CONTRACT AMENDMENT

P12-0065 Page 1 of 1

Description: Solid Waste Disposal Services

Amendment No. One (1) Date: 2/26/14

Materials Management Procurement
9875 N. 85th Ave., 2nd Fl.
Peoria, AZ 85345
Telephone: (623) 773-7115
Fax: (623) 773-7118

Buyer: Jennifer Miller

In accordance with the Contract, the above referenced contract shall expire on March 21, 2014.

Extend month to month, not-to-exceed six (6) months, beginning March 21, 2014

Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

Signature	Date	Typed Name and Title	Company Name
	3-11-14	Scott Bradley, Area V.P.	Waste Management

Address	City	State	Zip Code
222 S. Mill Suite 333	~~Phoenix~~ Tempe	AZ	85281

Attested By:

Rhonda Geriminsky, City Clerk

CC Number

LCON01312
Contract Number

City Seal
Copyright 2003
City of Peoria, Arizona

03-18-2014

Public Works Director: William Mattingly

3-13-14

Approved as to Form:

Stephen M. Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed:

March 20 2014, at Peoria, Arizona

Dan Zenko, Materials Manager

(Rev 09/09/13)CF

LCON01312A

SOLID WASTE DISPOSAL AGREEMENT
OPTION B (2-Year)

This SOLID WASTE DISPOSAL AGREEMENT ("**Agreement**") is made and entered into as of the day set herein, by and between Waste Management of Arizona, Inc. ("**WMA**" or "Contractor") and the City of Peoria, an Arizona municipal corporation ("**City**"). WMA and City may be referred to herein collectively as the "Parties" and individually as a "Party" WMA and City.

RECITALS

A. WMA owns and operates environmentally-sound and permitted solid waste disposal sites located in Maricopa County, State of Arizona, such as the Northwest Regional Landfill ("**Northwest**") and Deer Valley Transfer Station ("**Deer Valley**") (collectively, the "**Disposal Sites**").

B. City is a municipality, which provides for the collection and transportation of mtunicipal solid waste of its residents and commercial businesses, and City desires environmentally sound solid waste disposal sites for the disposal of such solid waste materials.

C. WMA and City entered into a Previous Solid Waste Disposal Agreement dated July 1, 2002, (LCON # 04002). WMA and the City wish to terminate the Previous Agreement and any subsequent amendments ("Previous Agreement").

D. The Previous Agreement is to be terminated as of the Effective Date of this Agreement and any provisions in the Previous Agreement regarding termination, notice and/or penalties/damages, if any, are waived by the Parties.

E. The termination of the Previous Agreement on the agreed Effective Date shall not affect any of the rights or obligations of either Party to the Previous Agreement accruing prior to the Effective Date.

F. The Parties acknowledgment and agreement to terminate the Previous Agreement is evidenced by the Parties signature below.

G. City and WMA desire to terminate the Previous Agreement and enter into this Agreement to provide for the disposal of City Acceptable Waste and recycling of City Recyclables.

AGREEMENT

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the Parties, intending to be legally bound, hereby agree as follows:

1. **DEFINITIONS**. As used in this Agreement, the following terms shall have the following meanings:

LCON01312

1.1 **"Acceptable Waste"** shall mean any and all waste that is Solid Waste, including Unacceptable Material, but not Excluded Waste, Recyclables, Sewage Sludge or Special Waste.

1.2 **"Agreement"** shall mean this Solid Waste Disposal Agreement between City and WMA, as it may be amended or modified in writing from time to time.

1.3 **"Base Rate"** shall mean the initial per ton disposal fee to be paid by City to WMA as compensation for disposal of Acceptable Waste, as set forth in and adjusted in accordance with Section 3 of this Agreement.

1.4 **"City"** shall mean the City of Peoria, an Arizona municipal corporation.

1.5 **"City Acceptable Waste"** shall mean Acceptable Waste received at a Disposal Site from the City pursuant to this Agreement.

1.6 **"City Recyclables"** shall mean Recyclables received at a Disposal Site from the City pursuant to this Agreement.

1.7 **"Designated Materials"** shall mean (i) at least 90% of Acceptable Waste and at least 6,000 tons per year of Recyclables collected by the City from single family residential premises located within the City, and (ii) at City's discretion, Sewage Sludge generated by City owned and/or operated waste water treatment facilities

1.8 **"Disposal Sites"** shall mean, collectively, those certain permitted Solid Waste Disposal Sites owned and operated by WMA located in Maricopa County, State of Arizona, and known as Northwest Regional Landfill and Deer Valley Transfer Station.

1.9 **"Effective Date"** The term of any resultant contract shall commence One (1) day following the date of award.

1.10 **"Equipment"** shall mean any and all containers, tractors, trailers, motor vehicles, cranes, top pickers and other equipment utilized by City and/or WMA for the collection, transportation, handling, processing and disposal of Acceptable Waste and Recyclables pursuant to this Agreement.

