City* — City shall mean the City of Eloy, Arizona; and shall include City's elected officials, officers, employees, agents, volunteers and representatives.

2.17 *City Event* — City Event shall mean an event sponsored or co-sponsored by the City and designated by the City to receive City Services not to exceed 15 events. City events shall include festivals and community clean -up events. The City has the sole authority to add or eliminate City Events to receive City Services. Items accepted at all events include Electronics, Latex Paint, Document Shredding, and Metal and Appliances.

2.18 *City Facility* — City Facility shall mean any City-owned or operated facility designated by the City as a City Facility to receive City Services. The City has the sole authority to add or eliminate City Facilities to receive City Services.

2.19 *City Services* — City Services shall mean Municipal Solid Waste Services, Bulk Waste Services, and Recycling Services for City Facilities pursuant to this Agreement and Municipal Solid Waste Services and Recycling Services for City Events pursuant to this Agreement.

2.20 *Collect, Collected or Collection* – Collection shall mean the act of picking up Residential Solid Waste, City Facility Solid Waste, City Event Solid Waste, or Bulk Waste from Residential Waste Service Units, City Facilities, Neighborhood Recycling Dropoff Sites (if the parties agree to add), or City Events and delivery of Residential Solid Waste, City Facility Solid Waste, City Event Solid Waste, or Bulk Waste to the Disposal Facility. Collection shall also mean the act of picking up Program Recyclables, Electronics, or tires from Residential Waste Service Units, City Facilities, or City Events and delivery of the Program Recyclables to the Recycling Facility.

2.21 *Commercial Enterprise* — Commercial Enterprise shall mean any non-residential establishment that has a physical address within the incorporated limits of the City and that is serviced under the Contract with the City. This includes, but is not limited to: businesses, schools, churches, nonprofit organizations, correctional facilities, or multi-family residential structures.

2.22 *Compactor* — Compactor shall mean any container, regardless of its size, which has a compaction mechanism, whether stationary or mobile, and approved for use by the City.

2.23 *Comply or Compliance* — Comply or Compliance shall mean timely, fully and completely performing or meeting each and every term, requirement, obligation, performance criteria, duty or condition as stated in this Agreement. Compliance shall not mean substantial compliance. Substantial compliance shall be an Act of Default unless waived by the City solely by a written instrument.

2.24 *Computer Equipment* – Computer Equipment shall mean PC's, laptops, CRT monitors, modems, switches, hubs and routers, storage devices, main frames, servers, power supplies, tape libraries, circuit boards, power cords, printers, wire and cabling, surplus metals, mice, keyboards, hard drives, floppy, DVD and CD drives, and other electronic equipment of a similar nature.

- 2.25 *Construction and Demolition Waste* — Construction and Demolition Waste shall mean Municipal Solid Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, carpet or carpet padding, excelsior, rubber, plastics, concrete, tile, asphalt, and old corrugated cardboard.
- 2.26 *Container* — Container shall mean Compactor, Dumpster, and Roll-off.
- 2.27 *Contamination* — Contamination shall mean the existence of any other material or substance on or contained in Program Recyclable Materials other than Program Recyclable Materials.
- 2.28 *Contract Administrator* — Contract Administrator shall mean the City Manager of the City, or his designee or designees, who shall represent the City in the administration and supervision of this Agreement.
- 2.29 *Contract Year* — Contract Year shall mean the period beginning July 1st and ending on June 30th of the subsequent year for the term of the Agreement.
- 2.30 *Contractor* — Contractor shall mean Waste Management of Arizona, Inc., which is authorized to do business in the City and the State, and Contractor's assignees and Contractor's subcontractors.
- 2.31 *Council* — Council shall mean the City Council, governing body of the City.
- 2.32 *Curbside* — Curbside shall mean within five (5) feet of the street or alleyway that provides primary access to the Residential Service Unit as designated by the City.
- 2.33 *Discharge* — Discharge shall mean the deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or omissions.
- 2.34 *Disposal, Disposed or Disposal* — Dispose, Disposed, or Disposal shall mean the discharge, deposit injection, dumping, spilling, leaking of any Residential Solid Waste, City Facility Solid Waste, City Event Solid Waste, or Bulk Waste at a Disposal Facility operated in accordance with laws.
- 2.35 *Document Shredding* — Document Shredding shall mean the act of destroying any documents either onsite or within locked containers that may be considered confidential and verified with a Certificate of Destruction.
- 2.36 *Dumpster* — Dumpster shall mean any container, excluding compactors, with a tight-fitting lid and a minimum capacity of one (1) cubic yard, a maximum capacity of eight (8) cubic yards, and approved for use by the City.

2.37 *Effective Date* – Effective Date shall mean the date upon which this Agreement is fully executed by both parties. The later signature date shall be the Effective Date.

2.38 *Electronic Components* – Electronic Components shall mean capacitors diodes, resistors, transistor and integrated circuits, and other electronic equipment of a similar nature.

2.39 *Electronics* – Electronics shall mean Computer Equipment, Point of Sale Equipment, Telecom Equipment, Printing Equipment, Audio/Visual Equipment, Batteries, Electronic Components, household appliance, surplus metals and wire and cable, test equipment, lab equipment, connectors, ballasts, power strips, and other electronic equipment of similar nature.

2.40 *Excluded Waste* — Excluded Waste means 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, any materials containing information protected by federal, state or local privacy and security laws or regulations (unless tendered to Contractor pursuant to a separate agreement), or any material the acceptance or handling of which would cause a violation of any Applicable Law, damage to Contractor's equipment of facilities, or present a substantial endangerment to the health or safety of the public or Contractor's employees. Title to and liability for Excluded Waste shall remain with the generator at all times.

2.41 *Garbage* — Garbage shall mean Solid Waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

2.42 *Generator* — Generator shall mean any person, by site or location that produces Solid Waste, or Recyclable Materials.

2.43 *Green Waste* — Cuttings or trimmings from trees, shrubs, or lawns, and similar materials such as grass, leaves, flowers, stalks, tree trimmings, Brush, and branches that are set out to be collected as a part of the Green Waste Service. Any such material set out to be collected with Municipal Solid Waste Services or Bulk Waste Services shall be considered Municipal Solid Waste or Bulk Waste.

2.44 *Green Waste Bag* — Green Waste Bag shall mean Kraft bag or other sack authorized by the Green Waste Processing Facility, designed to store Green Waste with sufficient wall strength to maintain physical integrity when lifted. Total weight of a Green Waste Bag and its contents shall not exceed forty (40) pounds.

2.45 *Green Waste Service* — Green Waste Service shall mean the collection, processing, and marketing of Green Waste pursuant to this agreement, if the parties agree to add such services to this Agreement.

- 2.46 *Hazardous Waste* — Hazardous Waste shall mean any Solid Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §§6901 et seq., as amended and set forth in Arizona Administrative Code Section R18-8-261.
- 2.47 *Herein, Hereunder, Hereby, Hereto, Hereof, and any similar terms* — shall mean this Agreement.
- 2.48 *Improper Set-out* — Improper Set-out shall mean a set-out of Residential Solid Waste, City Solid Waste, City Event Solid Waste, Bulk Waste, or Green Waste, that is not compliant with local laws.
- 2.49 *Laws* — Laws shall mean any and all Federal, State and local laws, statutes, regulations, rulings, ordinances and policies.
- 2.50 *Latex Paint* — Latex Paint shall mean water-based or acrylic paint, which is not to be considered hazardous.
- 2.51 *Marketing* — Marketing shall mean identification and developing of end markets for Program Recyclable Material and the selling of Program Recyclable Material to end markets.
- 2.52 *May* — May shall mean something that is not mandatory but permissible.
- 2.53 *Missed Block* — Missed block shall mean a block for which Contractor failed to provide services to three (3) or more customers on the block, who properly prepared and set out their Residential Solid Waste, City Facility Solid Waste, City Event Solid Waste, Bulk Waste, or Animal West at the collection location on the scheduled collection day, and all said materials were not picked up by the Contractor. Contractor may dispute the designation of a Missed Collection to the City. In the case of a dispute, the City's determination shall be final as to whether a set-out is a Missed Collection.
- 2.54 *Missed Collection* — Missed Collection shall mean Contractor's failure to provide service to customers who properly prepared and set out their Residential Solid Waste, City Facility Solid Waste, City Event Solid Waste, Bulk Waste, or Animal West at the collection location on the scheduled collection day, and all said materials were not picked up by the Contractor. Contractor may dispute the designation of a Missed Collection to the City. In the case of a dispute, the City's determination shall be final as to whether a set-out is a Missed Collection.
- 2.55 *Multi-family Complex* — "Multifamily residential properties" means any real property that has one or more structures and that contains five or more dwelling units for rent or lease that are subject to title 33, chapter 10. Arizona Revised Statutes 49-746.

2.56 *Municipal Separate Storm Sewer System or MS4* – means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, natural conveyances or storm drains) owned or operated by the City and designed or used for collecting or conveying Stormwater, and that is not used for collecting or conveying sewage. Also the City MS4.

2.57 *Municipal Solid Waste* — Municipal Solid Waste (MSW) shall mean Solid Waste resulting from or incidental to activities of Residential Service Units, City Facilities, and City Events, including garbage and rubbish. Municipal Solid Waste shall not include Excluded Waste.

2.58 *Municipal Solid Waste Services* — Municipal Solid Waste Services shall mean collection and disposal of Municipal Solid Waste by the Contractor pursuant to this Agreement.

2.59 *Neighborhood Recycling Drop-off Site* - Neighborhood Recycling Drop-off Site shall mean any site designated by the City for drop-off of Program Recyclables. The City has the sole authority to add or eliminated Neighborhood Recycling Drop-off Site, in which case the parties will negotiate additional (if added) Contractor compensation.

2.60 *Neighborhood Recycling Drop-off Services* - Neighborhood Recycling Drop-off Services shall mean the provision of Bulk Waste Services and Recycling Services to Neighborhood Recycling Drop-off Sites by the Contractor.

2.61 *Non-recyclable Waste* – Non-recyclable waste shall mean the portion of Solid Waste that is not Program Recyclables.

2.62 *Person* — Person shall mean an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

2.63 *PCS (Petroleum Contaminated Soil)*- classified as special waste containing gasoline, diesel, and used oils derived from the cleanup of leaks and small spills subject to waste handling requirements A.R.S. § 49-856. A.1.

2.64 *Process, Processed or Processing* — Recovery of Recyclable Materials, Treatment into Recovered Materials, and marketing of Recovered Materials to end markets; Recovery of Green Waste, treatment into mulch or compost, and marketing of mulch or compost to end markets; and marketing of Recovered Materials to end markets.

2.65 *Processing Facility* — Processing Facility shall mean a facility permitted under all applicable local, state, and federal laws and regulations for Processing Green Waste.

2.66 *Program Aluminum and Steel Program Recyclable Material* — Program Aluminum and Steel Recyclable Material shall mean any beverage container, food can, bi-metal container, or lid with or without paper labels, rings, and lids composed primarily of whole iron, aluminum, steel, or other Recyclable Material of a similar nature.

2.67 *Program Glass Recyclable Material* — Program Glass Recyclable Material shall mean any glass food and beverage bottles, containers, or jars with or without paper labels, rings, and lids. Program Glass Recyclable Material shall not mean window glass, porcelain, or china.

2.68 *Program Paper Recyclable Material* — Program Paper Recyclable Material shall mean any:

- (A) Kraft paper,
- (B) Corrugated containers that have liners of Kraft, jute, or test liner including dry food boxes, beer and soda carriers, shoe boxes,
- (C) Old newspaper including slick paper inserts,
- (D) Chipboard, and
- (E) Other mixed paper including but not limited to junk mail, junk mail inserts, residential mixed paper, bagged shredded paper, high-grade paper, white and colored ledger, copier paper, office paper, laser printer paper, computer paper including continuous-formed perforated white bond or green bar paper, book paper, cotton fiber content paper, duplicator paper, form bond, manifold business forms, mimeo paper, note pad paper (no backing), loose leaf fillers, stationery, writing paper, paper envelopes without plastic windows, carbonless (NCR) paper, tabulating cards, facsimile paper, manila folders, magazines, paperback books, small catalogs, telephone books and Yellow Pages.

2.69 *Program Plastic Recyclable Material* — Program Plastic Recyclable Material shall mean any #1 through #7 rigid plastic bottle, container, jug, or jar. Contractor may temporarily dispose of such items if there is not a commercially viable market.

2.70 *Program Recyclable Material* — Program Recyclable Material shall mean Program Paper Recyclable Material, Program Plastic Recyclable Material, Program Glass Recyclable Materials, and Program Aluminum and Steel Program Recyclable Material.

2.71 *Recovered Material* — Recovered Material shall mean Recyclable Materials which have been processed at the Recyclable Material Facility to market specifications.

