



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

20

2. Council Meeting Date:

June 28, 2012

TO: MAYOR & COUNCIL

3. Date Prepared: May 30, 2012

THROUGH: CITY MANAGER

4. Requesting Department: Municipal Utilities

5. SUBJECT: Agreement MU2-962-2991 for operation of the Recycling-Solid Waste Collection Center and Transportation of Bulk Waste with Otto Logistics LLC, in an estimated amount of \$837,257 per year.

6. RECOMMENDATION: Recommend award of Agreement MU2-962-2991 for contractor-related operations of the Recycling-Solid Waste Collection Center and Transportation of Bulk Waste with Otto Logistics LLC, in an estimated amount of \$837,257 per year.

7. HISTORICAL BACKGROUND/DISCUSSION: The requested agreement provides for operations to include inspections, loading and hauling waste collected at the City's Recycling-Solid Waste Collection Center, transportation of sludge generated at the City's water and wastewater plants, waste generated by street sweeping and alley clean up, and waste generated by water distribution operations. The recommended contractor will transport an estimated 61,950 tons of material annually to Waste Management's Butterfield Station for disposal.

8. EVALUATION PROCESS: On February 7, 2012, staff issued a Request for Proposal (RFP) MU2-962-2991 for operation of the Recycling-Solid Waste Collection Center and Transportation of Bulk Waste. The RFP was advertised and 831 registered vendors for the requested service were notified. Only one offer was received. Staff believes the price offered is reasonable based on comparison to previous contracts. The total value of the recommended contract is \$39,869 less than previous agreements for the requested services.

The services were performed under two separate agreements prior to issuing one combined RFP for all services. The services were combined into one RFP because staff believed there were cost savings and efficiencies that could be obtained if the services were combined into one agreement. The RFP allowed proposers to bid on individual or groups of waste streams as well as provide a separate "all or nothing" price based on receiving award for the entire contract. Although the City only received one proposal for the service, staff believes combining the contracts created savings based on comparing the "all or nothing" price to the individual price. The "all or nothing" price was \$66,536 less than the individual price.

The contract rates will be adjusted annually to reflect changes in the consumer price index (CPI), and quarterly to reflect changes in the cost of fuel. The requested amount is for twelve months of service. The agreement will have a five year term and has provisions to extend for one additional five year period.

9. FINANCIAL IMPLICATIONS:

Cost: \$837,250

Savings: N/A

Long Term Cost: N/A

Fund Source:

<u>Account Name</u>	<u>Fund Name</u>	<u>Program Name</u>	<u>CIP Funded</u>	<u>Funds</u>
625.3700.5219.0.0	Solid Waste Operating	Other Prof/Contract Services	No	\$358,650
605.3830.5219.0.0	Water Operating	Other Prof/Contract Services	No	\$56,300
605.3800.5834.0.0	Water Operating	Landfill Use Charges	No	\$12,350
615.3970.5219.0.0	Wastewater Operating	Other Prof/Contract Services	No	\$100,875
615.3960.5219.0.0	Wastewater Operating	Other Prof/Contract Services	No	\$276,707
101.3350.5834.0.0	General Fund	Landfill Use Charges	No	\$32,375
Total:				\$837,257

10. PROPOSED MOTION: Move to award Agreement MU2-962-2991 for operation of the Recycling-Solid Waste Collection Center and Transportation of Bulk Waste with Otto Logistics LLC, in an estimated amount of \$837,257 per year for five years with provisions to extend for one additional five year term.

APPROVALS

11. Requesting Department



Sheree Sepulveda, Solid Waste Manager

13. Department Head



Dave Siegel, Municipal Utilities Director

12. Procurement Officer



Mike Mandt, Procurement Officer

14. City Manager



Rich Dlugas

**CITY OF CHANDLER SERVICES AGREEMENT
OPERATION OF CITY RECYCLING-SOLID WASTE COLLECTION CENTER AND
TRANSPORTATION OF BULK WASTE
AGREEMENT NO.: MU2-962-2991**

THIS AGREEMENT is made and entered into this ____ day _____ of, 2012, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Otto Logistics, LLC an Arizona Corporation, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR:

- 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Cost Center Manager for facility Serviced (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3. **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.
2. **SCOPE OF WORK:** CONTRACTOR shall operate the City Recycling-Solid Waste Collection Center and transport bulk waste as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.
 - 2.1. **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
 - 2.2. **Licenses.** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.
 - 2.3. **Advertising, Publishing and Promotion of Contract.** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the CITY.
 - 2.4. **Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.
 - 2.4.1 Pursuant to the provisions of A.R.S. § 41-4401, the CONTRACTOR hereby warrants to the City that the CONTRACTOR and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

