



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA**

1. Agenda Item Number:

17

2. Council Meeting Date:

July 30, 2009

TO: MAYOR & COUNCIL

3. Date Prepared: June 24, 2009

THROUGH: CITY MANAGER

4. Requesting Department: Municipal Utilities

5. **SUBJECT:** Award of Agreement SW9-910-2760 for City Facilities Refuse Collection to Waste Management of Arizona in an amount not to exceed \$225,550.

6. **RECOMMENDATION:** Recommend award of Agreement SW9-910-2760 for City Facilities Refuse Collection to Waste Management of Arizona in an amount not to exceed \$225,550.

7. **HISTORICAL BACKGROUND/DISCUSSION:** The City has an ongoing requirement for the collection of refuse generated at City Facilities. These facilities include but are not limited to City Parks, Fire Stations, and City Office Buildings. This requirement is currently fulfilled through a contract with Allied Waste Services. The current contract, which will expire July 31, 2009, contained an option for two annual extensions. In an effort to secure lower pricing, staff elected to re-bid the contract. However, the lowest bid represents a 2.3% increase over the current contract costs.

8. **EVALUATION PROCESS:** On June 2, 2009, staff issued IFB SW6-910-2320 for City Facilities Refuse Collection. The bid was advertised and all registered vendors were notified. The attached spreadsheet summarizes the bid results. Staff is recommending award to Waste Management of Arizona, who submitted the low bid and was responsive to all requirements. The recommended award will be for a two-year period with provisions to extend three additional years.

**9. FINANCIAL IMPLICATIONS:**

Cost: \$225,550 (2-year cost)  
Savings: NA  
Long Term Cost: N/A

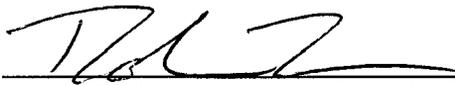
Fund Source:

<u>Account Name</u>	<u>Fund Name</u>	<u>Program Name</u>	<u>CIP Funded</u>	<u>Funds</u>
625.3700.0000.5219	Solid Waste Operating	Other Prof/Contract Svcs	Non-CIP	\$225,550

10. **PROPOSED MOTION:** Move to award Agreement SW9-910-2760 for City Facilities Refuse Collection to Waste Management of Arizona in an amount not to exceed \$225,550.

**APPROVALS**

**11. Requesting Department**

  
Robert Mulvey, Assistant Municipal Utilities Director

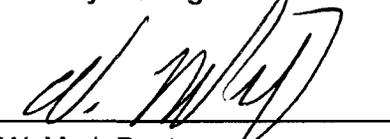
**12. Department Head**

  
Dave Siegel, Municipal Utilities Director

**13. Procurement Officer**

  
Mike Mandt

**14. City Manager**

  
W. Mark Pentz

Bid tab  
City Facilities refuse Collection  
SW9-910-2760

Allied Waste						
Item	Container Size	Collection Frequency	A Estimated Quantity	B Monthly Rate	C Extended Monthly Rate = A X B	D Annual Rate = C X 12
1	2 Cubic Yard	1 per week	1	\$ 21.07	\$ 21.07	\$ 252.84
2	2 Cubic Yard	2 per week	1	\$ 42.08	\$ 42.08	\$ 504.96
3	2 Cubic Yard	3 per week	1	\$ 63.13	\$ 63.13	\$ 757.56
4	3 Cubic Yard	2 per week	43	\$ 63.21	\$ 2,718.03	\$ 32,616.36
5	3 Cubic Yard	3 per week	5	\$ 94.83	\$ 474.15	\$ 5,689.80
6	3 Cubic Yard	4 per week	1	\$ 126.26	\$ 126.26	\$ 1,515.12
7	3 Cubic Yard	5 per week	1	\$ 157.82	\$ 157.82	\$ 1,893.84
8	4 Cubic Yard	2 per week	1	\$ 84.17	\$ 84.17	\$ 1,010.04
9	4 Cubic Yard	3 per week	2	\$ 126.26	\$ 252.52	\$ 3,030.24
10	4 Cubic Yard	4 per week	1	\$ 168.35	\$ 168.35	\$ 2,020.20
11	4 Cubic Yard	5 per week	1	\$ 210.13	\$ 210.43	\$ 2,525.16
12	6 Cubic Yard	2 per week	18	\$ 135.43	\$ 2,437.74	\$ 29,252.88
13	6 Cubic Yard	3 per week	10	\$ 203.14	\$ 2,031.40	\$ 24,376.80
14	6 Cubic Yard	4 per week	1	\$ 271.23	\$ 271.23	\$ 3,254.76
15	6 Cubic Yard	5 per week	1	\$ 339.03	\$ 339.03	\$ 4,068.36
			A Estimated Quantity	B Rate Per Collection		Annual Rate =A X B
15	2 Cubic Yard	Unscheduled	1	\$ 21.63		\$ 21.63
17	3 Cubic yard	Unscheduled	2	\$ 27.04		\$ 54.08
18	4 Cubic Yard	Unscheduled	3	\$ 31.22		\$ 93.66
19	6 Cubic Yard	Unscheduled	2	\$ 32.45		\$ 64.90