1.11 **"Excluded Waste"** shall mean waste that: (a) is prohibited from receipt at the applicable Disposal Site by state, federal or local law, regulation, rule, code, ordinance, order, license, permit or permit condition; (b) is or contains Hazardous Waste as defined below; (c) WMA reasonably believes would, as a result of or upon disposal, be a violation of local, state or federal law, regulation or ordinance, including land use restrictions or conditions applicable to the Disposal Site; or (d) WMA reasonably believes would present a significant risk to human health or the environment, or otherwise create or expose WMA or City to potential liability.

1.12 "**Hazardous Waste**" shall mean waste that is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous waste" or "dangerous waste," pursuant to any state or federal law and waste containing any substance or material defined, regulated or listed (directly or by reference) as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic waste," pollutants or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to federal, state or local laws, but shall not include any Special Waste as defined below.

1.13 "**Recyclable**" or "**Recyclables**" means a material or group of materials that can be processed into a form suitable for reuse through reprocessing or remanufacture. However, Recyclables shall not be classified as such if commingled with materials that contain twenty five percent (25%) or more of non-recyclable. The initial list of Recyclables is identified as Recyclables in Exhibit A. WMA may add materials to the list of Recyclables at its discretion.

1.14 "**Previous Agreement**" means the WMA and City's Solid Waste Disposal Agreement entered into July 1, 2002, (LCON # 04002) and any amendments.

1.15 "**Sewage Sludge**" means solid, semisolid or liquid residue that is generated during the treatment of domestic sewage in a treatment works. Sewage Sludge includes domestic septage, scum or solids that are removed in primary, secondary or advanced wastewater treatment processes, and any material derived from sewage sludge. It does not include ash that is generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings that are generated during preliminary treatment of domestic sewage in a treatment works.

1.16 "**Solid Waste**" shall mean any and all putrescible and non-putrescible solid and semi-solid waste, including garbage, refuse or rubbish resulting from residential, industrial, commercial, community and municipal activities, including, but not limited to, demolition and construction wastes, food and beverage containers, paper, rubbish, ashes, vehicle parts, discarded home appliances, yardwaste (including grass clippings), vegetable wastes and Sewage Sludge.

1.17 "**Special Waste**" shall mean Solid Waste that is bulky or may require special handling at the Disposal Site, including, without limitation, tires, white goods, appliances, and batteries.

1.18 "**Unacceptable Material**" shall mean that portion of the material included in a delivery of source-separated or commingled Recyclables that is not a Recyclable up to 25%. A partial listing of Unacceptable Material is set forth in Exhibit A.

1.19 "**Uncontrollable Circumstances**" shall mean Acts of God including landslides, lightning, unforeseeable storms, floods not in floodplain, unforeseeable freezing, and earthquakes; forest fires; civil disturbances; strikes; lockouts or other industrial disturbances; acts of the public enemy other than WMA employees; wars; pandemic outbreaks; blockades; public

riots; unforeseeable breakage; explosions; negligent accident to machinery, pipelines or materials; power failure; governmental restraint; damage to or destruction of the Disposal Site as a result of events such as those described herein not caused by acts of WMA.

2. **DELIVERY OF ACCEPTABLE WASTE, RECYCLABLES AND SEWAGE SLUDGE.** Beginning on the Effective Date, and throughout the term of this Agreement, City shall cause to be delivered to the Disposal Sites, and WMA shall accept for disposal or recycling, the "Designated Materials". Nothing herein shall prevent any owner, occupant or tenant of residential premises within the area of City from personally handling, hauling, or transporting Acceptable Waste or Recyclables generated by or from his/her own residence for the purpose of disposing of the same at any authorized disposal area or transfer station. If the City contracts out the collection of Acceptable Waste or Recyclables from single family residential premises (e.g., exclusive or non-exclusive collection franchise), a minimum of 90% of such Acceptable Waste and 6,000 tons per year of such Recyclables shall be delivered to and accepted at a Disposal Site. The rates charged to the City hereunder shall also apply to the City's contract collector(s).

WMA will notify the City if the list of Recyclables set forth in Exhibit A can be expanded to include additional types of material. Furthermore, if WMA becomes aware of ways in which the City could improve its Solid Waste diversion, WMA will offer consulting assistance, at no charge to the City, and in implementing such improvements.

3. WMA COMPENSATION.

3.1 Base Rates. WMA shall charge City, and City shall pay to WMA for disposal services, the following initial disposal rates:

a. Acceptable Waste:
   i. Deer Valley Transfer Station: $24.00 per ton
   ii. Northwest Regional Landfill: $20.00 per ton

b. Special Waste:
   i. Northwest Regional Landfill: The lower of the posted gate rate (between Deer Valley Transfer Station and Northwest Regional Landfill) for such waste as of the date of disposal.

c. Sewage Sludge:
   i. Deer Valley Transfer Station: The Acceptable Waste Base Rate
   ii. Northwest Regional Landfill: The Acceptable Waste Base Rate minus $1.00/ton

d. Current Fuel Surcharge $1.22 per ton

The Base Rates includes all federal, state and local taxes, fees and assessments levied on or applicable to the disposal of solid waste as of the Effective Date. In charging the Base Rate hereunder, WMA shall determine the tonnage of Acceptable Waste by weighing the City's vehicles at the Disposal Site.