2.72 *Recyclable Material* — Recyclable Material shall mean material that has been recovered or diverted from the nonhazardous Solid Waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable material is not Solid Waste. However, Recyclable Material may become Solid Waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be Solid Waste with respect only to the party actually abandoning or disposing of the material.

2.73 *Recyclable Material Facility* — Recyclable Material Facility shall mean all contiguous land, structures, other appurtenances, and improvements on the land used for processing of Recyclable Materials. A facility may be publicly or privately owned and may consist of several processing or storage units.

- 2.74 *Recycling* — Recycling shall mean a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed Municipal Solid Waste composting, that is, composting of the typical mixed Solid Waste, recycling includes the composting process if the compost material is put to beneficial use.
- 2.75 *Recycling Services* — Recycling Services shall mean the single stream collection, processing, and marketing of Program Recyclable Material by Contractor pursuant to this Agreement.
- 2.76 *Resident* — Resident shall mean a person whom resides at a Residential Service Unit.
- 2.77 *Residential Service Unit* — Residential Service Unit shall mean a dwelling Identified by the City to receive Residential Waste Services and utilizing a Solid Waste Cart for the accumulation and storage of Residential Solid Waste.
- 2.78 *Residential Solid Waste* - Residential Solid Waste shall mean any Solid Waste that is generated from Residential Waste Service Units, not including Construction and Demolition Waste, Hazardous Waste, Excluded Waste, or tires.
- 2.79 *Residential Waste Service Area* — Residential Waste Service Area shall mean Residential Waste Service Areas described by separate resolution on file with the City Clerk.
- 2.80 *Residential Services* — Residential Services shall mean Municipal Solid Waste Services, Bulk Waste Services, Recycling Services, and Green Waste Services (if the parties agree to add this service to the Agreement), for Residential Service Units.
- 2.81 *Residue* — Residue shall mean that portion of the Recycle Materials accepted by the Contractor which are not converted to Recovered Materials due to spoilage, breakage, contamination and/or transportation or processing inefficiencies, other than Rejects.
- 2.82 *RFP Documents* — RFP Documents shall mean the RFP, including addendums, and the proposal submitted by the Contractor in response to the RFP.
- 2.83 *Roll-off* — Roll-off shall mean any container, excluding compactors, with a capacity of greater than eight (8) cubic yards which is normally loaded onto a motor vehicle and transported to a Solid Waste Facility or Recyclable Material Facility and approved for use by the City.
- 2.84 *Rubbish* — Rubbish shall mean non-putrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar

materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

- 2.85 *Scavenging* — Scavenging shall mean the unauthorized removal of Recyclable Material after the generators thereof divest control physically or as a matter of appropriate law, rule or regulation.
- 2.86 *Shall* — Shall will always mean mandatory and not merely directory.
- 2.87 *Single Stream* — Single Stream shall mean Program Recyclable Materials that are commingled and that do not require the generator to subdivide the Program Recyclable Materials prior to collection.
- 2.88 *Solid Waste* — Solid Waste shall mean garbage, rubbish, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities, but does not include:
- (A) Solid or dissolved material in domestic sewage or irrigation return flows or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code.
 - (B) Soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for surface improvement construction.
- 2.89 *Solid Waste Facility* — Solid Waste Facility shall mean all contiguous land, structures, other appurtenances, and improvements on the land used for disposing of Solid Waste.
- 2.90 *Special Waste* — Special Waste shall mean any Solid Waste or combination of Solid Wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special Wastes shall include:
- (A) Hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of this title (relating to Household Materials Which Could Be Classified as Hazardous Wastes);
 - (B) Class 1 industrial nonhazardous waste.
 - (C) Untreated medical waste.
 - (D) Septic tank pumping's.
 - (E) Grease and grit trap wastes.
 - (F) Wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal

Regulations (CFR) Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f); (G) Slaughterhouse wastes.

- (H) Dead animals.
- (I) Drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste.
- (J) Pesticide (insecticide, herbicide, fungicide, or rodenticide) containers.
- (K) Discarded materials containing asbestos.
- (L) Incinerator ash.
- (M) Soil contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.521(a)(1) of this title (relating to Appendices); (N) Used oil.
- (O) Waste from oil, gas, and geothermal activities when those wastes are to be processed, treated, or disposed of at a solid waste management facility; (P) Waste generated outside the boundaries of Arizona that contains:
 - (i) any industrial waste.
 - (ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or
 - (iii) any item listed as a special waste in this paragraph.
- (Q) Lead acid storage batteries; and
- (R) Used-oil filters from internal combustion engines.

2.91 *State*— State shall mean the State of Arizona, or any of its duly established agencies, such as the Arizona Department of Environmental Quality.

2.92 *Stormwater* – Stormwater shall mean any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

2.93 *Substantial Compliance* — Substantial Compliance shall pertain solely to acts of Contractor being less than full and complete compliance and being ninety percent (90%) or more of full compliance. Substantial compliance shall mean an act of default.

2.94 *Telecom Equipment* - Telecom Equipment shall mean telephones, cell phones, CSU/DSU multiplexing equipment, phone systems, answering systems, and other electronic equipment of a similar nature.

2.95 *Temporary Discontinuance of Residential Waste Services Customer List* - Temporary Discontinuance of Residential Waste Services Customer List shall mean the customer list maintained by the City of those Residential Waste Service Units which have been granted a temporary discontinuance by the City from the requirement to receive curbside Residential Waste Services other than community-wide Residential Solid Waste Services pursuant to Article 10-10 of the City Code.

2.96 *Ton* — Ton shall mean a unit of weight equal to 2,000 pounds.

- 2.97 *Unaccepted Set-out* — Unaccepted Set-out shall mean a set-out for collection that does not comply with the requirements of the contract.
- 2.98 *Unaccepted Set-out Notice* — Unaccepted Set-out Notice shall mean a written notice approved by the City notifying the Resident of the reason, stating the reason the set-out or portion of the set-out was designated an Unaccepted Set-out.
- 2.99 *Will* — Will shall mean mandatory and not merely directory.

SECTION 3: REPRESENTATIONS

3.1 Representations by City

The City represents to the Contractor that the City is duly organized and existing in good standing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

3.2 Representations by Contractor

The Contractor represents to the City that:

- (i) The Contractor is duly qualified and in good standing to do business in the State and is duly qualified and in good standing to do business wherever necessary to carry on the business and operations contemplated by this Agreement.
- (ii) The Contractor has obtained the necessary disposal capacity for Municipal Solid Waste and Bulk Waste with a Solid Waste Facility for the initial term and renewal terms as defined in Section 5 of this Agreement.
- (iii) The Contractor has obtained the necessary processing and marketing capacity for Program Recyclable Material and Bulk Waste with a Recyclable Material Facility for the initial term and renewal terms as defined in Section 5 of this Agreement.
- (iv) The Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are necessary for collection and disposal of Municipal Solid Waste and Bulk Waste.
- (v) The Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are necessary for collection, processing and marketing of Bulk Waste Program Recyclable Material, and Green Waste (if the parties agree to add).
- (vi) The Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are required under Federal, State, local law, regulation, rule or ordinance.
- (vii) The Contractor has obtained all required insurance coverages specified in this Agreement when contracted services begin.

- (viii) The Contractor has obtained the required performance bond specified in this Agreement when contracted services begin.
- (ix) To the best of the Contractor's knowledge, there is no action, suit or proceeding, at law or equity, before or by any court or government authority, pending or threatened against the Contractor, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Contractor of its obligation hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other contract or instrument entered into by the Contractor in connection with the transactions contemplated hereby.

SECTION 4: GRANT OF FRANCHISE

City hereby grants Contractor for the term of this Agreement, as defined in Section 5 unless sooner terminated, the right, privilege, and franchise to have, use and operate Residential Services and City Services; and to have, use and operate its vehicles on, over, and along, and across the present and future streets. The City grants the Contractor the exclusive right, privilege, and franchise to have, use and operate:

- (i) Residential Services Residential Solid Waste Services, Bulk Waste Services, Recycling Services, and Green Waste Services (if the parties agree to add), for Residential Service Units,
- (ii) Municipal Solid Waste Services, Bulk Waste Services, and Recycling Services for City Facilities, and
- (iii) Municipal Solid Waste Services and Recycling Services for City Events.
- (iv) Notwithstanding any provision in this Agreement, commercial enterprises shall have the option to procure solid waste services on the open market without regard to any Agreement entered into by the City. However, should any commercial enterprise wish to establish a billing account through the City under the City's Agreement with the Contractor, they shall receive services as outlined in this Agreement.

SECTION 5: EFFECTIVE DATE AND TERM OF AGREEMENT; COOPERATIVE USAGE

5.1 Effective Date

Except as otherwise provided for herein, the obligations of the parties shall take effect on the date of execution hereof.

5.2 Term of Agreement

5.2.1 Initial Term

Unless sooner terminated in accordance with the provisions in this Agreement, the initial term of this Agreement shall be for a three (3) year period commencing on June 1, 2025 at 12:00 AM and shall continue in effect until June 30, 2028 at 11:59 PM.

5.2.2 Optional Renewal Terms

After the initial term as defined in Section 5 of this Agreement, City shall have the option to renew this Agreement for two (3) additional optional renewal terms of three (3) years each, followed by one (1) final renewal term of one (1) year. Contractor may prohibit the City from exercising an optional renewal term by providing written notice to the City on or before nine (9) months preceding the scheduled date of expiration of the initial term or the then current optional renewal term of this Agreement. If the Contractor does not provide written notice to the City on or before nine (9) months preceding the scheduled date of expiration of the initial term or the then current optional renewal term of this Agreement prohibiting the City from exercising the optional renewal term, the City may upon written notice to Contractor not later than 180 calendar days preceding the scheduled date of expiration of the initial term or the then current optional renewal term of this Agreement of the City's intent to exercise the optional renewal term. This provision in no way limits the City's right to terminate this Agreement at any time during the initial term or any optional renewal term thereof pursuant to the provisions in this Agreement.

5.3 Cooperative Purchasing

The City of Eloy intends that this contract be extended for use by other municipalities, government agencies and governing bodies, and political subdivisions of the State. Any such usage by other entities must be in accordance with the ordinances, charter and/or rules and regulations of the respective entity and is subject to the approval of the Contractor.

SECTION 6: RESIDENTIAL SERVICES [SOLID WASTE SERVICES, BULK WASTE SERVICES, RECYCLING SERVICES AND GREEN WASTE SERVICES]

6.1 Residential Services [Solid Waste Services, Bulk Waste Services, Recycling and Green Waste Services, Waste Services] for Residential Service Units

6.1.1 Municipal Solid Waste Services for Residential Service Units

Contractor shall collect, once per week on a scheduled day, all Municipal Solid Waste contained in all carts placed in street curbside for scheduled waste collection from each Residential Service Unit in the City.

6.1.2 Bulk Waste Services for Residential Service Units

Contractor shall collect all Bulk Waste from Residential Service Units in City. Residential Service Units shall schedule Bulk Waste Collection by using Contractor's website. Residential Service Units may also schedule Bulk Waste Collection by contacting the City Public Works Department, or by using a widget on the City's website. Notwithstanding the above, Contractor agrees that, for six months after the Commencement Date, Contractor shall collect all Bulk Waste that has been placed out for collection regardless of whether a Bulk Waste Collection has been scheduled by a Residential Service Unit (the "Transition Period"). Residential Service Units receive Bulk Waste Collection prior to the next regular Bulk Waste Collection Day may be assessed an additional charge as prescribed in Appendix A: Rates for Residential, Commercial, and City Services. Residential Service Units may contact Contractor to schedule Bulk Waste collection at the curbside. Such Bulk Waste collections will be available once per month, at the rate set forth in Exhibit A. Bulk Waste items may not exceed 4 feet x 4 feet x 2 feet and must be able to be safely lifted by two people into a collection vehicle. Additional charges will apply for extra items.

6.1.3 Recycling Services for Residential Service Units

Contractor shall collect, every week on the same scheduled day as Contractor collects Municipal Solid Waste from the Residential Service Unit, all Program Recyclable Material contained in carts placed curbside for scheduled waste collection from each Residential Service Unit in the City.

6.1.4 Green Waste Services

If the City desired to implement Green Waste Services, the City and Contractor will meet and confer to develop a collection program and Contractor compensation.

6.2 Municipal Residential and Commercial Roll-off Services

In accordance with this Agreement, City may request of the Contractor that the Contractor provide roll-off containers for residential and commercial account holders. The Contractor shall determine the size of roll-off containers available for residential or commercial use. Roll-off containers may have approximate capacities of between ten (10) and forty (40) cubic yards. The Contractor and City shall mutually decide on the frequency and scheduled days when the roll-off containers may be available for residential and/or commercial customers. If a dispute arises concerning City Services for a City Facility and/or City Event, City shall at its sole discretion determine resolution of the disputed issue.