Annual Cost \$ 113,003.19  
Annual Cost X 2

Waset Management		
B Monthly Rate	C Extended Monthly Rate = A X B	D Annual Rate = C X 12
\$ 42.73	\$ 42.73	\$ 512.76
\$ 81.90	\$ 81.90	\$ 982.80
\$ 120.25	\$ 120.25	\$ 1,443.00
\$ 79.51	\$ 3,418.93	\$ 41,027.16
\$ 119.77	\$ 598.85	\$ 7,186.20
\$ 177.31	\$ 177.31	\$ 2,127.72
\$ 220.22	\$ 220.22	\$ 2,642.64
\$ 101.96	\$ 101.96	\$ 1,223.52
\$ 122.63	\$ 245.26	\$ 2,943.12
\$ 196.93	\$ 196.93	\$ 2,363.16
\$ 244.41	\$ 244.41	\$ 2,932.92
\$ 103.17	\$ 1,857.06	\$ 22,284.72
\$ 152.91	\$ 1,529.10	\$ 18,349.20
\$ 235.14	\$ 235.14	\$ 2,821.68
\$ 291.75	\$ 291.75	\$ 3,501.00
	B Rate Per Collection	Annual Rate =A X B
\$ 45.00		\$ 45.00
\$ 49.00		\$ 98.00
\$ 54.00		\$ 162.00
\$ 64.00		\$ 128.00

\$ 112,774.60  
\$ 225,549.20  
\$ 92,574.16

Current Contract		
B Monthly Rate	C Extended Monthly Rate = A X B	D Annual Rate = C X 12
\$ 20.01	\$ 20.01	\$ 240.12
\$ 60.05	\$ 2,582.15	\$ 30,985.80
\$ 90.08	\$ 450.40	\$ 5,404.80
\$ 116.10	\$ 232.20	\$ 2,786.40
\$ 128.65	\$ 2,315.70	\$ 27,788.40
\$ 192.98	\$ 1,929.80	\$ 23,157.60
	B Rate Per Collection	Annual Rate =A X B
\$ 20.55		\$ 20.55
\$ 25.69		\$ 51.38
\$ 30.82		\$ 61.64

Additional Annual Cost (Savings)  
\$ 272.64  
\$ 10,041.36  
\$ 1,781.40  
\$ 156.72  
\$ (5,503.68)  
\$ (4,808.40)  
\$ 24.45  
\$ 46.62  
\$ 66.36  
\$ 2,077.47

**CITY OF CHANDLER SERVICES AGREEMENT**  
**NAME OF AGREEMENT: City Facilities Refuse Collection**  
**AGREEMENT NO.:SW9-910-2760**

THIS AGREEMENT is made and entered into this 10<sup>th</sup> day of July, 2009, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Waste Management of Arizona, Inc. a California 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 Solid Waste Specialist/designee, 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 provide collection and disposal of refuse at City facilities 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. Current City Facility Locations are set forth in Exhibit D.
  - 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 verifications.
- 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.
- 3.3. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed two hundred twenty five thousand five hundred and fifty dollars (~~\$225,550~~) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.

#### 4. TAXES

- 4.1. 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.
- 4.2. **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.
- 4.3. **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.
- 4.4. **Price Adjustment.** All prices offered herein shall be firm against any increase for two (2) years from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.

- 4.5. **Acceptance by City.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
- 4.6. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its services concurrent with a published price reduction made to other customers.
5. **TERM:** The contract term is for a two year period commencing on the ~~1<sup>st</sup> day of August 2009~~ and terminating on the ~~31<sup>st</sup> day of July 2011~~, subject to mutually agreed upon additional successive periods of a maximum twelve months per extension with a maximum aggregate including all extensions not to exceed five (5) years. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.

## 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.
- 6.2. **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](http://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.
- 6.3. **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 B++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 Insureds.
- 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 effected 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 coverages, 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 "I" "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 are 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 \$500,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 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.