3.2 Fuel Surcharge and CPI Adjustments. On or before each November 30 during the term of this Agreement, WMA will provide written notification to the City of any annual Fuel Surcharge adjustment and/or biannual CPI adjustment that will become effective the following July 1 (the "**Adjustment Date**"). Failure of WMA to provide timely notice as provided for in this section shall not relieve the City of any of its obligations under the Agreement, but shall act to only delay such obligations until notice is given.

3.2.1 Fuel Surcharge. In addition to the Base Rate, as part of the compensation payable by the City to WMA for disposal services at Deer Valley Transfer Station, City shall pay WMA a Fuel Surcharge to account for fluctuations in diesel fuel prices. The fuel surcharge shall not apply to disposal services provided to the City at Northwest Regional Landfill.

Calculation of the initial Fuel Surcharge is based on a base Fuel Price of $1.29. On each July 1 during this Agreement, the Fuel Surcharge will be adjusted based on the immediately preceding twelve-month period ending June 30. The amount of the adjustment shall be calculated by:

(a) Subtracting the base Fuel Price ($1.29) from the Average Fuel Price (as defined below) for the preceding twelve-month period ending June 30; and

(b) Multiplying the result by a fuel factor of 0.81 to produce the new Fuel Surcharge.

As used herein, "Average Fuel Price" means the average monthly diesel fuel price, as published by the U.S. Department of Energy: http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp. (See U.S. No 2 Diesel Retail Prices by All Sellers (Cents per Gallon) at the historical data worksheet titled, "Data 2-M Diesel Prices – All Types.")

For example, before November 30, 2010, WMA would have subtracted the base Fuel Price ($1.29) from the Average Fuel Price for the twelve months ending June 30, 2011 (assume $2.80), and multiplied the difference ($1.51) by the fuel factor (0.81) to determine the Fuel Surcharge (equal to $1.22 /ton) that would have been effective July 1, 2011.

In the event the Average Fuel Price for the applicable preceding twelve-month period ending June 30th is less than the base Fuel Price, the Fuel Surcharge will be zero ($0.00) for the applicable following year period.

3.2.2 CPI Adjustment. Bi-annually (on every other Adjustment Date), commencing with the July 1, 2012 Adjustment Date, the then-current Base Rates, as adjusted under this Section 3, shall be automatically adjusted by the average percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) West Region, 1982-84=100, published by the United States Department of Labor, Bureau of Labor Statistics ("**BLS**"). Both parties will agree to refer to the BLS Internet Site (http://stats.bls.gov/cpi/) or other agreed upon BLS source to calculate the CPI-adjusted Base Rate hereunder as follows: find the average West Region CPI-U HALF 1 published for the two years immediately preceding the Adjustment Date (the "first period"), and divide by the average of the West Region CPI-U HALF 1 published for the two-years prior to the "first period." The resulting quotient would then be multiplied by the existing

Base Rates to calculate the new Base Rates for the next two-year period. This method of calculation will then be used for review of rate adjustment for each future biennial review. If there is no positive increase in the CPI average, there will be no change to the Base Rates for any following adjustment period until the next biennial review. The rate adjustment under this section 3.2.2 shall go into effect during the first billing cycle for the month of July, following the new Base Rate calculation.

Example:

For example, the modified methodology to determine the New Base Rate effective July 1, 2012, utilizing a fictitious figure of $25.00 for the Base Rate, is as follows:

CPI HALF 1 Average 2008 = 219.016
CPI HALF 1 Average 2009 = 217.786
Average CPI for "first period" = 218.401

CPI HALF 1 Average 2010 = 220.790
CPI HALF 1 Average 2011 = 226.428
Average CPI for this example "prior" period = 223.609

Divide 223.609/218.401 = 1.024 x $25.00 = $25.60 (Fictitious New Base Rate)

3.3 Other Rate Adjustments. WMA may increase the Base Rates to posted gate rates in the event City fails to deliver to the Disposal Site all Designated Material. WMA may also increase the Base Rates to reflect WMA's actual increased costs due to changes in federal, state or local laws, statutes, rules, regulations, ordinances or permit conditions occurring after the Effective Date, except when permit conditions change as a result of WMA actions. WMA may also increase the Base Rates for any tax, tariff, fee, assessment or other charge levied or assessed by a governmental authority on the storage, handling, transportation or disposal of solid waste after the Effective Date. WMA may also increase the Base Rate for actual increased costs resulting from Uncontrollable Circumstances as defined in Section 10. All rate adjustments under this Section 3.3 shall be subject to mutual agreement and take effect upon 30 day written notice from WMA. The City, with good cause, may withhold this approval.

3.4 Omitted.

3.5 Payment. On a monthly basis during the term of this Agreement, WMA shall invoice City for City Acceptable Waste delivered to Disposal Facilities during the preceding month. The City shall pay the full amount of each invoice to WMA within thirty (30) days of the date of each invoice unless the City disputes an amount on the invoice. The City will pay any amounts not in dispute within the 30-day time frame. The City shall pay a late fee and service charge on all past due amounts, not in dispute, accruing from the date of receipt of the invoice at a rate of twelve percent (12%) per annum or, if less, the maximum rate allowed by law. On a monthly basis, WMA shall transmit a statement to the City detailing amounts due and paid by the City during the preceding month.