6.3 Municipal Solid Waste Services, Bulk Waste Services and Recycling Services for City Facilities and Municipal Solid Waste Services and Recycling Services for City Events

In accordance with this Agreement, City may request of the Contractor that the Contractor collect Municipal Solid Waste, Bulk Waste, and Program Recyclable Materials from City Facilities and Municipal Solid Waste and Program Recyclable Materials from up to 15 City

Events (Contractor compensation for more than 15 City Events will be negotiated by the parties). Contractor and City shall mutually decide on the number and size of carts and containers. In addition, Contractor and City shall mutually decide on the frequency and scheduled days. If a dispute arises concerning City Services for a City Facility and/or City Event, City shall at its sole discretion determine resolution of the disputed issue.

6.4 Commercial Solid Waste Services for Front-Load Containers

Commercial customers with a regular and consistent waste stream currently have the option to have a front-load solid waste container delivered to their place of business. Capacities of the front-load containers are typically 2-, 3-, 4-, 6-, or 8- cubic yards. Additional frontload containers sizes may be available at the discretion of the Contractor. There are currently two options for commercial establishments to have the front-load container serviced, which are explained as follows:

- **On-Demand Scheduling.** The commercial enterprise calls the City to have the full front-load container(s) removed and replaced with an empty container of the same size as needed, in which case the City will notify the Contractor of the address and size of the container to be serviced. The City will provide at least 24 hours to the Contractor, and the Contractor will confirm the date the front-load container is scheduled for service, but in no case shall the customer be made to wait more than two (2) business days to have the front-load container serviced; or
- **Regularly Scheduled Service.** If the commercial enterprise has sufficient solid waste to justify a regular service, the Contractor will provide such regular service as requested by the commercial business at regular intervals. An example of this level of service would be a correctional institution with the Arizona Department of Corrections or a private correctional facility that has an 8-yard front-load container scheduled to be serviced twice a week. The commercial enterprise will establish the frequency of the service with the City and the City will notify the Contractor of the day/date the commercial front-load container is scheduled for service. If the Contractor is unable to service the commercial frontload container on the regularly scheduled day/date, the Contractor shall provide at least 24 hours' notice to the City that the front-load container will not be serviced according to the regular schedule and shall notify the City when the front-load container will be serviced.

SECTION 7: COLLECTION, DISPOSAL, AND PROCESSING LOCATION

7.1 Collection Location

7.1.1 Residential Services

If the City deems all Residents of a Residential Service Unit are handicapped or due to age or verified physical limitations cannot safely move a cart to the curbside, the Contractor

shall collect Municipal Solid Waste and Program Recyclable Material at the Backdoor (which must be deemed safe for Contractor employees and equipment) and Bulk Waste at the Curbside for such Residential Service Units. For Municipal Solid Waste Services and Recycling Service for Residential Service Units not deemed approved for backdoor Residential Services by the City, the Contractor shall collect Municipal Solid Waste, Bulk Waste, Program Recyclable Material, and Green Waste (if added) at the curbside.

7.1.2 City Services

The City and the Contractor shall mutually decide on a location for collection of Municipal Solid Waste, Bulk Waste, and Recyclable Material from City Facilities and the location for collection of Municipal Solid Waste and Recyclable Material from City Events. The City reserves the right to designate the location for collection of Municipal Solid Waste, Bulk Waste, and Recyclable Material generated by City Facilities and the location for collection of Solid Waste and Recyclable Material for City Events if the City and the Contractor cannot agree on an acceptable location.

7.2 Disposal Location

Contractor shall dispose of all Municipal Solid Waste collected in connection with this Agreement at a Solid Waste Facility. For Bulk Waste collected in connection with this Agreement that shall be disposed, Contractor shall dispose of such Bulk Waste at a Solid Waste Facility that is appropriately licensed and/or permitted by the State of Arizona and/or the Arizona Department of Environmental Quality.

7.3 Processing Location

Contractor shall deliver all Recyclable Materials, Green Waste (if added), and Bulk Waste Collected in connection with this Agreement at a Processing Facility as follows:

- (i) Program Recyclable Materials Collected to a Recyclable Material Facility for Program Recyclable Materials
- (ii) Green Waste Collected to a Processing Facility for Green Waste (if such services are added)
- (iii) Bulk Waste Processing Facility that processes Bulk Waste (appliances only)

SECTION 8: COMMINGLING OF RESIDENTIAL SERVICES MATERIALS AND DISPOSAL OF PROGRAM RECYCLABLE MATERIALS PROHIBITED

8.1 Commingling of Residential Services Materials Prohibited

The Contractor shall not commingle Municipal Solid Waste, Bulk Waste, and/or Recyclable Materials from Residential Services with materials from outside the City except when approved in writing by the City. The Contractor shall not commingle Recyclable Materials from City Facilities with materials from outside the City except when approved in writing by the City.

8.2 Disposal of Program Recyclable Materials Prohibited

The Contractor shall not dispose of any Program Recyclable Material or market Program Recyclable Materials to markets that the Contractor knows or reasonably should have anticipated will dispose of the Program Recyclable Material except when approved in writing by the City.

SECTION 9: PROGRAM RECYCLABLE MATERIAL PROCESSING REQUIREMENTS

9.1 Program Recyclable Materials Processing Requirements

The Contractor shall utilize processing subsystems at the Recyclable Material Facility capable of complying with product specifications of secondary materials buyers including, but not limited to, product form, size, weight, density, and degree of contamination. In addition, the Contractor shall utilize processing subsystems at the processing facility capable of processing a minimum of ninety-five percent (95.0%) by weight of Program Recyclable Materials into Recovered Materials monthly.

9.2 Residential Recyclable Materials Audit

The Contractor shall conduct a Recyclable Materials Audit of Residential Recyclable Materials at the Contractor's sole expense and at its discretion. However, City may request the Contractor perform up to two audits per year, if Contractor has not done so. If requested by the City, the Contractor shall conduct Recyclable Materials Audits in accordance with the protocol in Exhibit C of the RFP.

The Contractor and the City agree that composition information derived from Recyclable Materials Audits is for public education and outreach purposes.

The Contractor shall conduct Recyclable Materials Audits in accordance with the protocol in Exhibit C. If such services are added, Contractor will service all of the Neighborhood Recycle Center's container and return contents to the Processing facility. Contractor will weigh the load and manually or mechanically separate recyclable items from trash and provide a material composition by weight for each type of recyclable item. The residual will be broken down by nonrecyclable materials and a percentage of contamination will be provided to the City.

9.3 Addition and Deletion of Program Recyclable Materials

The City reserves the right to add other Program Recyclable Materials to the program if the processing facility accepts such material from other customers and if the parties agree it is economically and technically feasible. In addition, the City reserves the right to delete Program Recyclable Materials from the program if the parties agree it is economically and technically prohibitive. Contractor may temporarily dispose of Program Recyclable Materials for which there is no commercially viable market. In such event, Contractor will notify City within ninety (90) days that any material will be removed from the recycling program.

SECTION 10: INSPECTION OF SET-OUTS AND UNACCEPTED SETOUTS

10.1 Contractor's Right to Inspect Set-Outs

The Contractor may inspect each set-out prior to collection for consistency with the requirements of this Agreement.

10.2 Unaccepted Set-outs

10.2.1 Reasons for Unaccepted Set-outs

Prior to collection of the set-out, Contractor may designate a set-out as an Unaccepted Setout for the following reasons:

- (i) A set-out exceeds the set-out limits as established in this Agreement.
- (ii) A set-out presents a substantial endangerment, such as disease or death, to the public or employee health or safety; or
- (iii) A set-out contains Hazardous Waste that cannot be easily separated, such as by manual efforts.

Contractor may not designate a set-out as an Unaccepted Set-out for any reason other than those identified in this section.

10.2.2 Procedure for Unaccepted Set-outs

If the Contractor designates a set-out or a portion of a set-out as an Unaccepted Set-out for the reasons set forth in Section 10.2.1, Contractor shall:

- (i) Take a date/time-stamped photograph of the entire set-out.
- (ii) Collect the portion of the set-out that is properly set-out; and
- (iii) Immediately provide an Unaccepted Set-out Notice to the Generator stating the reason the set-out or portion of the set-out was designated an Unaccepted Set-out.

For Bulk Waste set-outs that are Unaccepted Set-outs due to exceeding the set-out limits, Contractor shall collect the four (4) largest Bulk Waste items.

For all other Unaccepted Set-outs, Contractor shall provide a list of the Unaccepted Setouts including the address, reason set-out was an Unaccepted Set-out, and other information as requested by City to the City by 10:00 AM the next business day. If Contractor fails to provide notice in accordance with this section, Contractor shall be subject to administrative charges in accordance with this Agreement.

If the Contractor designated a set-out or a portion of a set-out as an Unaccepted Set-out for the reasons set forth in Section 10.2.1, Contractor shall: Take a date/time-stamped photograph of the entire set-out.

Collect the portion of the set-out that is properly set-out.

Immediately provide a City approved Improper set-out tag on the Unaccepted Set-out stating the reason the set-out or portion of the set-out that was designated as an Unaccepted Set-out;

The Contractor shall provide a list of the Unaccepted Set-outs including the address, reason the set-out was an Unaccepted Set-out, photographs, and other information as requested by the City to the City by 4:00 p.m. of the same business day. If Contractor fails to provide notice in accordance with this section, Contractor shall be subject to administrative charges in accordance with this Agreement.

10.3 Contamination; Overage.

a. Definitions.

- i. "Contamination" refers to materials placed in a Recyclable Materials container other than Recyclable Materials.
- ii. "Overage" is defined as (a) Solid Waste or Recyclable Materials exceeding its container's intended capacity such that the lid is lifted by at least 10" or would be lifted by at least 10" if closed, or (b) Solid Waste or Recyclable Materials placed on top of or in the immediate vicinity of the container, in bags or otherwise.

b. Roll-Out Period – Education and Outreach. During the period beginning on the Agreement commencement date and ending 60 days later (the "Roll-Out Period"), Contractor shall provide an education program designed to minimize instances of Contamination and Overage. During the Roll-Out Period, where Contractor documents that a particular customer has Contamination or Overage, Contractor shall collect the offending container (where it can be done safely and excluding material laying on ground) and provide a notice to the 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 customer may have.

During the Roll-Out Period, Contractor shall not impose a Contamination or Overage Charge.

c. Post Roll-Out Period. The following shall apply after the Roll-Out Period:

i. Contamination.

1. First and Second Occurrences. Contractor shall service containers with Contamination except where there is visible Excluded Waste. Contractor shall provide a Violation Notice, where such contact information has been provided.
 2. Third and Subsequent Occurrences. Contractor may opt to not collect Recyclable Materials containers with Contamination; in such event, the customer may request the container be collected as Solid Waste, and an additional fee will apply. Alternatively, Contractor may collect a container with Contamination and invoice the City a Contamination Charge in the amount set forth in Exhibit "A". In either case, the Contractor shall provide a Violation Notice.
- ii. Overage. Contractor may opt to not collect Overage, unless caused by Contractor spillage of non-overloaded containers during collection; in such event, the customer may correct the Overage and request that Contractor return to service the container (an additional fee will apply). Alternatively, Contractor may collect the container with Overage and invoice the City an Overage Charge in the amount set forth in Exhibit "A". In either case, Contractor shall provide a Violation Notice. If there have been more than three instances of Overage in any 12-month period for a particular service (i.e., Solid Waste or Recyclable Materials), Contractor may increase the customer's service level (i.e., larger/additional container or more frequent service) to mitigate the Overage, and may increase the charges to such City according to the increased service level.
- iii. Overweight Containers. The Contractor may refuse to collect any Solid Waste, Program Recyclable Material, or Green Waste Container which the Contractor reasonably believes to be overweight. A Container shall be considered "overweight" if the total weight of the Container and contents exceeds two times the volume capacity of said Container (e.g., 192 pounds for a 96-gallon Cart). The Contractor shall provide notification to the customer and to the City regarding each instance of non-collection.

SECTION 11: COLLECTION AND PROCESSING EQUIPMENT

11.1 Collection Equipment

11.1.1 Collection Vehicles

City may inspect the Contractor's equipment at any time to ensure compliance with this Contract. Upon notification from the City, the Contractor shall be required to repair or replace equipment that is no longer in acceptable condition for its intended purpose, according to industry standards. The Contractor shall, upon notification from the City, sanitize or repaint equipment that is unsightly.

11.1.1.1 Appearance of Collection Vehicles

Contractor shall paint all collection vehicles uniformly as approved by the City and with the name of Contractor, customer service office telephone number and the unique identification number of the vehicle in letters not less than six (6) inches high on each side and the rear of the vehicle. All collection vehicles shall be uniquely numbered, and a record kept of the vehicle to which each number is assigned.