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:

Contact: Peggy Clemens  
Mailing Address: P.O. Box 4008  
Physical Address: 955 E Queen Creek Rd  
City, State, Zip: Chandler, AZ 85244-4008  
Phone: 480-782-3518  
FAX: 480-782-3520

In the case of the CONTRACTOR

Firm Name: Waste Management of Arizona  
Contact: Bill Day  
Address: 1580 E Elwood St  
City, State, Zip: Phoenix, AZ 85040  
Phone: 602-721-4018  
FAX: 602-323-3768  
Bday2@wm.com

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:**

- 15.1 Entire Agreement.** This Agreement, including Exhibits A, B, C and D 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.
- 15.2 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.3 Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.

- 15.4 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.
- 15.5 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.
- 15.6 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.
- 15.7 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 \_\_\_\_\_ 20\_\_\_\_.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

\_\_\_\_\_

By:   
Signature

MAYOR

ATTEST:

ATTEST: If Corporation

SEAL

\_\_\_\_\_

Mark Snedecor  
Secretary

City Clerk

Approved as to form:

\_\_\_\_\_

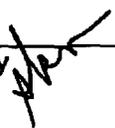
City Attorney 

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:	SW9-910-2760		
Name (as listed in the contract):	Waste Management of AZ		
Street Name and Number:	1580 East Elwood St		
City:	Phoenix	State:	AZ
		Zip Code:	85046

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: Mark Snedecor

Title: Sales Manager

Date (month/day/year): ~~07~~ 7/10/09

**Exhibit B  
SCOPE OF WORK**

**1. GENERAL**

The Contractor shall furnish all labor, supervision, materials, permits, licenses, and equipment necessary to provide mechanized contained refuse collection from City facilities listed on Exhibit D.

**2. SCHEDULES**

Collection schedules are set forth in Exhibit D. The contractor may request changes in the collection schedule. City staff will make a determination and notify the contractor if the request is accepted or rejected within 14 calendar days of the request.

**3. TIME OF COLLECTION**

The Contractor shall not start refuse collection prior to 6:00 a.m. nor continue collections after 6:00 p.m. In an emergency, the Contractor may request authorization from the City to work additional hours.

**4. ADDITIONS, CHANGES AND DELETIONS**

The facilities, container sizes and collection frequencies listed on Exhibit D are the City's current requirements. The City reserves the right to add facilities, change container sizes and collection frequencies during the term of the contract.

**5. MISSED COLLECTION AND ASSESMENTS**

- a. City will notify contractor of any missed collections.
- b. Contractor will pick up missed containers by noon the following working day
- c. Contractor shall not miss more than 2 containers per month
- d. The contractor will be assessed one hundred dollars (\$100) per day per container for each container not collected by noon the following day.
- e. If the Contractor fails to pick up the missed collection following the procedures noted above, the City will provide the service, either directly or indirectly, and deduct all costs from payment due or become due the Contractor.

**6. HOLIDAYS**

- a. If the collection day falls on any of the following holidays the collection shall be rescheduled as specified below.
  - i. New Year's Day.
  - ii. Martin Luther King Jr.
  - iii. President's Day
  - iv. Memorial Day
  - v. Independence Day
  - vi. Labor Day
  - vii. Veteran's Day
  - viii. Christmas Day.
- b. When a holiday falls on Sunday, it is observed by the City on the following Monday; when a holiday falls on a Saturday, it is observed by the City on the preceding Friday.
- c. The Contractor shall be required to provide make-up collections for all regularly scheduled pick-ups not collected on the holidays. The makeup collections shall be completed prior to the close of the next working day following the holiday.

**7. COMMUNICATIONS**

- a. Throughout the period of this contract, the Contractor shall establish and maintain a local office and authorized managing agent within the Phoenix metropolitan area. The Contractor shall furnish the City with the name of the managing agent prior to commencing collection operations, and shall immediately notify the City if the managing agent is changed at any time. Communication to the Contractor's agent shall always constitute a communication to the Contractor.

- b. The Contractor's local office shall have a person in charge during the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday with authority to make decisions related to operations under this contract. The Contractor shall maintain a local telephone number for the purpose of receiving complaints, inquiries and general conduct of business during the noted time period.
- c. The Contractor shall immediately record and report to the City all accidents, equipment malfunctions and other incidents that occur while performing this contract. Follow-up written reports shall be provided to the City by the close of the working day of the event.