3.6 Residential Drop-Off Rates. Upon presentation of evidence satisfactory to WMA that an individual is a resident of the City of Peoria, such individual will be permitted to dispose of residential waste at the same rate per ton as set forth in Section 3.1, subject to a $7.50 minimum charge per entry for disposal. Residential drop-off rates will be adjusted as per the CPI adjustment in section 3.2.2.

3.7 Omitted.

3.8 Recyclables Rebate. Each month, WMA shall pay the City a percentage of the total tonnage of City Recyclables (including commingled Unacceptable Material) received at the Disposal Sites multiplied by the Blended Rate (the "**Recycling Rebate**"). The "Blended Rate" is the sum of weighted average per ton sales prices of City Recyclables categories (e.g., cardboard, newspaper, etc.) and Unacceptable Material. However, in no event shall the Blended Rate be less than $110 for the purpose of calculating the Recycling Rebate. At least once each month, WMA will perform an audit of City Recyclables and determine the percentage of each City Recyclable category of total City Recyclables and Unacceptable Material. When determining the weighted average per ton sales price of City Recyclables categories, WMA will calculate the average City Recyclables category percentages of the six previous City Recyclables audits and multiply such percentage by the actual price per ton at which the commodity category was sold.

The Recycling Rebate percentage will depend on the Blended Rate, as follows:

Blended Rate	Recycling Rebate percentage
$120 or less	14%
$120.01 to $130	18.5%
$130.01 to $150	23.5%
$150.01 to $180	27.5%
$180.01 and up	29.5%

The Recycling Rebate shall increase by $10.00 per ton for Recyclables delivered to Northwest Regional Landfill, as opposed to Deer Valley Transfer Station.

The following hypothetical illustrates how the Recycling Rebate is calculated:

Commodity Category[1]	Percentage of Total[2]	Price/ton[3]	Weighted Price
Cardboard	20%	$201.00	$40.20/ton
Newspaper	55%	$179.00	$98.45/ton
Mixed Paper	7%	$174.00	$12.18/ton
Aluminum	3%	$1,302.00	$39.06/ton
Unacceptable Material	15%	$0	$0
Total	100%		

[1] There are other categories of commodities, but they were excluded for the sake of simplicity.
[2] This is a hypothetical average of six City Recyclables audits, wherein WMA calculates the percentage of each City Recyclable category of the total amount of City Recyclables received.
[3] These are hypothetical prices at which WMA sold City Recyclables.

Blended Rate		$189.89/ton
Recycling Rebate/ton for Deer Valley	(29.5% of Blended Rate)	$56.02
Recycling Rebate/ton for Northwest	(29.5% + $10.00)	$66.02

4. **EXCLUDED WASTE; UNACCEPTABLE MATERIAL; INSPECTION, REJECTION.** Prior to delivery to the Disposal Site, the City shall inspect all Designated Material and shall remove any and all Excluded Waste. WMA shall have the right, but not the obligation, to inspect, analyze or test any material delivered by the City to a Disposal Facility. WMA shall have the right to reject, refuse or revoke acceptance of any delivered material if, in the opinion of WMA, such material or tender of delivery fails to conform to, or the City fails to comply with, the terms of this Agreement, including the delivery of waste meeting the definition of Acceptable Waste hereunder. However, if a delivery of Recyclables contains between 0% and 40% of Unacceptable Material (but no Excluded Material), WMA shall accept such delivery and endeavor to dispose of the Unacceptable Material as Acceptable Waste. In the event WMA, by notice to the City, rejects or revokes acceptance of waste or Recyclables hereunder, the City shall, at its sole cost, immediately remove or arrange to have the rejected material removed from WMA's control or property. If the rejected material is not removed within 24 hours from receipt of notice, WMA shall have the right and authority to handle and dispose of the rejected or Excluded Waste. The City shall reimburse WMA for any and all costs, damages and fines incurred as a result of or relating to City's tender or delivery of Excluded Waste or other failure to comply or conform to this Agreement, including, without limitation, costs of inspection, testing, analysis, handling and disposal of Excluded Waste. Title to, ownership of and liability for Excluded Waste shall at all times remain with the City.

5. **ADDITIONAL SERVICES.** In the event the City desires WMA to provide services in addition to the services provided for herein, the City and WMA shall negotiate in good faith the terms under which such services will be provided, including the compensation to be paid WMA to perform such additional services. Any such agreement to perform additional services shall be set forth in writing, signed by duly authorized personnel of each of the parties.

6. **COMPLIANCE WITH LAWS.** The City and WMA shall fully comply with all federal, state and local statutes, regulations, permits, approvals and restrictions, any legal entitlement and any other rule, regulation, requirement, guideline, permit, action, determination or order of any governmental body having jurisdiction, that is/are applicable to the collection, handling, transport, processing, storage or disposal of Solid Waste, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, building codes, non-discrimination and the payment of minimum wages.