Contractor shall maintain all collection vehicles in a clean manner, by industry standards. Upon the request of the City, Contractor shall wash collection vehicles as to maintain collection vehicles in a clean manner.

Contractor shall utilize vehicles to which wrap graphics may be applied and shall apply wrap graphics upon request by the City. Wrap graphics may be for the purpose of City-related education, events, announcements, or other content approved by the City. Application of Wrap graphics to collection vehicles shall be performed by the Contractor and production and application shall be City's sole cost.

No advertising shall be permitted on vehicles for persons other than the Contractor. No advertising shall be permitted on vehicles for third parties.

11.1.1.2 Age of Collection Vehicles

Upon commencement of the Agreement, contractor shall provide collection with collection vehicles having an average age not exceeding seven years (7). Contractor shall provide collection with collection vehicles of less than ten (10) years of age during the initial term of the Agreement and any subsequent renewal terms.

11.1.1.3 Purchase, Operation, Maintenance, Storage and Replacement of Collection Vehicles

Contractor, at its sole cost, shall purchase, operate, maintain, store and replace all collection vehicles as required for the provision of Residential Services and City Services. Contractor shall maintain collection vehicles according to industry standards including, but not limited to compaction, prevention of leakage, and other industry standard performance requirements.

All collection vehicles must be equipped with back-up cameras and spill kits for oil and hydraulic fluid spills.

11.1.2 Carts

11.1.2.1 Purchase and Delivery of Carts

Contractor, at its sole cost, shall provide all carts as required for the provision of Residential Services and City Services in connection with this Agreement. The City shall approve the appearance, manufacturer and quality of residential carts. Contractor, at its sole cost, shall be responsible for the cost to the cart manufacturer,

order, and arrange for the delivery of all carts to a secured area at Contractor's designated location, for storage of carts until carts are requested to be distributed.

11.1.2.2 Storage and Distribution of Replacement Carts

Contractor, at its sole cost and expense, shall provide a secured area at Contractor's designated location, for storage of carts prior to the implementation of the Service Agreement, and shall maintain that location for the duration of the Agreement for distribution or replacement of the carts. Contractor, at its sole cost, shall deliver cart(s) to Residential Service Units and City Facilities within five (5) business days of the request by the Resident or the City. The Contractor shall provide Residential and City Services utilizing current carts owned by or new carts purchased by the Contractor.

11.1.2.3 Maintenance, Repair, and Replacement of Carts

The Contractor shall provide maintenance and repair of carts, and distribution carts to new Residential Units and of replacement carts as needed. Upon notification to Contractor by the Resident or City that a customer's cart has been lost, destroyed, stolen, or that it has been damaged beyond repair, Contractor shall deliver a replacement cart to such customer within five (5) business days. Contractor shall, at its sole cost and expense, replace carts destroyed or damaged beyond repair if determined by the City that such destruction or damage was caused by the Contractor or Contractor's employees or equipment for the life of the Agreement at no cost to the City or the customer. Contractor shall be reimbursed by City for replacement containers where the damage to the container being replaced was not by Contractor mishandling.

Contractor's employees shall take care to prevent damage to carts by unnecessary rough treatment. Except as provided herein, Contractor shall be solely responsible for the maintenance and repair, including warranty issues, of carts.

The Contractor shall report to the City, in accordance with Recordkeeping and Reporting requirements defined in Section 19 of the Agreement, the number of carts, used for the Collection of Municipal Solid Waste and for the Collection of Program Recyclable Materials, that have been lost, stolen, destroyed, or damaged beyond repair.

11.1.3 Other Collection Equipment

11.1.3.1 Appearance of Other Collection Equipment

Contractor shall paint all metal containers uniformly as approved by the City and with the name of Contractor and Contractor website in letters not less than six (6) inches high on the front of the container. No advertising shall be permitted on vehicles for persons other than the Contractor. No advertising shall be permitted on vehicles for third parties. As for other collection equipment, Contractor shall be

solely responsible to ensure the appearance of other collection equipment is consistent with the collection vehicles and carts.

11.1.3.2 *Purchase, Operation, and Maintenance of Other Collection Equipment*

Unless otherwise stated in this Agreement, Contractor, at its sole cost, shall purchase, operate, and maintain collection equipment pursuant to this Agreement. City, at its reasonable discretion, shall determine whether the Contractor is or is not properly maintaining the collection equipment by industry standards. If the City determines the Contractor is not properly maintaining the collection equipment, it shall notify Contractor, and Contractor shall then repair or replace such equipment in accordance with this Agreement. Additionally, City may assess administrative charges in accordance with this Agreement, where applicable.

11.1.3.3 *Replacement of Collection Equipment*

Unless otherwise stated in this Agreement, Contractor, at its sole cost, shall replace collection equipment if such equipment is lost, stolen or damaged beyond normal wear and tear. If Contractor or City determines that collection equipment requires replacement, Contractor shall replace such equipment within fourteen (14) calendar days with comparable equipment. Contractor shall be responsible to make the appearance of the replacement equipment in adherence with the requirements of this Agreement.

11.1.4 Ownership of Collection Equipment

11.1.4.1 *Ownership Collection Equipment other than Carts*

Ownership of collection equipment other than carts shall rest with Contractor.

11.1.4.2 *Ownership of Carts*

Title to and ownership of all solid waste and recycling carts is, at all times, with the Contractor, regardless of whether such carts are in the possession of Contractor, Residential Service Units, City Facilities or any other entity or individual. This shall include the carts in the possession of the City to be used as an emergency inventory for the City as prescribed in Paragraph 11.1.2.2 above.

11.2 Disposal Facility, Recyclable Material Facility, and Processing Facility Equipment

11.2.1 Scales

The Contractor shall be solely responsible for ensuring the Disposal Facility and Recyclable Material Facility are equipped with adequately sized truck scales and computerized record-keeping systems for weighing and recording all incoming vehicles transporting Municipal Solid Waste and Recyclable Materials. Contractor shall separately weigh, record and tabulate each load from City.

Contractor shall have each scale annually certified with the State. Upon request of the City, the Contractor shall provide proof of certification to the City.

11.2.2 Capacity and Other Facility Equipment

The Contractor shall be solely responsible for ensuring the Disposal Facility has the capacity and equipment to dispose of the quantity and type of materials collected by the Contractor in connection with this Agreement in accordance with industry standards. In addition, the Contractor shall be solely responsible for ensuring the Recyclable Material Facility has the capacity and equipment to process the quantity and type of materials collected by the Contractor in connection with this Agreement in accordance with industry standards.

SECTION 12: PERSONNEL

Contractor shall assign a qualified person or persons to be in charge of its operations within City, and shall provide the name, office telephone number, mobile phone number, email address, and fax number of Contractor's representatives and key personnel to the City. Such records shall be updated as personnel or contact information changes. In addition, Contractor shall adhere to the following requirements:

- (i) Contractor shall hire and maintain qualified personnel to provide service under this Agreement. As for personnel operating commercial vehicles, Contractor shall ensure such personnel have a valid commercial driver's license while operating commercial vehicles in the City or in connection with this Agreement. If deemed qualified, the Contractor is encouraged to hire City residents to fill vacant positions at all levels.
- (ii) Contractor shall furnish each employee involved in the performance of this Agreement with a uniform and safety vest, shirt or jacket which clearly displays the name of Contractor. Such uniforms and safety equipment shall make the employee readily visible to other motorists. Contractor's employees shall wear complete uniforms and safety vest, shirt or jacket at all times.
- (iii) Contractor shall provide regularly scheduled, on-going operating and safety training for all employees. In addition, Contractor's employees shall be trained to perform their duties to maximize the City's recycling rate, minimize contamination, and always promote recycling. Such meetings shall be mandatory for all collection and supervisory personnel and held not less than once per month. All temporary and newly hired permanent collection personnel shall receive comprehensive safety and operational training prior to working on the collection vehicles. Training manuals and schedules shall be maintained at the local office of Contractor and available for review at any time by City.
- (iv) All employees involved in the performance of this Agreement including office and all collection personnel, shall be provided adequate training before and during their employment with the Contractor. This training shall familiarize employees with the required duties and standards of performance, specific requirement on routes to which they will be assigned, teach the route layouts previously established and approved, and provide necessary knowledge to eliminate delays and missed collections. All supervisory and

collection employees shall be provided comprehensive safety training, equipment, and supplies prior to and during the performance of their duties. All collection, administrative, supervisory and customer service personnel shall receive customer service training prior to and during the time they are employed by the Contractor.

- (v) Contractor's employees shall treat all customers, co-workers, City employees and any person with whom they come in contact in the performance of their duties in a polite and courteous manner. Rudeness, belligerence, and the use of profanity are strictly prohibited. The City reserves the right to direct Contractor to remove any employee who violates this policy from providing services to the City.
- (vi) In performance of collection, disposal, processing, and marketing services, Contractor's employees shall adhere to municipal, City, state and federal laws.

City reserves the right to make a complaint regarding any employee of the Contractor who violates any provision herein, or who is wanton, negligent or discourteous in the performance of his/her duties. The City may require the Contractor to remove any unacceptable employee, as determined by the City, from service to the City. The City reserves the right to have the Contractor remove employees who fail to meet these criteria from services related to this Agreement.

SECTION 13: HOURS OF OPERATION

13.1 Collection Hours of Operation Except for specified holidays, Contractor's hours of operation within the City of Eloy, Arizona are set forth below. However, due to events beyond the Contractor's control, which prevent Contractor from completing its collection services by 6:00 p.m., Contractor shall send an email to the City no later than 4:00 p.m. that day and request extended collection hours not to exceed 8:00 p.m. and state the reason for the extended hours. If the extended hours request is not approved by the City, administrative charges will apply.

13.1.1 Residential Services

Contractor's regular collection hours shall be from 6:00 a.m. until 6:00 p.m., Monday through Friday.

Contractor is prohibited from operating its vehicles on City streets prior to 6:00 a.m. or after 8:00 p.m.

13.1.2 City Services

Contractor's regular collection hours for City Services shall be from 6:00 a.m. until 6:00 p.m., Monday through Friday. Unless otherwise directed by City, Contractor is prohibited from operating its vehicles on City streets after 8:00 p.m.

13.2 Facility Hours of Operation

Contractor shall be solely responsible to ensure the Disposal Facility, Recyclable Material Facility, and Green Waste Processing Facility (if added) hours of operation are sufficient to support the requirements as set forth in this Agreement.

13.3 Contractor Representative Hours of Operation

Contractor shall have a competent and reliable representative on duty that is authorized to make decisions and act on its behalf. Contractor agrees that City shall have twenty-four (24) hour access to said representative via a non-toll call from City. Answering machines, pagers or other devices that do not provide for immediate contact with Contractor's said representative(s) shall not meet the requirements of this section.

SECTION 14: HOLIDAYS

For purposes of this Agreement, holidays shall solely include the following:

- (i) New Year's Day. (ii)
Martin Luther King Jr. Day
- (iii) Independence Day. (iv)
Thanksgiving Day; and
- (v) Christmas Day.

The City and Contractor may agree to add or delete holidays. If a holiday occurs on a scheduled collection for Residential Services, Contractor shall perform the scheduled collection for the holiday and the remainder of the week ending on Friday on the next calendar day after the scheduled collection day. If a holiday occurs on a scheduled collection for City Services, the Contractor shall perform the scheduled collection for such generator at the sole discretion of each City Facility and City Event on the next calendar day after the holiday.

SECTION 15: CUSTOMER SERVICE

15.1 Customer Service Office and Complaints

Contractor shall maintain a customer service call center office at a location approved by the City; a call center in the Phoenix metro area is deemed approved. The customer service office shall be staffed by the Contractor with personnel 8:00 am – 5:00 pm, Monday – Friday, excluding holidays.

All customer service complaints for Residential Services shall be directed to the City. The Contractor and Contractor staff shall not be designated as points of contact for customer complaints, and will not handle, respond to, or resolve customer complaints. If the Contractor receives a complaint directly, the Contractor shall direct the complainant to contact the City or shall contact the City Representative and provide the following information to the City's Representative:

- (i) Customer name, address, and phone number
- (ii) Type of complaint

For all complaints, whether received by the City or the Contractor, the Contractor shall resolve each complaint within:

- (i) If the complaint is a missed collection, Contractor shall pick up the missed collection on that same day if the complaint is delivered to the Contractor prior to 1:00 PM.
- (ii) If the complaint is a missed collection, Contractor shall pick up the missed collection before 5:00 PM on the next calendar day if the complaint is delivered to the Contractor after 1:00 PM.
- (iii) If the complaint is property damage, Contractor shall immediately leave notice for the customer (resident) and notify the City within twenty-four (24) hours. Contractor shall resolve the complaint within seven (7) days, consistent with the damage to property requirements as set forth in Section 17 of this Agreement. If resolution is not completed within seven (7) days or is not completed to the City's standard, the City may perform or contract with a third party to perform resolution and subsequently bill Contractor for services.
- (iv) If the complaint other than a missed collection or property damage, Contractor shall resolve the complaint within twenty-four (24) hours of notice of such complaint to Contractor.