**8. CARE AND DILIGENCE:**

- a. The Contractor shall exercise all reasonable care and diligence in the collection and transporting of refuse. Every effort shall be made to prevent spilling, scattering or dropping refuse during the collection and transportation process. In the event that refuse is spilled, scattered or dropped, the operator shall immediately clean-up the material, place it in the container if applicable and dump the container. All spilled hydraulic/oil fluid shall be immediately cleaned up/removed by the operator. The Contractor shall block off or tarp all vehicle openings en route to the disposal site.
- b. Containers must be placed in an upright position with lids closed. Operator must close all lids after dumping container.
- c. Contractor will make every reasonable effort to collect all overweight or overflowing containers scheduled for collection.
- d. Refuse collection easements are frequently co-located with other utility easements. Particular attention must be given to the location of water meters, transformers, guy wires, utility poles and irrigation structures. Authorization to use the easement does not abrogate the Contractor's responsibility to exercise caution and consideration in relationship to the property of other authorized users.

**9. PERSONNEL:**

- a. The Contractor shall furnish such supervision and labor as is considered necessary for the fulfillment of the work specified in this contract in an acceptable manner and at a satisfactory rate of progress.
- b. The Contractor shall not employ any person who engages in misconduct, is discourteous to the public, or is negligent in the proper performance of his or her duties.
- c. Employees driving the Contractor's vehicles shall at all times possess and carry a valid Commercial Driver License (CDL) issued by the State of Arizona, and comply with all traffic and speed regulations. The Contractor shall prohibit the use of intoxicating substances by drivers and crewmembers while on duty or in the course of performing their duties under this contract.
- d. The Contractor's field employees shall be required to wear a clean uniform bearing the Contractor's name. Such employees shall additionally bear some means of individual identification as a nametag or identification card. At no time shall a Contractor's employee in any way identify or represent him or herself as an employee of the City of Chandler.

**10. COLLECTION VEHICLES:**

- a. The Contractor shall provide and maintain during the entire period of this contract a fleet of mechanized refuse collection vehicles sufficient in number and capacity to perform the work and render the service required by this contract. The fleet must be sufficient to handle the special requirements of adverse weather, holiday overloads and vehicle breakdowns.
- b. The Contractor's vehicles must be clearly identified with company name and vehicle identification number. All vehicles must be kept clean, in sanitary condition, good repair and meet community standards of appearance at all times. Hydraulic/oil fluid leaks must be checked for and corrected daily. The City shall be the sole judge of community standards of appearance.
- c. The noise level for the collection vehicles during the stationary compaction process shall not exceed seventy-five (75) decibels at a distance of twenty-five (25) feet from the collection vehicle and at an elevation of five (5) feet from the horizontal base plane of such vehicle.
- d. Vehicles used in the provision of services under this contract shall have all required permits or certificates (e.g., garbage hauler permit issued by the Maricopa County Health Department and City of Chandler Hauler Permit).

**11. DISPOSAL SITE:**

- a. The Contractor shall transport all collected solid waste to **Butterfield Landfill** an ADEQ licensed, Subtitle D disposal site.

**12. CONTAINERS:**

- a. The Contractor shall be responsible for the purchase and furnishing of all required front end load containers as specified in this contract.
- b. The Contractor shall be responsible for the repair and maintenance of all containers.
- c. The Contractor may be required to furnish locking lids on some containers

**Exhibit C  
Pricing**

Item	Container Size	Collection Frequency	Monthly Rate
1	2 Cubic Yard	1 per week	\$ 42.73
2	2 Cubic Yard	2 per week	\$ 81.90
3	2 Cubic Yard	3 per week	\$ 120.25
4	3 Cubic Yard	2 per week	\$ 79.51
5	3 Cubic Yard	3 per week	\$ 119.77
6	3 Cubic Yard	4 per week	\$ 177.31
7	3 Cubic Yard	5 per week	\$ 220.22
8	4 Cubic Yard	2 per week	\$ 101.96
9	4 Cubic Yard	3 per week	\$ 122.63
10	4 Cubic Yard	4 per week	\$ 196.93
11	4 Cubic Yard	5 per week	\$ 244.41
12	6 Cubic Yard	2 per week	\$ 103.17
13	6 Cubic Yard	3 per week	\$ 152.91
14	6 Cubic Yard	4 per week	\$ 235.14
15	6 Cubic Yard	5 per week	\$ 291.75
			Rate Per Collection
16	2 Cubic Yard	Unscheduled	\$ 45.00
17	3 Cubic yard	Unscheduled	\$ 49.00
18	4 Cubic Yard	Unscheduled	\$ 54.00
19	6 Cubic Yard	Unscheduled	\$ 64.00