7. **TERM OF AGREEMENT. The initial term of this Agreement shall be two (2) years, commencing on the Effective Date and ending at midnight on the day that is two (2) years later. This Agreement may be renewed for four (4) additional two (2) year period upon the mutual written agreement of the Parties**

8. **LIMITED LICENSE TO ENTER.** City and its subcontractors shall have a limited license to enter the Disposal Sites for the sole purpose of off-loading Acceptable Waste and Recyclables at an area designated, and in the manner directed, by WMA. The City shall, and shall ensure that its subcontractors, comply with all rules and regulations of the Disposal Site, including those relating to the use and operation of the Disposal Site and conduct of persons on the premises of the Disposal Site, as the same may be amended by WMA from time to time. In the event of an accident at the disposal site, the City of Peoria will have the right to enter the property to take pictures, take a report and have a police officer respond if necessary.

9. **TIME OF DELIVERY.** The City shall be entitled to deliver Acceptable Waste to Deer Valley Transfer Station Monday through Saturday (excluding holidays) between the hours of 5:00 am and 5:00 pm, and Acceptable Waste and Recyclables Northwest Regional Landfill Monday through Friday (excluding holidays) between the hours of 7:00 am and 4:00 pm. Additional hours will be as authorized by WMA, with the posted off-hours premium being added to the otherwise applicable Disposal Rate. Resident drop-off hours will initially be between the hours of 7:00 am and 5:00 pm Monday through Friday and 7:00 am to 1:00 pm Saturday (excluding holidays) at both Disposal Sites, and the parties will mutually agree in writing to any changes in operational hours. The Disposal Sites will be closed for the holidays of New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving Day and Christmas Day. The hours of operation are subject to change upon the delivery of thirty (30) days' written notice to the City, provided the City concurs in writing with such change. The City will not withhold approval without good cause.

10. **UNCONTROLLABLE CIRCUMSTANCES.** Provided that the requirements of this Section are met, neither Party shall be considered in default in the performance of its obligations under this Agreement (not including the obligation to make payments) to the extent that such performance is prevented or impaired by the occurrence of Uncontrollable Circumstances. If, as a result of an event of Uncontrollable Circumstances, either Party is wholly or partially unable to meet its obligations under this Agreement, then it shall give the other Party prompt written notice of such event, describing it in reasonable detail. The obligations under this Agreement of the affected Party shall be suspended, other than for payment of monies due, but only with respect to the particular component of obligations affected by the event and only for the period during which the event of Uncontrollable Circumstances exists; provided, however, that WMA shall have a reasonable time during which to assess the impacts caused by an event of Uncontrollable Circumstances and sole discretion to determine whether it will make repairs and resume all or part of the operations or whether it will terminate all operations at the Disposal Site.

11. **TERMINATION; DEFAULT.** Either Party shall have the right to terminate this Agreement upon giving the other Party written notice if the other Party (i) fails to make any payment required hereunder within ten (10) days after receiving notice of nonpayment from the non-defaulting Party, or (ii) breaches any of its representations and warranties set forth in Sections 13 or 14 below, or (iii) fails to comply with any federal, state or local laws, rules, orders or ordinances, or regulations that pertain to the collection, handling, storage, transportation, processing and/or disposal of the Acceptable Waste or Recyclables, or (iv) defaults in the performance of any other material obligation of the defaulting Party under this Agreement and

fails to cure such default within thirty (30) days after receiving written notice thereof from the non-defaulting Party. In addition, WMA shall have the right to terminate this Agreement upon ninety (90) days' written notice to City if the laws, regulations or orders of any governmental body having jurisdiction over WMA prohibit WMA from operating a Disposal Site as contemplated in this Agreement.

12. **RIGHT TO TERMINATE WITHOUT CAUSE; LIQUIDATED DAMAGES.** Neither party shall have the right to terminate this Agreement except for cause as provided in Section 11. Notwithstanding the foregoing limitation on the right to terminate this Agreement, in the event the City elects to terminate this Agreement without cause during the initial term and the City provides not less than Six months' notice thereof, the City agrees to pay WMA by no later than the termination date, as liquidated damages and not a penalty, an amount equal to the total amount billed to the City with respect to the most recent month prior to the termination date of which complete billings are available, multiplied by twelve; Beyond the initial term, either party may terminate this Agreement without cause by giving the other party one hundred eighty (180) days prior notice and such termination is not subject to liquidated damages.