Contractor and Contractor's employees understand, acknowledge, and agree that customer service is of high importance to the City. Contractor and its employees will work diligently to provide high customer services to the City and all customers.

SECTION 16: TRANSITION SUPPORT

Contractor understands, acknowledges, and agrees that a smooth transition from currently provided Residential Services and City Services and service provider another service provider and/or from current Residential Services to new or changed Residential Services is essential for the health and safety of the City and its residents. Contractor understands, acknowledges, and agrees that with the failure of Contractor to timely and promptly transition will create serious health and safety issues for the City and its residents. Contractor understands, acknowledges, and agrees that the City does not possess the necessary manpower or equipment to provide Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service.

Contractor shall cooperate fully and timely with the City and any previous and subsequent provider(s) in any transition of Residential Services and City Services. Contractor shall cooperate fully with the City in:

- (i) The transition to the Contractor providing Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service upon the Commencement Date;
- (ii) The transition from the Contractor to subsequent person(s) or the City providing Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service upon expiration of the initial term or optional renewal term; and,
- (iii) The transition from the Contractor to subsequent person(s) or the City providing Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service upon termination of the Agreement.

For the transition from provider(s) of Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service prior to the Commencement Date to the Contractor, Contractor shall collect Municipal Solid Waste and Recyclable Materials from carts and containers from the provider(s) prior to the Commencement Date. In addition, Contractor shall immediately provide a Transition Notice, as defined in Section 23 of this Agreement, to the Residential Service Units and to City Facilities whom set-out Municipal Solid Waste and Recyclable Materials in carts from the provider(s) prior to the Commencement Date as set forth in this Agreement. Transition support shall include delivery to the City prior to Commencement Date route maps in electronic PDF and shapefile format..

Upon Contractor's failure to fully and completely transition in accordance with this Agreement or the Transition Plan, included in Appendix B, City may engage the immediate services of another provider to immediately fully and completely transition in accordance with this Agreement or the Transition Plan and the reasonable expenses of which Contractor hereby agrees to pay to City. In the event City is unable to secure the immediate services of another solid waste provider, Contractor agrees and consents to all equitable and at law remedies available to City.

The successful Proposer's transition plan, upon approval by the City, shall be included as an Appendix to the final awarded Agreement.

SECTION 17: DAMAGE TO PROPERTY

The Contractor shall take all necessary precautions to protect public and private property during the performance of this Agreement. Except for reasonable wear and tear, the Contractor shall repair or replace any private or public property which is damaged by the Contractor. Such property damages shall be addressed for repair or replacement, at no charge to the property owner, within seven (7) days with property of the same or equivalent value at the time of the damage.

If the Contractor fails to address the repair or replacement of damaged property within seven (7) days, the City may, but shall not be obligated to, repair or replace such damaged property, and the cost of doing so shall be deducted from payment to be made to the Contractor.

SECTION 18: SPILLAGE AND LEAKAGE, LITTER, AND ODOR

18.1 Spillage and Leakage

Contractor shall clean up any materials including leakage of fluids spilled from Contractor's vehicles by the Contractor, Contractor's vehicles or Contractor's employees. During transport, all materials shall be contained, covered and enclosed so that leaking, spilling, and blowing of materials does not occur. Contractor shall be responsible for the cleanup of any spillage or leakage caused by Contractor, Contractor's vehicles or the Contractor's employees. Contractor shall perform all clean-ups within two (2) hours of the earliest of either the (i) notification of spillage or leakage or (ii) knowledge of spillage or leakage by Contractor or Contractor's employees. (see Exhibit E)

Contractor is to provide a Fluid Discharge and Spill Response Procedure to be approved by the City to include:

- Communication standards for Contractor's Dispatch Team and City employees including immediate notification of discharge or spill.
- Primary and secondary Stormwater Pollution Prevention Control Measures for spill containment.

Discharge and spill response close-out report to be emailed to the City within twenty-four (24) hours of spillage or leakage to include date and time of spillage or leakage, emergency response actions needed, cause of spillage or leakage, detailed clean-up procedures, and date/time-stamped photographs of before and after spillage or leakage clean-up.

18.2 Litter

Except as provided in Section 10.3, the Contractor shall be required to pick up any and all litter including any glass spillage caused by the provision which blows or falls from the service vehicles of services during Residential Service Unit collection or service of the Neighborhood Recycling Center in connection of with this Agreement.

18.3 Odor

The Contractor shall maintain collection equipment that is owned by the Contractor as to prevent the odors. The Contractor shall routinely clean collection equipment.

SECTION 19: RECORDKEEPING, REPORTING, AUDITED FINANCIAL STATEMENTS, AND REPORTING FORMAT

19.1 Recordkeeping

The Contractor shall maintain at the local customer service office adequate records relating to the performance of their respective duties under this Agreement. Such records shall be made available at any time during reasonable business hours for inspection by the City and for a period of five (5) years after last or final payment. At a minimum, the Contractor shall create, maintain, and make available records as defined herein and/or required by applicable law, and any reports as are reasonably necessary to:

- (i) Document services provided by type of service, container type, container size, collection frequency, fees charged, and other information as requested by the City.
- (ii) Document deliveries of materials by type of material, time delivered to facility, tonnage of material delivered, source of material, route, and other information as requested by the City.
- (iii) Document missed collections and unaccepted set-outs on a daily basis by address, time and date for each and the reason and notice for unaccepted set-outs.
- (iv) Document damaged carts by address, description of damage, and other information as requested by the City.
- (v) Document the number of carts that have been lost, stolen, destroyed, or damaged beyond repair and other information as requested by the City.

- (vi) Document complaints by address, date and time of receipt of complaint, date and time of resolution of complaint, description of complaint resolution, and other information as requested by the City.
- (vii) Document inactive accounts by address and other information as requested by the City.
- (viii) Document spills and property damage by date and time of incident, description of incident, date and time of resolution, description of resolution, and other information as requested by the City (see Exhibit E of the RFP).
- (ix) Such other documents and reports as City may reasonably require to verify compliance with the Agreement or to meet City's reporting requirements.

19.2 Reporting

19.2.1 Initial Reports

19.2.1.1 Transition Plan

The Contractor shall submit to the City for approval a transition plan, consistent with the transition support requirements as set forth in this Agreement, prior to execution of this Agreement. In the transition plan, Contractor shall detail:

- (i) The transition to the Contractor providing Residential Services and City Services upon the Commencement Date;
- (ii) The transition from the Contractor to subsequent person(s) or the City providing Residential Services and City Services upon expiration of the initial term or optional renewal term; and,
- (iii) The transition from the Contractor to subsequent person(s) or the City providing Residential Services and City Services upon termination of the Agreement.

19.2.1.2 Hazardous Waste and Special Waste Contingency Plan

The Contractor shall submit to the City for approval a Hazardous Waste and Special Waste contingency plan prior to July 1, 2025. This plan shall detail what actions shall be taken by the Contractor upon discovery of Hazardous Waste and/or Special Waste to a facility. Contractor shall include in the plan a copy of a signed contract(s) with a permitted Hazardous Waste and Special Waste transporter(s) to handle any Hazardous Waste and Special Waste discovered at the facility. The plan shall comply with all State and Federal regulations regarding the handling of Hazardous Waste and Special Waste.

19.2.2 Regular Report Delivery and Frequency

The Contractor shall submit all reports in an electronic format approved by the City. The successful Offeror shall provide the City with a monthly report within seven (7) calendar days following the end of the month and an annual report within thirty (30) calendar days

following the end of the calendar year summarizing the information described in Section 19.1 of the Agreement.

19.2.3 Report Format

Within fourteen (14) calendar days of the execution of this Agreement, the Contractor shall submit to the City for its approval the format and sample contents of the records to be maintained and the reports to be generated in fulfillment of the requirements of the Agreement. Contractor shall submit all reports in an electronic format approved by the City.

SECTION 20: CITY INSPECTION RIGHTS

20.1 City's Right to Inspect Records, Books, Data and Documents

The City or any of its duly authorized representatives shall have access, within twenty-four (24) hours of notification, to all relevant books, records, data and documents of the Contractor for inspection and audit of this Agreement, at City's own expense.

20.2 City's Rights to Inspect Facilities and Equipment

The City or any of its duly authorized representatives shall have access, within twenty-four (24) hours of notification, to inspect Contractor's facilities, including the Disposal Facility, Recyclable Material Facility, and Green Waste Processing Facility (if services added), and equipment and perform such inspections, as City deems reasonably necessary, to determine whether the services required to be provided by Contractor under this Agreement conform to the terms hereof and/or the terms of the solicitation documents, if applicable. City shall conduct the inspection of facilities and equipment during regular hours of operation. Contractor shall make available to City all reasonable facilities and assistance to facilitate the performance of inspections by City's representatives.

SECTION 21: CUSTOMER LIST, BILLING, PAYMENT, AND ANNUAL ADJUSTMENTS

21.1 Customer List

On or prior to [March 28], 2025, City shall provide Contractor with a Customer List for Residential Services and City Services. Contractor will report in writing to the City any Cart(s) or Bulk Waste placed at the curbside of a Residential Waste Service Unit or City Facility that is not on the then current Customer List, and City will thereafter update the Customer List as applicable. At the end of each month prior to invoice the contractor will send a list of customer changes. City will notify contractor of any discrepancies to customer lists. Regardless of the Customer List, Contractor shall provide services to all Residential Services Units and City Facilities in accordance with this Agreement.

21.2 Billing

21.2.1 Base Residential Services

The City shall bill Residential Service Units as identified on the Customer List for Residential Services in accordance with the rate structure established by the City.

21.2.2 City Event Services

The Contractor shall at its sole expense provide City Event Services. The Contractor shall not bill the City, co-sponsors, or any other person for City Event Services. The Contractor shall provide Electronics Recycling Services to City Events, which will include a Certificate of Data Destruction for all applicable electronics. Other materials which the Contractor shall provide at no cost to the City is Christmas Tree Recycling, Metals and Appliances (including appliances with Freon removed), and Tires. The Contractor will decide the number of roll-off containers to be utilized at the City Events.

21.3 Payment to Contractor

On or prior to 20th of each calendar month, the City shall pay Contractor for Residential Services billed by the City for an amount equal to the accounts receivable from Residential Services billed less

- (i) any disputed amounts,
- (ii) administrative charges,
- (iii) authorized withholding of payments,
- (iv) The Contractor shall bill the City on or before the 20th day of each month for all Residential Service Units, City Facility Services, Neighborhood Recycling Services (if added), and City Event Services performed during the prior calendar month. The Contractor shall ensure that each bill
 - a) describes services provided to the City.
 - b) provides a summary sheet for residential service units.
 - c) includes all charges for the prior month.
 - d) includes any other information the City requests.

The Contractor shall bill the City in accordance with the Rate Structure established in Appendix B and may subsequently be adjusted as set forth in this agreement.

21.4 Annual Rate Adjustment Subject to Council Approval

All costs proposed in Appendix B shall remain fixed from the execution of this Agreement through June 30, 2025, except as provided for in Section 21.6 of this Agreement. On July 1, 2025, and every July 1st thereafter for the life of this Agreement, all rates as established in Appendix B may be adjusted, increased or decreased, according to this section upon approval of City Council.

Rate adjustment requests must be received by the City on or before March 1 of each year or the Contractor forfeits the right to adjust the rate for that upcoming year. Upon approval of City Council, the annual rate adjustment shall be a composite as follows:

- (i) a. 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 adjusted by a percentage amount derived by multiplying the then-current Rates by one hundred percent (100%) of the percentage increase of the 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"). The CPI-U adjustment will be calculated using the change in the 12-month annual average of monthly CPI-U index values between the December 31 to December 31 period of the year immediately prior to the adjustment date, and the December 31 to December 31 period of the year before. Provided that adequate supporting information has been submitted by Company, the annual adjustment to Rates shall be deemed approved and shall take effect as outlined in this section. CPI not to exceed 5% or below 2% on an annual basis.

If the Contractor does not request a rate increase by March 1 of a year, the City reserves the right to evaluate Residential rates in accordance with the rate adjustment criteria as defined in this section. If evaluation of Residential rates would result in a decrease in rates, the City may request approval of a rate decrease by City Council, to take effect July 1 of each year.