**Exhibit D**

**CITY FACILITY LOCATIONS**

<b>NAME OF FACILITY</b>	<b>LOCATION</b>	<b>2YD</b>	<b>3YD</b>	<b>4YD</b>	<b>6YD</b>	<b>Collection Days</b>
Airport Water Rec Facility	905 E. Queen Creek Rd.		1			Tues & Fri (C)
Boys/Girls Club	300 E. Chandler Blvd.				1	Tues & Fri
Center for the Arts	250 N. Arizona Ave.		1			Tues & Fri (C)
Vision Gallery	80 S. San Marcos Pl.	1				Fri Only
COC Airport	2380 S. Stinson Wy.		5			Tues & Fri
Public Works Yard	249 E. Chicago St.		2			Tues & Fri
Community Center	25 S. Arizona Pl.				2	Mon, Wed, & Fri
Fire Academy	3550 S. Dobson Rd.		1			Tues & Fri
Fire Station 1	911 S. Hamilton Rd.		1			Tues & Fri (C)
Fire Station 2	1911 N. Alma School Rd.		1			Tues & Fri
Fire Station 3	275 S. Ellis St.		1			Tues & Fri (C)
Fire Station 4	295 N. Kyrene Rd.		1			Tues & Fri
Fire Station 5	1800 N. Jacaranda Pkwy.		1			Tues & Fri (C)
Fire Station 6	911 N. Jackson St.		1			Tues & Fri
Fire Station 7	6200 S. Gilbert Rd.		1			Tues & Fri
Fire Station 8	711 W. Frye Rd.		1			Tues & Fri
Fire Station 9	211 N Desert Breeze Bl W		1			Tues & Fri
Fire Station 10	5211 S McQueen Rd		1			Tues & Fri
Housing Enterprise Academy	73 S. Hamilton St.		1			Tues & Fri
Housing Project #1	130 N. Hamilton St.		3		3	Tues & Fri (C)
Housing Project #2	73 S. Hamilton St.				3	Tues & Fri
Housing Project #3	127 N. Kingston St.		2			Tues & Fri
Housing Project #4	660 S. Palm Ln.		5			Tues & Fri (C)
Housing Project #5	210 N. McQueen Rd.				4	Tues & Fri
Library - Downtown	22 S. Delaware St.		2			M, W & Fri (C)
LBWRF - Severn Trent	3333 S. Old Price Rd		1			Tues & Fri
Park - Arrowhead	426 N. Arrowhead Dr.		1		2	Mon, Wed, & Fri
Park - Desert Breeze	660 N. Galaxy Dr.				1	Mon, Wed, & Fri
Park - Folley	582 E. Frye Rd.		2			Tues & Fri
Park - Snedigar	4500 S. Alma School Rd.		1		3	Mon, Wed, & Fri
Park - Tumbleweed	2200 S. McQueen Rd.				1	Mon, Wed, & Fri
Park - W. Aquatic Center	250 S. Kyrene Rd.		1			Tues & Fri
Park - Veterans Oasis	4050 E Chandler Blvd				1	Tues & Fri
Park - Mesquite Grove	5901 S Hillcrest Dr				1	Mon, Wed, & Fri
Police Evidence	576 W. Pecos Rd.		2			Tues & Fri
Police/Courts	200 & 250 E. Chicago St.				2	Tues & Fri
PD Substation West	261 N Desert Breeze Bl W		1			Tues & Fri
PD Substation South	4040 E Chandler Hts Rd		1			Tues & Fri
R.O. Plant	3737 Old Price Rd.				1	Tues & Fri
Senior Center (w/Pk Maint)	202 E. Boston St.				2	Tues & Fri
Traffic (Bldg B)	975 E. Armstrong Wy		1			Tues & Fri
Warehouse/Fleet (H, I)	975 E. Armstrong Wy				1	Tues & Fri

**CITY FACILITY LOCATIONS**

Water Distribution (J, K, L)	975 E. Armstrong Wy		1			Tues & Fri (C)
Water Treatment Plant	1475 E. Pecos Rd.		1			Tues & Fri
	4yd cans on casters			2		Mon, Wed, & Fri
Water Production-Bldg O	975 E. Armstrong Wy		1			Tues & Fri
Tumbleweed Recreation Center	745 E Germann Rd				2	Mon, Wed, & Fri
Parks & Facilities Service Center	650 E Ryan Road				1	Tues & Fri

**(C) = Caster on Containers**