13. **WARRANTIES OF THE CITY.** The City warrants and represents that:

13.1 Waste delivered to Disposal Sites from the City or otherwise by the City or its agents or subcontractors shall conform to the definitions of Acceptable Waste or Recyclables, as set forth in Sections 1.1 and 1.12 of this Agreement, and shall not contain any Excluded Waste. Deliveries identified by the City as Recyclables shall contain no more than 40% Unacceptable Material and not contain any Excluded Waste;

13.2 The City shall establish and maintain a program of operating and monitoring procedures for its Solid Waste collection activities to prevent the transportation or delivery to the Disposal Sites of Excluded Waste and minimize the inclusion of Unacceptable Materials with Recyclables;

13.3 The City possesses the Equipment, plant and employee or subcontractor resources required to meet its obligations required under this Agreement, and the Equipment shall, at all times relevant to the performance of services hereunder, be maintained in a good and safe condition and fit for use;

13.4 The City shall, and shall cause any of its subcontractors to, collect, handle and transport all Solid Waste in a safe and workmanlike manner in full compliance with all applicable federal, state and local laws, ordinances, decisions, orders, rules or regulations; and

13.5 The City has advised its drivers and its transfer station operators of WMA's prohibition on delivery of Excluded Waste, limitations on acceptance of Unacceptable Material, of the definitions and listing of Hazardous Waste under applicable federal and state law and regulations and of the definitions of Acceptable Waste, Recyclables and Unacceptable Materials herein.

14. **WARRANTIES OF WMA.** WMA warrants and represents that:

14.1 It possesses the Equipment, plant and employee resources required to meet its obligations required under this Agreement, and the Equipment shall, at all times relevant to the performance of services hereunder, be maintained in a good and safe condition and fit for use;

14.2 The Disposal Sites have been issued, and WMA will maintain throughout the term of this Agreement, all permits, licenses, certificates or approvals required by valid and applicable laws, ordinances and regulations necessary to allow the Disposal Sites to accept, dispose of and/or recycle Acceptable Waste and Recyclables (Northwest only); and

14.3 It will handle and dispose of the Acceptable Waste and Recyclables in a safe and workmanlike manner in full compliance with all valid and applicable federal, state and local laws, ordinances, orders, rules and regulations.

15. **INSURANCE.** WMA and City each warrants that it shall, and shall ensure that its subcontractors, secure and maintain in full force and effect throughout the term of this Agreement insurance coverage for commercial general liability (bodily injury and property damage), automobile liability and workers' compensation insurance with limits that are required by appropriate regulatory agencies or the following limits, whichever are greater: commercial general liability, $2,000,000 combined single limit per occurrence and aggregate; automobile liability, $2,000,000 combined single limit per occurrence and aggregate; workers' compensation, statutory limit; and pollution legal liability, $5,000,000 per occurrence, $10,000,000 aggregate.

16. INDEMNITY.

16.1 Indemnity. Each Party ("Indemnitor") shall defend, indemnify and hold harmless the other Party and its employees, officers, agents and subcontractors (collectively, "Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including reasonable attorneys' fees (collectively, "Damages"), which any or all of the Indemnitees may hereafter suffer, incur, be responsible for or pay out as a result of personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent directly or indirectly caused by, or arising from or in connection with the breach of any representations and warranties of the Indemnitor set forth above, or any negligent actions or omissions of Indemnitor, its employees, officers, owners, directors, agents or subcontractors, in the performance of this Agreement. Such indemnity shall be limited to exclude Damages to the extent they arise as a result of any negligent actions or omissions of any of the Indemnitees. Notwithstanding the foregoing or anything else in this

Agreement to the contrary, City shall be liable and shall defend, indemnify and hold harmless WMA for Damages (including, but not limited to, reasonable investigation and legal expenses) arising from, related to or caused by the presence, handling or disposal of Excluded Waste that is generated, received, handled, processed at, or transported or originating from, City's transfer station or otherwise from City.

16.2 Notice, Defense. In the event of any suit against any Indemnitee under this Section 16, the Indemnitor shall appear and defend such suit provided that the Indemnitor is notified in a timely manner of the suit. The Indemnitee shall have the right to approve counsel chosen by the Indemnitor to litigate such suit which approval shall not be unreasonably withheld. In the event a dispute exists over whether a Party is entitled to indemnification, each Party shall defend itself until the dispute is resolved. Upon resolution of the indemnification dispute, the prevailing Party shall be entitled to indemnification for its defense costs incurred prior to resolution.

16.3 Insurance. The indemnification obligation hereunder shall arise only in excess of any available and collectible insurance proceeds and the party indemnifying the other party shall be liable hereunder to pay only its share of the amount of Damages, if any, that exceeds the total amount that all insurance has paid for the Damages, plus the total amount of all deductible and self-insured expenses paid under all insurance policies.

17. **BINDING EFFECT, ASSIGNMENT**. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns provided that the rights, obligations and duties of each Party as specified in this Agreement may not be transferred, assigned or otherwise vested in any other company, entity, or person without the prior written approval of the other Party which approval shall not be unreasonably withheld. Notwithstanding the foregoing, WMA may assign or transfer its rights and obligations hereunder to a subsidiary of WMA's parent company without seeking or obtaining the approval of the City.

18. **NOTICES**. All notices required under this Agreement shall be personally delivered or mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight carrier, or confirmed facsimile to the Parties' addresses on the signature page hereto, or to such other address as either Party shall specify by written notice so given. Any notice sent by mail in the manner set forth above shall be deemed given and received three (3) business days after the date deposited in the United States mail. Any notice or communication given by personal delivery or sent by overnight carrier or confirmed facsimile in the manner set forth above shall be deemed given upon receipt.