21.5 Other Rate Adjustments Subject to Council Approval

In addition to the above, the Contractor may petition the City for additional rate adjustments at reasonable times based on increases in cost of operations, caused by factors listed in (i) through (iv) below. The Contractor's petition will specifically identify the reasons for the requested adjustment, and its impact upon the Contractor's cost of operations, in unit terms, with an explanation of the methodology used to calculate such impact due to any one or more of the following causes:

- i. An act of God, public enemy or similar cause beyond the reasonable control of the contractor. ii. Change in Applicable Law that is effective after the Effective Date of this Agreement.

- iii. Increases in surcharges, fees, assessments, or taxes levied by federal, state, or local regulatory authorities or other governmental entities related to Contractor's services.
- iv. Any other extraordinary circumstances or causes or reasons that are not within the reasonable control of the Contractor.

The city may request additional information it considers necessary to evaluate the requested adjustment. The City may grant such adjustments through amendments to the Agreement..

SECTION 22: COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor understands, acknowledges, and agrees the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

Pursuant to the provisions of A.R.S. §41-4401, the Contractor warrants to the City that the Contractor and all its subcontractors are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Contractor or any of its subcontractors will be deemed a material breach of this Contract and may subject the Contractor or subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of the Contractor or any subcontractor who works on this Contract to ensure that the Contractor or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Contractor and any of its subcontractors to ensure compliance with this warranty.

The City will not consider the Contractor or any of its subcontractors in material breach of this Contract if the Contractor and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article shall be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. In addition, Contractor shall comply with the following laws:

- (i) Occupational Safety and Administration

Contractor will warrant that any work performed on City property or in a location partially or entirely under (Contractor's) control will be performed in accordance with OSHA requirements and all applicable labor laws, regulations, and standards.

(ii) Equal Employment Opportunity

Contractor will comply with applicable laws, statutes, codes, rules and regulations related to or prohibiting discrimination in employment in the performance of its work under this Agreement.

(iii) Fair Labor Standards Act

Contractor is required and hereby agrees by execution of this Agreement to pay all employees not less than the Federal minimum wage and to abide by other requirements as established by the Congress of the United States in the Fair Labor Standards Act, as amended from time to time.

SECTION 23: PUBLIC EDUCATION NOTICES

Contractor shall provide the following services associated with public education notices at no cost to the City or the customer. Contractor shall submit all public education notices to the City for approval. Contractor will at no time place public education notices inside customers' mailboxes. Contractor shall not distribute any public education notices within the City without written approval from the City, and all public education materials are required to be City approved.

(i) Distribution of Transition Notice

Contractor shall develop, print, and distribute, at Contractor's own expense, a Transition Notice for Residential Service Unit and City Facility to inform customers of change in service provider, if applicable, prior to the Commencement Date which are set-out after the Commencement Date.

(ii) Distribution of Program Introduction Notice

Contractor shall develop, print, and distribute, at Contractor's own expense, a Program Introduction Notice for each Residential Service Unit prior to the Commencement Date describing all Residential services to that will be provided, including new services and changes to services. Program Introduction notice shall include, at a minimum:

- Types of Residential Services that will be provided
- Service frequency or procedure for request for each service
- Set-out requirements (types of materials accepted, configuration, and limits)

(iii) Development, Printing and Distribution of Unaccepted Set-out Notice

Contractor shall develop, print, and distribute, at Contractor's own expense, an Unaccepted Set-out Notice. The Unaccepted Set-out Notice shall be approved by the City and shall include one (1) original with two (2) carbon copies. The Unaccepted Set-out shall include (a) the date (b) reason for non-collection, and (c) Contractor's customer service telephone number, and (d) any other information the City requests.

Contractor shall attach the original Unaccepted Set-out Notice via a non-adhesive means to the Cart, or Container. Contractor shall take a digital photo of set-out that receives an Unaccepted Set-out. Contractor shall maintain carbon copies of Unaccepted Set-out Notices and digital photos in a format Contractor can immediately retrieve a requested notice or photo by address. Contractor shall provide a monthly report of Unaccepted Set-out Notices as set forth in this Agreement.

(iv) Development, Printing and Distribution of Additional Public Education Notices

At the request of the City, the Contractor shall develop, print, and distribute, at Contractor's own expense, other Public Education Notices to Residential Service Units for purposes and needs identified by the City.

(v) Development and Distribution of Public Education Video

At the request of the City, the Contractor shall develop one (1) City of Eloy-specific video that promotes recycling and diversion and provides information about the services provided to the City. The successful Respondent shall update the video annually to reflect any focus areas for public education or any changes to service levels. The successful Respondent shall also make available to the City other relevant recycling, diversion and solid waste videos developed by the successful Respondent for use by the City.

The Contractor shall be required to provide to the City at no cost any existing public educational materials previously developed and utilized for Residential services, including, but not limited to flyers, mailers, informational or instructional videos, etc. The City shall be permitted to utilize such materials for public education purposes within the City at the City's discretion.

SECTION 24: OWNERSHIP OF SOLID WASTE, BULK WASTE, GREEN WASTE, AND PROGRAM RECYCLABLE MATERIALS

Title to Solid Waste, Bulk Waste, Green Waste (if services added), and Program Recyclable Materials shall pass to the Contractor once the Contractor takes possession of the materials.

SECTION 25: INDEMNIFICATION

To the maximum extent permitted by law, Contractor hereby agrees and consents for itself, individually and on behalf of the business entity, to fully and unconditionally release, indemnify, defend, and hold harmless the City of Eloy, Arizona, including its officers, agents, and employees, and to defend and hold it harmless from and against any and all costs, expenses, attorney fees, claim suits, demands, losses, or liability for injuries to real or personal property and injuries to persons including death, including Contractor's employees, affiliates, representatives, partners, agents, or those working on proposer's behalf, from any and all other costs, expenses, attorney fees, claims, suits, damages, losses or liabilities of any and every nature whatsoever arising in any manner, directly or indirectly, out of or in connection with any contract awarded pursuant to this

RFP and in the performance thereof, regardless of cause or of the sole, joint, comparative or concurrent negligence or gross negligence, save and except the sole and exclusive negligence of the City. This provision shall apply to all imputed or actual joint enterprise and joint venture liability, if any.

SECTION 26: INSURANCE REQUIREMENTS

The following insurance requirement applies.

26.1 General Requirements

- (i) The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Agreement term and during any optional renewal terms, as set forth in Section 5.2 of the Agreement.
- (ii) The Contractor shall provide to the City a certificate of insurance with respect to each required insurance policy as verification of coverages required below prior to contract execution and within fourteen (14) calendar days after any future written request from the City. In addition, the Contractor shall promptly obtain and provide to the City new certificates of insurance (i) annually, (ii) within ten (10) days after the renewal date for any policy, and (iii) within ten (10) days after any replacement or supplemental policy is obtained.
- (iii) All certificates of insurance must be originals, duly endorsed by an authorized representative of the carrier, and be in such form as the City shall reasonably require.
- (iv) The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- (v) The Contractor must submit certificates of insurance to the City for each subcontractor prior to the subcontractor commencing work on the project.
- (vi) The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Arizona at the time the policies are issued and shall be written by companies with A.M. Best Financial Strength Rating of B+ or better, and A.M. Best Financial Size Category of VII or better. The

City will accept workers' compensation coverage written by the Arizona's Workers' Compensation Insurance Fund and other carriers approved by the City.

- (vii) All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Eloy
595 North 'C' Street
Eloy, AZ 85131

- (viii) The “*other*” insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- (ix) If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- (x) The City reserves the right to review the insurance requirements set forth during the effective period of the Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor. The City shall reimburse Contractor for any additional cost incurred due to material changes in the City’s insurance requirements from those set forth in this Agreement.
- (xi) The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement and any optional renewal terms, as set forth in Section 5.2 of the Agreement, or as required in the Agreement.
- (xii) The Contractor shall be responsible for premiums, deductibles and selfinsured retentions, if any, stated in policies.
- (xiii) The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

26.2 Specific Coverage Requirements

The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement, including extension options and hold over periods. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- (i) Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$2,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

- (ii) Blanket contractual liability coverage for liability assumed under the Agreement and all other Contracts related to the project.
- (iii) Independent Contractor's Coverage.
- (iv) Products/Completed Operations Liability for the duration of the warranty period.
- (v) Thirty (30) calendar days' Notice of Cancellation
- (vi) The City will be an additional insured on a blanket basis

26.3 Business Automobile Liability Insurance

The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$2,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$500,000 bodily injury per person, \$2,000,000 bodily injury per occurrence and at least \$250,000 property damage liability per accident. The policy shall contain the following endorsements: (i) Waiver of Subrogation

- (ii) Thirty (30) calendar days' Notice of Cancellation
- (iii) The City of Eloy listed as an additional insured

26.4 Workers Compensation and Employers' Liability Insurance

Coverage shall be consistent with statutory benefits outlined in the Arizona's Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

- (i) The Contractor's policy shall apply to the State of Arizona. (ii) Waiver of Subrogation
- (iii) Thirty (30) calendar days' Notice of Cancellation

26.5 Environmental Impairment Liability Insurance

With a minimum limit of \$2,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of sudden and accidental or non-sudden and accidental pollution arising out of the transportation, storage, or permanent disposal of hazardous and non-hazardous wastes.

With respect to sudden and accidental occurrences, the Contractor and/or subcontractors who own or operate a treatment, storage and disposal facility must demonstrate financial responsibility for bodily injury and property damage to third parties of at least \$2,000,000 per occurrence.

With respect to non-sudden and accidental occurrences, all Contractor and/or subcontractors who own or operate a surface impoundment, landfill or land treatment facility that is used to manage hazardous wastes must demonstrate financial responsibility

for bodily injury and property damage to third parties of at least \$2,000,000 per occurrence. The amounts of coverage must be exclusive of legal defense costs.

26.6 Endorsements

The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval which will not be unreasonably withheld.

- (i) Certificate. The following statement must be shown on the Certificate of Insurance.

The City of Eloy is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Eloy for general liability, auto liability and workers compensation policies.

SECTION 27: ADMINISTRATIVE CHARGES

Contractor understands that if Contractor does not timely perform its obligations pursuant to the terms of this Agreement, City will suffer damages which are difficult to determine and adequately specify. The Contractor agrees, in addition to any other remedies available to the City, that the City may withhold payment from the Contractor in the amounts specified below as administrative charges for failure of the Contractor to fulfill its obligations.

The following acts or omissions shall be considered a breach of the Contract: (i)

Missed Collection

\$50 for each missed collection above two (2) misses per collection day, to be assessed at the end of each collection month. A missed collection occurs when a collection was not performed on the scheduled collection day for reasons other than (a) the container not being set out at the time of attempted collection, (b) the container being obstructed such that Contractor's vehicle could not safely perform the collection, or (c) the customer placing unpermitted items in the container.

- (ii) Missed Residential Service Unit Block

\$500 for each incident of the Contractor failing to pick up material on entire block containing Residential Service Units. A missed block is defined as one side of a street between cross streets or an entire cul de sac. There shall be no administrative charge where a non-collection was due to (a) a container not being set out at the time of attempted collection, (b) a container being obstructed such that Contractor's vehicle could not safely perform the collection, or (c) a customer placing unpermitted items in the container.

- (iii) Failure to Provide Residential Services or City Services During Regular Hours of Operation (see Section 13.1):

\$250 for each Contractor vehicle providing Residential Services or City Services operating on City streets after 6:00 PM and ending before 8:00 PM.

\$500 for each for each Contractor vehicle providing Residential Services or City Services on City streets in the City after 8:00 PM.

- (iv) Failure to perform proper billing procedures and/or receive customer approval prior to performing and billing for additional Bulk Waste Services, and failing to cure within 5 days after being notified:

\$250 each incident

- (v) Failure to Complete a Majority (50%) of the collections on a given day \$2,500 each incident

- (vi) Failure to clean up material spilled or littered by Contractor within two (2) hours of verbal or written notification

\$250 each incident

- (vii) Failure to maintain vehicle in manner which prevents nuisances such as leaky seals or hydraulics

\$100 per vehicle per day

- (viii) Failure to address, as required by this Agreement, Damage to Property within forty-eight (48) hours

\$250 each incident

- (ix) Omitted

- (x) Failure to maintain Cart or Container in proper working order ten (10) calendar days after notice has been provided by the City

\$100 each incident

- (xi) Failure to provide a timely or complete monthly or annual report \$250 each incident

- (xii) Placing Recyclable Material in Solid Waste containers or vehicles \$1,000

- (xiii) Failure to provide updated route maps to City after change in routing

\$50 per day each day beyond thirty (30) calendar days after change in routing

- (xiv) Failure to leave a City approved education tag when material that is inappropriately prepared is not collected

\$100 each incident

- (xv) Distributing Carts without labels that include text and graphics depicting what materials may be placed in the containers

\$100 each incident

- (xvi) Failure to respond to any customer complaint received by the close of the following business day

\$100 per business day thereafter per incident

- (xvii) Failure to complete Residential Bulk Waste Services by the end of the zoned service date

\$250 for each Contractor vehicle providing Residential Services operating on City streets after 6:00 PM and ending before 8:00 PM.