- 2.4.2 A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 2.4.3 The City retains the legal right to inspect the papers of any CONTRACTOR or Subcontractor employee who works on this Contract to ensure that the CONTRACTOR or Subcontractor is complying with the Contractor Immigration Warranty. The CONTRACTOR agrees to assist the City in the conduct of any such inspections.
- 2.4.4 The City may, at its sole discretion, conduct random verifications of the employment records of the CONTRACTOR and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The CONTRACTOR agrees to assist the City in performing any such random verification.
- 2.4.5 The provisions of this Article must 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.
- 2.4.6 In accordance with A.R.S. §35-393.06, the CONTRACTOR hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.4.7 In accordance with A.R.S. §35-391.06, the CONTRACTOR hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 3. ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
- 4. PRICE:**
- 4.1. **Price.** CITY shall pay CONTRACTOR for services provided under this agreement based on the unit prices set forth in Exhibit C, which is attached herein by this reference, The payments made to CONTRACTOR pursuant to this section shall be the full, entire, and complete compensation due to CONTRACTOR pursuant to this Agreement.
- 4.2. CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.
- 4.3. **Payment.** CONTRACTOR shall submit to the Contract Administrator, after completion of the task or combination of tasks listed in the Agreement, a statement of charges for the work completed under that Agreement, in conformance with the pricing schedule set forth in Exhibit C, the Contract Administrator shall process the claim for prompt payment in accordance with the standard operating procedures of CITY. Payment for RSWCC will be based on the weight measured at by the RSWCC scales. Payment for all other facilities serviced under this agreement will be based on the weight measured at the Butterfield Landfill Scale.
- 4.4. **Estimated Quantities.** The quantities shown on Exhibit C (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that

any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.

4.5. IRS W9 Form. In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.

4.6. Price Adjustment. CONTRACTOR shall adjust all unit prices set forth in **Exhibit C** in accordance with the procedures described in this section. Adjustment will be effective one month after the adjustment date.

CPI Adjustment - Eighty percent (80%) of the applicable unit price will be adjusted annually to reflect increases or decreases to the Consumer Price Index for all urban consumers – U S Cities Average – All Items, published by the United States Department of Labor, Bureau of Statistics. The adjustment will be based on the change for the most recent one-year period published. The First Adjustment will be on October 1, 2013 and annually thereafter.

Fuel Adjustment – The applicable unit price will be adjusted quarterly (January 1, April 1, July 1 and October 1) to reflect increases or decreases in the Oil Producers Price Service, Phoenix rack for #2 Ultra Low Sulfur Diesel plus applicable taxes in the weekly "Fax-A-Rack" (OPIS). The adjustment will be based on the change of the average of the index for the most recent quarter and the Baseline Fuel Cost of 450 which includes OPIS of 399.6 + 26 AZ State tax + 24.4 Federal Diesel Tax. The adjustment will be calculated by multiplying the difference by .66 and adding that value to the applicable unit price.

5. TERM:

5.1. The term of the Contract is 5 years, commencing on October 1, 2012 and terminating on September 30, 2017 unless sooner terminated in accordance with the provisions herein. The contract may be extended by mutual agreement of the parties for one additional term of 5 years.

6. USE OF THIS CONTRACT:

6.1. The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.

6.1. Cooperative Use of Contract. In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

6.2. Emergency Purchases: CITY reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

7. CITY'S CONTRACTUAL REMEDIES:

7.1. Right to Assurance. If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

7.2. Stop Work Order. The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days

indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

- 7.3. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.4. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.5. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.6. **Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

8. **TERMINATION:**

- 8.1 **Termination for Convenience:** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.
- 8.2 **Termination for Cause:** City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:
- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
 - 2) If CONTRACTOR is adjudged a bankrupt or insolvent;
 - 3) If CONTRACTOR makes a general assignment for the benefit of creditors;
 - 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property;
 - 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
 - 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
 - 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.
- 8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

- 8.4. **Gratuities.** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.
- 8.5. **Suspension or Debarment.** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.
- 8.6. **Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.8. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

10. DISPUTE RESOLUTION:

- 10.1 **Alternative Dispute Resolution.** The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONTRACTOR pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.
- 10.2 **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.3 **Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 10.4 **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-

prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. **INSURANCE:**

12.1. **Insurance Representations and Requirements:**

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of A-6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.

- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2. Proof of Insurance – Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverage's, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

12.3. Coverage

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. **Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.**
- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
 - D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
 - E. Claims for damages insured by usual personal injury liability coverage;
 - F. Claims for damages, other than to work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
 - G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "1" "any auto" policy form CA00011293 or equivalent thereof.
 - H. Claims for bodily injury or property damage arising out of completed operations;
 - I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
 - J. Claims for injury or damages in connection with one's professional services;
 - K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off-loading hazards. If any hazardous material, as defined by any local, state or federal authorities is to be transported, MCS 90 endorsement shall be included.
- 12.4. Commercial General Liability - Minimum Coverage Limits.** The Commercial General Liability insurance required herein shall be written for not less than \$1,000,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$2,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$5,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.
- 12.5. Automobile Liability.** CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).
- 12.6. Worker's Compensation and Employer's Liability.** CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

If CONTRACTOR is a sole proprietor and has no employees, CITY will accept a Sole Proprietor's waiver of Workers' Compensation benefits in lieu of Workers' Compensation insurance

In case any work is subcontracted, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

13. NOTICES: All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY

Contract Administrator: Procurement Officer
Contact: Mike Mandt
Mailing Address: PO Box 4008 MS 901

Physical Address: 175 South Arizona Ave.
City, State, Zip: Chandler AZ 85244-8008
Phone: 480-782-2406
FAX: 480-782-2410

In the case of the CONTRACTOR

Firm Name: Otto Logistics
Contact: Scott Sunderland
Address: 4220 East McDowell Rd., Suite 108
City, State, Zip: Mesa, AZ 85215
Phone: 480-641-3500
FAX: 480-641-3550

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. CONFLICT OF INTEREST:

14.1. No Kickback. CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to the CITY.

14.2. Kickback Termination. CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).

14.3. No Conflict: CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. GENERAL TERMS:

15.5 Entire Agreement. This Agreement, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives of each party.

15.6 Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

15.7 Assignment: Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.

15.8 Amendments. The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or

materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.

- 15.9 **Independent CONTRACTOR.** The CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 15.10 **No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 15.11 **Authority:** 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 that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 2012.

FOR THE CITY OF CHANDLER

MAYOR

ATTEST:

City Clerk

Approved as to form:

City Attorney *[Signature]*

FOR THE CONTRACTOR

By: *[Signature]*

Signature

ATTEST: If Corporation

SEAL

[Signature]

Secretary

EXHIBIT A

**Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract**

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

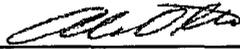
By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number:		
Name (as listed in the contract):		
Street Name and Number:		
City:	State:	Zip Code:

I hereby attest that

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:



Printed Name: ALAN OTTO

Title: Manager

Date (month/day/year): 5-25-12

**EXHIBIT B
SCOPE OF WORK
OPERATION OF CITY RECYCLING-SOLID WASTE COLLECTION CENTER
AND TRANSPORTATION OF BULK WASTE
MU2-962-2991**

1. GENERAL

CONTRACTOR shall operate the City Owned Recycling-Solid Waste Collection Center (RSWCC) and transport other bulk waste generated by CITY's Water treatment Plant (WTP), Wastewater Plants, Street Sweeping Operations, and Water Distribution Operations.

2. DISPOSAL

CONTRACTOR shall transport all waste directly to Waste Management Butterfield Station Landfill, located at 40404 South 99th Ave., Mobile, AZ 85239, for disposal under separate contract. Butterfield Station Landfill hours of operation are Monday through Friday 6 a.m. to 4 p.m. and Saturday 6 a.m. to 12 p.m. The CONTRACTOR shall be required to follow all rules at Butterfield Station. CONTRACTOR shall be responsible for unloading all waste at Butterfield landfill. CONTRACTOR shall have all loads weighed at Butterfield Station

3. Facilities

- 3.1. Recycling-Solid Waste Collection Center (RSWCC) 955 E. Queen Creek Rd.
- 3.2. Water Treatment Plant (WTP), 1475 East Pecos Road
- 3.3. OWRF Water Reclamation Facility (OWRF), 3333 S. Old Price Road
- 3.4. Airport Water Reclamation Facility, (AWRF), 905 East Queen Creek Road
- 3.5. Street Sweeper Waste (Locations: 975 E Armstrong Way, Roosevelt, Dobson, and RO ponds)
- 3.6. Water Distribution Waste (975 E Armstrong)