19. **NON-WAIVER**. The failure of either Party to enforce its rights under any provision of this Agreement shall not be construed to be a waiver of such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach.

20. WEIGHING OF ACCEPTABLE WASTE AND RECYCLABLES.

20.1 Calibration. WMA shall at all times maintain in proper working order the weighing devices at the facility and shall calibrate and re-calibrate such devices as needed and as required by the Arizona Department of Weights and Measures. Calibration records shall be available for inspection by the City of Peoria.

20.2 Tare Weight. Each vehicle delivering Acceptable Waste or Recyclables shall have a vehicle identification number permanently indicated and conspicuously displayed on the exterior of the vehicle which is readily visible by weigh scale operators. Peoria shall provide a certified tare weight for each such identified vehicle. Incoming Acceptable Waste and Recyclables shall be weighed. Weights shall then be recorded. From time to time, the parties may require revalidation of the tare weight of any vehicle or re-weighing of unloaded trucks. Peoria, at no extra cost, shall have the right to monitor the weighing of all vehicles delivering Acceptable Waste or Recyclables to the site. In the event the scales become temporarily inoperable, both parties shall agree to a weight delivered to the facility by using truck volume and historical data. Those estimates shall serve as official records for the duration of the scale outage.

THE FOLLOWING CITY OF PEORIA STANDARD TERMS AND CONDITIONS ARE AN EXPLICIT PART OF THE CONTRACT. IN THE EVENT OF CONFLICT BETWEEN THE AGREEMENT AND THE STANDARD TERMS AND CONDITIONS, THE PROVISIONS OF THE AGREEMENT WILL PREVAIL.

1. **CERTIFICATION:** By signature in the Offer section of the Offer and Contract Award page , the Vendor certifies:

   a. The submission of the offer did not involve collusion or other anti-competitive practices.

   b. The Vendor shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11456.

   c. The Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the vendor may be debarred.

2. **GRATUITIES:** The City may, by written notice to the Contractor, cancel this contract if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City with a view toward securing an order, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such order. In the event this contract is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity. Paying the expense of normal business meals which are generally made available to all eligible city government customers shall not be prohibited by this paragraph.

3. **APPLICABLE LAW:** In the performance of this agreement, contractors shall abide by and conform to any and all laws of the United States, State of Arizona and City of Peoria including but not limited to federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this agreement.

   This contract shall be governed by the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in statutes pertaining specifically to the City. This contract shall be governed by the laws of the State of Arizona and suit pertaining to this contract may be brought only in courts in the State of Arizona.

   This contract is subject to the provisions of ARS §38-511; the City may cancel this contract without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City or any of its departments or agencies, is at any time while the

contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

4. **LEGAL REMEDIES:** All claims and controversies shall be subject to resolution according to the terms of the City of Peoria Procurement Code as of the date of this agreement.

5. **CONTRACT:** The contract between the City and the Contractor shall consist of (1) the Solicitation, including instructions, all terms and conditions, specifications, scopes of work, attachments, and any amendments thereto, and (2) the offer submitted by the Vendor in response to the solicitation. In the event of a conflict in language between the Solicitation and the Offer, the provisions and requirements in the Solicitation shall govern. However, the City reserves the right to clarify, in writing, any contractual terms with the concurrence of the Contractor, and such written contract shall govern in case of conflict with the applicable requirements stated in the Solicitation or the Vendor's offer. The Solicitation shall govern in all other matters not affected by the written contract.

6. **CONTRACT AMENDMENTS:** This contract may be modified only by a written Contract Amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor.

7. **CONTRACT APPLICABILITY:** The Offeror shall substantially conform to the terms, conditions, specifications and other requirements found within the text of this specific Contract. All previous agreements, contracts, or other documents, which have been executed between the Offeror and the City are not applicable to this Solicitation or any resultant contract.

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

9. **SEVERABILITY:** The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

10. **RELATIONSHIP TO PARTIES:** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.

11. **INTERPRETATION-PAROL EVIDENCE:** This contract represents the entire agreement

of the Parties with respect to its subject matter, and all pervious agreements, whether oral or written, entered into prior to this contract are hereby revoked and superseded by this contract. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this contact. This contract may not be changed, modified or rescinded except as provided for herein, absent a written agreement signed by both Parties. Any attempt at oral modification of this contract shall be void and of no effect.

12. **ASSIGNMENT-DELEGATION:** No right or interest in this contract shall be assigned by Contractor without prior written permission of the City and no delegation of any duty of Contractor shall be made without prior written permission of the City.

13. **SUBCONTRACTS:** No subcontract shall be entered into by the contractor with any other party to furnish any of the material, service or construction specified herein without the advance written approval of the City. The prime contractor shall itemize all sub-contractors which shall be utilized on the project. Any substitution of sub-contractors by the prime contractor shall be approved by the City and any cost savings will be reduced from the prime contractor's bid amount. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract and if the Subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not Subcontractors are used.