(xviii) The Contractor shall be given a thirty (30) calendar day grace period from the commencement date during which missed collections will be noted but no administrative charges will be assessed for one (1) to five (5) Residential Service Units missed on any one (1) route. Any misses of over five (5) Residential Service Units on any one (1) route will not be covered by the grace period.

(xix) The placement of any and all education materials on Residential Waste Service Unit carts that are not City approved

\$100 each incident

The City must make a claim for administrative charges within 30 days of the underlying event. The Contractor shall be liable for administrative charges amount(s) upon determination by the City that performance has not occurred consistent with the provisions of the Agreement. The City shall notify the Contractor in writing or electronically of each act or omission in this Agreement reported to or discovered by the City. It shall be the duty of the Contractor to take whatever steps, or action may be necessary to remedy the cause of the complaint.

The City may deduct the full amount of any damages from any payment due to the Contractor. The remedy available to the City under this paragraph shall be in addition to all other remedies which the City may have under law or at equity.

Exceptions: For the purposes of this Contract, the Contractor shall not be deemed to be liable for penalties where its inability to perform collection service is the result of conditions of Force Majeure as set forth in this Agreement, inclement weather severe enough that trucks cannot safely take collections, provided however; that the Contractor shall obtain the approval for the delay from the City prior to 3:00 PM, CDT of the scheduled collection day.

SECTION 28: LIQUIDATED DAMAGES

Should the Contractor be unable, refuse or fail to:

- (i) Collect and dispose of at least 95% of the Municipal Solid Waste from Residential Service Units.
- (ii) Collect and dispose of at least 95% of the Municipal Solid Waste from Commercial Service Units.
- (iii) Collect and dispose of at least 95% of the Municipal Solid Waste from City Facilities.
- (iv) Collect and dispose of at least 95% of the Bulk Waste from Residential Service Units.
- (v) Collect and dispose of at least 95% of the Bulk Waste from City Facilities;
- (vi) Collect and process of at least 95% of the Program Recyclable materials from Residential Service Units; and/or

- (vii) Collect and process of at least 95% of the Program Recyclable Materials from City Facilities

As contracted for, for any reason or no reason with or without fault of Contractor, including but not limited to strikes, work stoppages, sickouts, and excluding force majeure, for three (3) consecutive calendar days, Contractor agrees to pay to the City as liquidated damages the sum of \$50,000 as a one-time cost and \$15,000 per calendar day from the inception of such failure to perform for as long as such failure to perform continues regardless of the volume of Municipal Solid Waste, Bulk Waste, and/or Program Recyclable material that remains uncollected, hauled away and properly disposed of. This provision of liquidated damages shall not prevent or limit the City's right to seek out other legal or equitable relief. Force majeure shall mean weather related events, civil disturbances, and similar events that clearly endanger the health and safety of collection personnel. This provision and liquidated damages is mutually agreed upon due to the difficulty in determining the City's actual damages to find, secure and fund immediate assistance to prevent public health and safety hazards.

SECTION 29: PAYMENT WITHHELD

In addition to express provisions elsewhere contained in this Agreement, City may withhold from any payment otherwise due the Contractor such amount as determined necessary to protect the City's interests on account of:

- (i) Unsatisfactory progress of the work not caused by condition beyond Contractor's control.
- (ii) Defective work not corrected.
- (iii) Contractor's failure to carry out instructions or orders of the City or its representative;
- (iii) A reasonable doubt that the Agreement can be completed for the balance then unpaid.
- (iv) Execution of work not in accordance with the Agreement.
- (v) Claim filed by or against Contractor or reasonable evidence indicating problem filing of claims.
- (vi) Failure of Contractor to make payments to any subcontractor for material or labor.
- (vii) Damage to another contractor.
- (viii) Unsafe working conditions allowed to persist by Contractor.
- (ix) Failure of Contractor to provide required reports and other reports as required by City;
- (x) Use of any subcontractors without the City's prior written approval.
- (xi) Failure of Contractor to provide accurate invoices and supporting data as describe elsewhere in this agreement.

When the above grounds are removed, payment shall be made for amounts withheld because of them and the City shall never be liable for interest on any delayed or late payment. The City's right to withhold payments under this section will be reasonable in light of the nature of the claim, amount of available insurance and performance bond pursuant to this Agreement.

SECTION 30: PERFORMANCE BOND

Contractor shall furnish the City with a Performance Bond (the "Bond") covering faithful performance of this Agreement. The Bond shall be submitted within 45 days following the Effective Date, but in no event later than the Commencement Date. The Bond shall be in an amount not less than three combined months of service revenue anticipated to be received under this Agreement and in a form approved by the City Attorney. The term of the Bond shall be not less than one year beginning on the Commencement Date. The Contractor shall furnish the City with a renewal of the Bond for an additional term of not less than one year from the expiration date of the Bond then in effect for each year this Agreement is in effect. The renewal of the Bond shall be submitted at least 30 days prior to the expiration date of the Bond then in effect. Notwithstanding the foregoing, the then-current Surety shall not be obligated to renew the Bond for any successive year. Non-renewal shall, however, be construed as a default by the Contractor under this Agreement and the default created by the failure to deliver a renewal Bond shall be actionable under the then-current Bond so provided unless the renewal Bond is delivered no later than 15 days prior to the expiration date of the Bond then in effect.

The Bond (and any renewal Bond) shall be limited to one and only one surety and shall be issued by a Surety Contractor authorized to do business in the State of Arizona and having an A.M. Best rating of "A" or better and the "T" Underwriting limitation shall not be exceeded by the Bond.

SECTION 31: ASSIGNMENT AND/OR SUBCONTRACTING

This Agreement and any permits required for performance of the Agreement may not be assigned, subcontracted, conveyed, or otherwise disposed of without the written permission of the City, which will not be unreasonably withheld. No such assignment or subcontracting shall relieve Contractor of its liability under this Agreement. In the event Contractor elects to use any subcontractors, this does not relieve Contractor from any prime responsibility of full and complete satisfactory and acceptable performance under any awarded Agreement. However, the Agreement may be assigned for the purpose of financing after notification of the terms of such assignment to the City's City Manager or his designee.

SECTION 32: TAXES

Contractor shall be responsible for and shall pay all sales, consumer, use, and other taxes. When equipment, materials or supplies generally taxable to the Contractor are eligible for a tax exemption due to the nature of the item and services performed as part of this Agreement,

Contractor shall assist City in applying for and obtaining such tax credits and exemptions which shall be paid or credited to City.

SECTION 33: FORCE MAJEURE

Except for any payment obligation by either party, if the City or Contractor is unable to perform, or is delayed in its performance of any of its obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the City or Contractor to correct the adverse effect of such event of force majeure.

An event of "Force Majeure" shall mean the following events or circumstances to the extent that they delay the City or Contractor from performing any of its obligations (other than payment obligations) under this Agreement:

- (i) Acts of God, tornadoes, hurricanes, floods, sinkholes, fires, and explosions (except those caused by negligence of Contractor, its agents, and assigns), landslides, earthquakes, epidemics, quarantine, pestilence, and extremely abnormal and excessively inclement weather; and
- (ii) Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities.
- (iii) Suspension, termination or interruption of utilities necessary to the operation of the Recyclable Material Facility or other facilities used by Contractor for this Agreement.

In order to be entitled to the benefit of this section, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure the event of Force Majeure. The parties agree that, as to this section, time is of the essence.

SECTION 34: TERMINATION

City may terminate this Agreement without liability to Contractor (except as to amounts owed under the Agreement) and pursue all of its legal and equitable remedies for the following events of default of Contractor, provided Contractor has not cured said default within the time set forth below:

- (i) Suffering an Event of Bankruptcy or Insolvency.
- (ii) Suffering the appointment of receiver of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) thereafter.
- (iii) Being adjudicated as a bankrupt.
- (iv) Filing of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- (v) Committing an act of default that is not cured within 30 days after Contractor receives written notice of default from City.

- (vi) Failing to timely and fully pay any or all impositions, that is not cured within 30 days after Contractor receives written notice of default from City
- (vii) As otherwise permitted by this Agreement, that is not cured within 30 days after Contractor receives written notice of default from City

If an item of Contractor non-performance may not reasonably be cured within a cure period set forth above, then Contractor will be given a reasonable amount of additional time to cure said default, provided Contractor proceeds to cure with diligence.

This Agreement shall terminate upon any one of the following:

- (i) The written agreement of the Parties.
- (ii) The expiring terms of this Agreement.

SECTION 35: ACTS OF DEFAULT OR DEFAULT

Failure of Contractor to fully, completely and timely comply with each material obligation by Contractor agreed to herein shall be an act of default. Substantial compliance short of full compliance shall be an act of default unless waived in writing by City. Contractor specifically understands, acknowledges, and agrees that non-material breach(s) of this Agreement shall constitute a material default when the breaches, even if different breaches, are frequent or regular or repetitive. Contractor specifically understands, acknowledges, and agrees that non-material breaches shall include, but not be limited to, the acts and omissions subject to administrative charges in accordance with this Agreement. City may terminate this Agreement and pursue all legal and equitable remedies upon a material default of this Agreement that is not cured as provided herein.

SECTION 36: DISPUTE RESOLUTION

36.1 Definition of Claim

As used herein "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of the Agreement terms, or other relief, arising under or relating to this Agreement. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, where the submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim for the purpose of this clause. A claim by the Contractor shall be made in writing and submitted to the City.

When a controversy cannot be resolved by mutual agreement, the Contractor shall submit a written request for final decision to the City. The written request shall set forth all the facts surrounding the controversy.

36.2 Process for Dispute Resolution

In connection with any claim under this Agreement, the Contractor and the City agree that the Contractor and the City shall, as a condition precedent to the institution of any action

regarding claims arising under this Agreement, first submit any claim to the City. The City shall render a written decision on all claims within thirty (30) business days of receipt of the Contractor's written claim, unless the City determines that a longer period is necessary to resolve the claim. The decision shall be furnished to the Contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. If a decision is not issued within thirty (30) calendar days, the City shall notify the Contractor of the time within which a decision shall be rendered and the reasons for such time extension.

Upon the written decision of the City, the Contractor and the City agree that the Contractor and the City shall, as a condition precedent to the institution of any action regarding claims arising under this Agreement, first submit any claims to the City Council. The City Council shall render a written decision on all claims within thirty (30) business days of receipt of the Contractor's written appeal, unless the City Council determines that a longer period is necessary to resolve the claim. The decision shall be furnished to the Contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. If a decision is not issued within thirty (30) calendar days, the City Council shall notify the Contractor of the time within which a decision shall be rendered and the reasons for such time extension.

Upon the written decision of the City Council, the Contractor and the City agree that the Contractor and the City shall, as a condition precedent to the institution of any action regarding claims arising under this Agreement, first submit any claims to mediation before a professional mediator selected by the Contractor and the City, at a mutually agreed time and place, and with the mediator's fees split equally between the Contractor and the City. If mediation is unsuccessful within forty-five (45) calendar days of the date of the initial mediation, the Contractor and the City agree that if the Contractor and/or the City elect to institute any action regarding claims arising under this Agreement such claims shall be submitted to the exclusive jurisdiction of the state or federal courts in Pinal County, Arizona.

36.3 Operations during Dispute

In the event that any dispute arises between City and Contractor relating to this Agreement performance or compensation hereunder, Contractor shall continue to render service and receive compensation in full compliance with all terms and conditions of this Agreement as interpreted, in good faith, by the City, regardless of such dispute.

The Contractor expressly recognizes the paramount right and duty of City to provide adequate services to its residents and further agrees, in consideration of the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court without first negotiating with City in good faith for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute shall present the matter to mediation in the courts of Arizona. If mediation fails, Contractor shall present the matter to a court in Arizona.

In the event City terminates this Agreement pursuant to Section 34, it may call the performance bond and apply the cash and surety bond for the cost of service in excess of that charged to City by the firm engaged for the balance of the Agreement period.

SECTION 37: DESIGNATED REPRESENTATIVE

Any notices or communication required or permitted to be made to either the City or the Contractor under this Agreement shall be made to the Designated Representative in writing:

If to the Contractor: WM
Director – Revenue Management
222 S. Mill Avenue,
Suite 301 Tempe, AZ 85281

If to the City: City of Eloy
595 North 'C' Street
Eloy, AZ 85131

Notice shall be deemed to be given: (a) if personally delivered, when delivered; (b) if mailed, five (5) business days after receipted delivery to the U.S. Mail; (c) if delivered to Federal Express, or any other nationally recognized overnight carrier, one (1) business day after delivery to such overnight carrier. Each party, by similar written notice given five (5) business days in advance to the other Parties in the aforesaid manner, may change the address to which notice may be sent.