4. Estimated Quantities (Annual)

4.1. RSWCC --	15,000 Ton
4.2. WTP	5,000 Tons
4.3. OWRF	11,000 Tons Sludge
4.4. AWRF	17,000 Tons 150 Tons Screenings
4.5. Streets	3,500 Tons
4.6. Water Distribution	1300

5. Scope

5.1. RSWCC

5.1.1. Facility

The City of Chandler RSWCC accepts Municipal Solid Waste (MSW) and selected recyclable materials. Current days and hours of operation are Thursday through Monday, including Saturday and Sunday. Hours of operation are from 8:00 a.m. to 4:00 p.m. The City of Chandler observes nine (9) holidays, whereby the transfer facility is either closed on the holiday or the date for which the City will observe the holiday. These holidays include: New Year's Day, Civil Rights/Martin Luther King Day, Presidents' Day, Memorial Day, July 4th, Labor Day, Veterans' Day, Thanksgiving, and Christmas. Days and hours of transfer facility operation are subject to change with 30-days advanced notice to the CONTRACTOR. Restroom and break room facilities will be available to the CONTRACTOR.

5.1.2. Litter Control

The CONTRACTOR shall not spill or scatter any MSW during loading, transfer or transportation operation.

The CONTRACTOR shall cover or enclose all loads immediately upon loading, and transport in a manner approved by the City. If any MSW is spilled or scattered during the contractor's operation, the CONTRACTOR shall immediately clean up to the satisfaction of the City. CONTRACTOR is required to clean the entire transfer area of all litter, oil spills, dust and dirt at the end of each day that any CONTRACTOR activity takes place. The entire area must be "broom clean" at the end of each day. The transfer area includes, but is not limited to, the dumping area, the upper scale area, the lower scales area, trailer movement and storage areas, and tractor semi-trailer ingress and egress lanes. The lower scale areas must be especially cleaned to prevent dirt and debris buildup underneath the scale platforms to ensure proper and continually accurate operation.

5.1.3. Equipment and Personnel Requirements

The CONTRACTOR shall maintain a sufficient number of trucks and transfer trailers to load and contain all MSW deposited at the Chandler transfer facility at the time of its deposition. CONTRACTOR will be allowed to park up to 25 transfer trailers and tractors at the Chandler transfer facility and up to 5 trailers at Butterfield Station Landfill. CONTRACTOR shall transport as much MSW as possible during the Butterfield Station Landfill's hours of operation to minimize the amount of MSW that will be stored at the City of Chandler's transfer facility site. CONTRACTOR shall provide sufficient back up equipment to handle any volume peaks and equipment problems. CONTRACTOR shall have equipment capable of unloading MSW or make arrangements with Waste Management to use the tipper located at Butterfield Station.

CONTRACTOR shall provide sufficient equipment to move and shuttle empty and full trailers in the daily operation of loading and covering the MSW deposited at the City of Chandler transfer facility.

CONTRACTOR shall provide sufficient equipment for pushing scrap metal at the end of the day or as needed during the day at the City of Chandler transfer facility.

All equipment maintenance, cleaning and repair activities required to maintain the Contractor's equipment shall be done off site. Any emergency repairs required on site must be prior approved by the City of Chandler.

5.1.4. Operational Requirements

The CONTRACTOR shall be responsible for all operational aspects of the transfer facility except checking customer residency and the initial directions to customers to direct customers where to place the material brought to the transfer facility. The CONTRACTOR shall provide sufficient personnel to spot and direct the loading of the MSW, operate loading equipment, cover transporters, shuttle transporters and operate transporters. Sufficient Personnel is a minimum of three personnel on site and more if required at peak times.

The CONTRACTOR shall provide sufficient personnel to proficiently communicate instructions to customers for disposing waste and diverting recyclable materials accepted for recycling at the transfer facility and to direct placement of these recyclable materials in their proper areas.

The Contractor's spotters shall be trained to identify unacceptable waste (including Hazardous Waste) as defined by City of Chandler Code 44-1. At a minimum, spotter training shall include certification through 40 hour HazWoper training as specified in the code of federal regulations 29 CFR 1910.120 (e) (1,2, and 3) and the Solid Waste Association of North America's waste screening program. The CONTRACTOR shall be required to notify the City of any unacceptable waste including Hazardous Waste. The City shall determine if the waste should be accepted or rejected. The CONTRACTOR shall be responsible for unacceptable waste including Hazardous Waste that is allowed to be loaded into their transfer vehicles without notification to the City.