SECTION 38: MISCELLANEOUS

38.1 Succession of Agreement

This Agreement and the rights and obligation contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

38.2 Survival

Any rights either party may have in the event it terminates this Agreement pursuant to the terms hereof shall survive such termination.

38.3 Joint Preparation

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

38.4 No Penalties

No provision of this Agreement is to be interpreted as a penalty upon any party to this Agreement. The parties hereby agree that the rights of the City in the event Contractor takes or fails to take certain actions pursuant to this Agreement, are reasonable, and that the parties desire such certainty with regard to such matters.

38.5 Relationship

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership, joint venture or any other relationship between Contractor and City.

38.6 Further Assurance

Contractor and City agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further documents and perform such acts as shall reasonably be requested of it in order to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

38.7 Time of the Essence

For purposes herein, the parties agree that time shall be of the essence of this Agreement and the representations and warranties made are all material and of the essence of this Agreement.

38.8 Captions and Section Headings

Captions and sections headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

38.9 No Waiver

No waiver of any provision in this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

38.10 Entire Agreement and Modification

This Agreement constitutes the entire understanding and agreement between the parties and may not be changed, altered or modified except by an instrument in writing signed by all parties against whom enforcement of such change would be sought.

38.11 Severability

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action remain in full force and effect.

38.12 Knowledge

Contractor agrees that it has investigated and examined all streets, alleys, overhead trees, wires and such other conditions and requirements of the City that may affect its full and

complete performance of this Agreement and enters into this Agreement giving completed such investigations and examinations to its full satisfaction and solely relying on such investigations and examinations.

38.13 Appendices

All Appendices attached hereto contain additional terms of this Agreement and are incorporated into this Agreement by reference. Typewritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

38.14 Governing Law

This Agreement shall be construed and interpreted according to the laws of the State of Arizona and venue with respect to any litigation shall be Pinal County, Arizona.

38.15 Attorney Fees

In the event of arbitration or litigation between the parties regarding this Agreement, each party shall be responsible for their own attorney's fees and costs.

38.16 Authorization

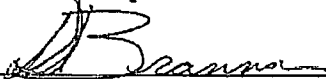
Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges and agrees that it has read this Agreement, understands it, and agrees to be bound by it.

38.17 Conflicts of Interest; Provisions of Service

This Agreement is subject to the cancellation provisions for conflicts of interest pursuant to the provisions of A.R.S. § 38-511, and the provisions of A.R.S. §§ 41-4401 and 23-214 (relating to the state's requirement that persons contracting with municipalities for the provision of services uses the verify program to verify employment eligibility).

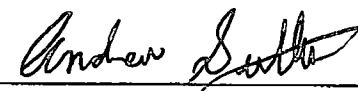
IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the day and year first above written.

CONTRACTOR:
WASTE MANAGEMENT OF
ARIZONA, INC.
a California corporation

By: 

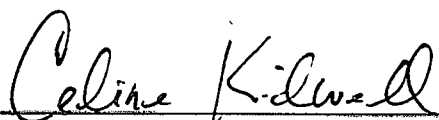
Title: Area Vice President

CITY OF ELOY
an Arizona municipal corporation



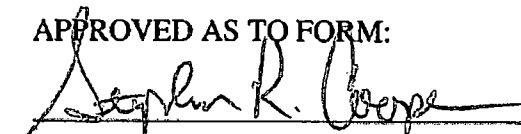
Andrew Sutton
Mayor

ATTEST:



Celine Kidwell
City Clerk

APPROVED AS TO FORM:



Stephen R. Cooper
City Attorney

APPENDIX A

RATES FOR RESIDENTIAL, COMMERCIAL AND CITY SERVICES

RESIDENTIAL SERVICES	
Service Rate ¹	Monthly Fee for Residential Service Unit
Residential Municipal Solid Waste Services	
1. Solid Waste Base Rate	\$ \$10.50
2. Additional Solid Waste Cart Base Rate ²	\$ \$5.25
3. Non-collection Day Solid Waste or Recycling Cart Collection	\$ 12.60 /occurrence
Residential Bulk Waste Services	
4. Bulk Waste Rate, Monthly Collection (12 times per year, 4 cubic yards each)	\$ 0.69/Month
5. Bulk Waste Rate, Quarterly Collection (4 times per year, 4 cubic yards each)	\$ 0.23/Month
6. Additional Bulk Waste Collection	\$ 55.00/item /occurrence
Residential Recycling Services	
7. Residential Recycling Base Rate (Once per Week)	\$ 9.00 **See Note Below
8. Exempt Residential Waste Service Units Rate ³	\$ \$7.50
Cart Maintenance Services	
9. Credit for Cart Maintenance Services provided by City ^a	\$ (0.81) / occurrence

Weekly Collection Frequency for Solid Waste Services at City Facilities ¹							
Type and Size	1	2	3	4	5	6	7
Cart	10.50	21.00	31.50	N/A	N/A	N/A	N/A
2 CY Container	64.77	95.25	194.31	N/A	N/A	N/A	N/A
3 CY Container	72.39	129.54	217.17	N/A	N/A	N/A	N/A
4 CY Container	82.55	152.40	247.65	N/A	N/A	N/A	N/A
6 CY Container	101.60	177.80	304.80	N/A	N/A	N/A	N/A
8 CY Container	130.81	234.95	392.43	N/A	N/A	N/A	N/A

1. Proposed fee includes all costs including, but not limited to, collection and disposal costs of front-end loading equipment provided as \$/Container/Month

Weekly Collection Frequency for Recycling Services at City Facilities ²							
Type and Size	1	2	3	4	5	6	7
Cart	9.00	18.00	27.00	N/A	N/A	N/A	N/A
2 CY Container	43.30	86.60	129.90	N/A	N/A	N/A	N/A
3 CY Container	64.95	129.90	194.85	N/A	N/A	N/A	N/A
4 CY Container	86.60	173.20	259.80	N/A	N/A	N/A	N/A
6 CY Container	129.90	259.80	389.70	N/A	N/A	N/A	N/A
8 CY Container	173.20	346.40	519.60	N/A	N/A	N/A	N/A

2. Proposed fee includes all costs including, but not limited to, collection and disposal costs of front-end loading equipment provided as \$/Container/Month

Weekly Collection Frequency for Recycling Services at Neighborhood Drop-off ³							
Type and Size	1	2	3	4	5	6	7
8 CY Container	173.20	346.40	519.60	N/A	N/A	N/A	N/A

3. Neighborhood Drop-off consists of 13 front-end loaded containers at the City's Recycling Center that is serviced by the current contractor three times per week.

Proposed Fees for Solid Waste Services via Roll-off Container				
Type and Size	Rental Fee (Per Month)	Initial Delivery Fee (One-time)	Collection	Disposal Fee
			Fee (Per Pull)	(Per Ton)
10 CY Container	\$225.00 *	\$75.00	\$225.00	\$35.00
12 CY Container	\$225.00 *	\$75.00	\$225.00	\$35.00
15 CY Container	\$225.00 *	\$75.00	\$225.00	\$35.00
20 CY Container	\$225.00 *	\$75.00	\$225.00	\$35.00
30 CY Container	\$235.00 *	\$75.00	\$235.00	\$35.00
40 CY Container	\$245.00 *	\$75.00	\$245.00	\$35.00

*Note: Rental fee will apply after 1 month of zero activity

Disposal Services for City Generated Material		
Service	Proposed Fee	
City Self-Haul Service	\$	\$35.00 /ton
Metal Recycling Fee ⁴	\$	\$65.00 /ton

Ancillary Fees:

- 1) Recycle Material Offset – Current Tip Fee \$80.88 (calculated as Processing Fee minus Commodity Value plus Transportation Costs), If the Tip fee fluctuates by \$10.00 on an annual average a \$0.25 adjustment will be made, either up or down per recycling cart. The recycling unit will not go below \$8.30, adjusted annually by contractual CPI.
- 2) Replacement Cart charge – \$25.00/cart if deemed damaged by resident and approved by City and not because of ordinary wear and tear or Contractor damage.
- 3) Recycling Contamination charge - \$5.00 per-event fee after a rollout and education period, allowing for up to three violations within a calendar year before fees are assessed. Not to exceed \$20.00 monthly.
- 4) Overage Charge - \$5.00 per-event fee after a rollout and education period, allowing for up to three violations within a calendar year before fees are assessed. Not to exceed \$20.00 monthly.
- 5) Overweight Containers. The Company may refuse to collect any Refuse, Recyclables, or Organic Waste Container which the Company reasonably believes to be overweight. A Container shall be considered “overweight” if the total weight of the Container and contents exceeds two times the volume capacity of said Container (e.g., 192 pounds for a 96-gallon Cart). The Company shall provide notification to the City regarding each instance of noncollection.

APPENDIX B

CONTRACTOR TRANSITION PLAN

Implementation meetings, coordination, and course correction

- Collection vehicles
- Cart and container deliveries (as applicable to your contract)
- Driver screening, hiring, and training (if additional drivers are needed)
- Route development
- Contingency planning

Implementation Meetings and Coordination

WM's team will meet weekly throughout planning and implementation with the City of Eloy. At the onset, these meetings will include our regional team of experts. As the contract start date approaches, the local district operations team will meet daily to review the most critical components of service delivery.

Our team is committed to keeping the City of Eloy informed of our implementation progress, and we will ask for your feedback as we customize our transition efforts to reflect the needs of your community and the most effective communication methods. From the onset of our transition, we propose meeting with the City of Eloy staff regularly to review key implementation milestones, our progress, and any proposed changes. We can start with monthly meetings initially, and increase the frequency, if needed.

In addition to our internal meetings and meetings with staff, it is important for us to coordinate closely with your outgoing service provider. From our experience, the outgoing service provider has been cooperative and helpful during contract transitions, and we often make their exit easier and more efficient. We will coordinate with them on the removal of their carts and containers and customer data exchanges.

Cart and Container Deliveries

Each City of Eloy resident will receive a new cart one week prior to their first scheduled collection day under the new contract. We will educate customers on the benefits of cart-based collection, available cart sizes, and key cart delivery dates. Information will be communicated at community meetings and through direct mail, out-dials, local media, and social media outlets. At this time, customers will also be notified of the final date they may

APPENDIX C

RECYCLABLE MATERIALS AUDIT PROTOCOL

The Respondent, at the Respondent's sole expense, shall conduct a Recyclable Materials Audit of Residential Recyclable Materials upon request by the City, but not more often than twice per year for one truck load of material from the same subdivision/location as identified by the City. Recyclable Materials Audits shall be conducted in accordance with the following:

General Protocol

1. Each audit will be monitored by the Respondent and the City if City desires.
2. Unless agreed to via email or other writing by the City, the City and the Respondent shall agree on an audit date(s) a minimum of thirty (30) calendar days in advance.
3. The City and the Respondent will agree to the description of each commodity in advance of the Recyclable Materials Audit in written form,
4. The audit will be conducted based on a minimum of one Recycling Truck Load collected from the same Residential Service Units identified by the City, twice annually at an interval determined by the City.
5. The City may choose to have representation during the audit, but is not required to do so.

Manual Audit Protocol

The Respondent may elect to manually sort the designated samples utilizing a sorting crew. The Respondent, at the Respondent's sole expense, shall conduct manual audits in accordance with the following.

1. Random selection of subdivision/location.
2. The Respondent shall store the truckload separately in a segregated area. The segregated area will have barriers in place to separate audit materials from any other materials that are delivered to the delivery facility.
3. The Respondent will classify the materials into the proposed material categories, but at a minimum each commodity and contamination and place the materials into the individual bins/cans for each category.
4. The Respondent will assign a bins/can to each material category and weigh to a tenth of a pound and record the weight of each bin/can empty. All weights shall be documented and provided to the City upon conclusion of the audit.
5. Once all the materials from the samples have been sorted into their designated bins/cans, the Respondent will check all bins/cans to confirm materials are placed in the appropriate bin/can. After the Respondent has performed a quality control check, the City shall check all bins/cans to confirm materials are placed in the appropriate bin/can, if City

representatives are present during the audit. If present for the audit, the City shall immediately communicate any issues to the Respondent.

6. Each commodity and contamination shall be weighed to a tenth of pound. All weights shall be documented and provided to the City upon conclusion of the audit.
7. At the end of the audit day, tally sheets of all weights for each sample shall be provided to City.

APPENDIX D

CONTRACTOR RESPONSE TO RFP

WM of AZ Response to RFP.pdf