The CITY shall operate the RSWCC scales and record the weights of the transport vehicles, to include the tare (empty) full weights, and net weights of each transport trailer that is loaded.

The CONTRACTOR shall treat all customers of the transfer facility with courtesy and respect.

5.2. WTP

Sludge generated by the WTP is held in sludge drying beds. CONTRACTOR shall be responsible to provide equipment and labor required to remove sludge from drying beds and transport sludge to Butterfield Station. The CONTRACTOR shall monitor beds and empty them as needed. If the City determines beds require emptying, CONTRACTOR shall respond and complete loading and transportation from drying beds within 15 days from notification by WTP staff.

The CONTRACTOR shall be responsible for the cleanup, of any sludge that has spilled, on the ramps into the drying beds and the street in front of the drying beds after the beds have been emptied. The City anticipates that the CONTRACTOR will be called out 3 or 4 times per year.

5.3. OWRF

Sludge generated by OWRF is loaded directly into CONTRACTORS vehicles from the plant sludge hopper. The CONTRACTOR shall be responsible to provide all equipment and labor required to load and transport sludge to Butterfield Station. CONTRACTOR shall be responsible for verifying legal weight limits. Trucks are loaded on the OWRF scale. OWRF staff has the ability to remove material in containers if requested by CONTRACTOR. The CONTRACTOR shall be responsible to provide an adequate number of vehicles to maintain continuous operation. OWRF staff and the CONTRACTOR will develop a schedule, which allows continuous operation of the plant while minimizing the standby time of the CONTRACTOR.

The current collection schedule is Monday through Friday. Schedules are subject to change based on production schedules.

5.4. AWRF

Sludge generated by the AWRF is loaded directly into Contractors vehicles from the plant belt presses. The CONTRACTOR shall be responsible to provide all equipment and labor required to load and transport sludge to Butterfield Station. Two trucks can be loaded simultaneously. CONTRACTOR shall be responsible for verifying legal weight limits. The CONTRACTOR can use the City of Chandler Landfill scale if necessary to verify weights. If it is determined that vehicles are overloaded, AWRF staff can remove sludge from vehicles if requested by CONTRACTOR. CONTRACTOR shall be responsible to provide an adequate number of vehicles to allow the plant to maintain continuous operation. AWRF staff and the CONTRACTOR will develop a schedule, which allows continuous operation of the plant while minimizing the standby time of the CONTRACTOR.

The current collection schedule is:

5 days per week Monday through Friday – 3 or 4 loads per day and is expected to increase to 6 days per week or more loads per day. Schedules are subject to change based on production schedules.

Screenings generated by the AWRF will be loaded by the city into a roll-off container provided by the CITY. CONTRACTOR shall transport when full. Current schedule for transporting the Screening container is approximately once per month.

5.5. Streets

Waste generated by the City street sweeping operation is dumped in a holding area at 975 East Armstrong Way and loaded directly into roll-off containers at the other locations listed below. CONTRACTOR shall be required to load the waste located in the holding area at Armstrong Way and transport to Butterfield landfill for disposal. CONTRACTOR shall be required to load the containers at other locations listed below and transport to Butterfield landfill for disposal. The CONTRACTOR shall be responsible to provide required number of roll-off containers to maintain operation. Currently, there are 3 locations for the Streets Division:

975 E Armstrong Way (holding area)
Roosevelt Site (1 Bin)
Dobson Well Site (1 Bin)

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

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

5.6. Water Distribution

Waste generated by the City Water Distribution operation is contained in a segregated waste storage area at the City Yard 975 e Armstrong Way. CONTRACTOR shall be required to load and transport the waste to Butterfield landfill for disposal.

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

**EXHIBIT C
PRICING**

Facility	Estimated Annual Tons	Unit cost per Ton	Extended Cost
RSWCC	15,000	\$ 23.91	\$ 358,650.00
WTP	5,000	\$ 11.26	\$ 56,300.00
OWRF	12,500	\$ 8.07	\$ 100,875.00
AWRF Sludge	24,500	\$ 11.21	\$ 274,645.00
AWRF Screenings	150	\$ 13.75	\$ 2,062.50
Streets	3,500	\$ 9.25	\$ 32,375.00
Water Distribution	1,300	\$ 9.50	\$ 12,350.00
Total	61,950		\$ 837,257.50