14. **RIGHTS AND REMEDIES:** No provision in this document or in the vendor's offer shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of the City to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the City's acceptance of and payment for materials or services, shall not release the Contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.

15. **OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the goods and services used to fulfill the Contract.

16. **FORCE MAJEURE:** Except for payment for sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force Majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God: acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts, injunctions-intervention-acts, or failures or refusals to act by

government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this Contract.

Force majeure shall not include the following occurrences:

a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.

b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this Force Majeure term and Condition.

Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed *Certified-Return Receipt* and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this contract.

17. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

18. **RIGHT TO AUDIT RECORDS:** The City may, at reasonable times and places, audit the books and records of any Contractor as related to any contract held with the City.

19. **RIGHT TO INSPECT PLANT:** The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or Subcontractor which is related to the performance of any contract as awarded or to be awarded.

20. **WARRANTIES:** Contractor warrants that all material, service or construction delivered under this contract shall conform to the specifications of this contract. Unless otherwise stated in Contractor's response, the City is responsible for selecting items, their use, and the results obtained from any other items used with the items furnished under this contract. Mere receipt of shipment of the material/service specified and any inspection incidental thereto by

the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in the solicitation.

21. **INSPECTION:** All material and/or services are subject to final inspection and acceptance by the City. Materials and/or services failing to conform to the specifications of this Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. The City may elect to do any or all:

    a. Waive the non-conformance.

    b. Stop the work immediately.

    c. Bring material into compliance.

    This shall be accomplished by a written determination for the City.

22. **TITLE AND RISK OF LOSS:** The title and risk of loss of material and/or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

23. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach of the Contract as a whole.

24. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment of lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole.

25. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.

26. **LIENS:** All materials, service or construction shall be free of all liens, and if the City requests, a formal release of all liens shall be delivered to the City.

27. **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.

28. **PATENTS AND COPYRIGHTS:** All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the City and shall not be used or released by the Contractor or any other person except with the prior written permission of the City.

29. **PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL:** All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.

30. **COST OF BID/PROPOSAL PREPARATION:** The City shall not reimburse the cost of developing presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

31. **PUBLIC RECORD:** All offers submitted in response to this solicitation shall become the property of the City and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the City's Procurement Code.

32. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the City.
33. **DELIVERY ORDERS:** The City shall issue a Purchase Order for the material and/or services covered by this contract. All such documents shall reference the contract number as indicated on the Offer and Contract Award .

34. **FUNDING:** Any contract entered into by the City of Peoria is subject to funding availability. Fiscal years for the City of Peoria are July 1 to June 30. The City Council approves all budget requests. If a specific funding request is not approved, the contract shall be terminated.

35. **PAYMENT:** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or services and correct invoice.

THE FOLLOWING CITY OF PEORIA SPECIAL TERMS AND CONDITIONS ARE AN EXPLICIT PART OF THE CONTRACT. IN THE EVENT OF A CONFLICT BETWEEN THE AGREEMENT AND THE SPECIAL TERMS AND CONDITIONS, THE AGREEMENT WILL PREVAIL.

1. **Purpose:** Pursuant to provisions of the City Procurement Code, the City of Peoria, Materials Management Division intends to establish a contract for Solid Waste Disposal Services.

2. **Authority:** This contract is issued under the authority of the City. No alteration of any resultant contract may be made without the express written approval of the City Materials Manager in the form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract and the City Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

3. **Contract Type:** Fixed Price

4. **Permits and Approvals:** Contractor agrees and undertakes to obtain necessary permits and approvals from all local, state and federal authorities for the project.

5. **Inspection:** All work shall be subject to inspection, surveillance, and test by the City at reasonable times during the performance. The Contractor shall provide and maintain an inspection system which is acceptable to the City.

6. **Investigation of Conditions:** The Contractor warrants and agrees familiarity of the work that is required, is satisfied as to the conditions under which is performed and enters into this contract based upon the Contractor's own investigation.

7. **Compensation:** Compensation for services shall be based upon fees negotiated, including all approved costs and expenses incurred in connection with the project; including but not limited to, telephone and other communications, reproduction of documents, special consultants (as approved by the City) and computer costs.

8. **Payments:** The City shall pay the Contractor monthly, based upon work performed and completion to date, and upon submission of invoices. All invoices shall document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

9. **Insurance Cancellation and Expiration Notice:** Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the City.

10. **Independent Contractor:**

a. General

i. The Contractor acknowledges that all services provided under this Agreement are being provided by him as an independent contractor, not as an employee or agent of the City Manager or the City of Peoria.

ii. Both parties agree that this Agreement is nonexclusive and that Contractor is not prohibited from entering into other contracts nor prohibited from practicing his profession elsewhere.

b. Liability

i. The City of Peoria shall not be liable for any acts of Contractor outside the scope of authority granted under this Agreement or as the result of Contractor's acts, errors, misconduct, negligence, omissions and intentional acts.

ii. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

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.

c. Other Benefits

The Contractor is an independent contractor, therefore, the City Manager will not provide the Contractor with health insurance, life insurance, workmen's compensation, sick leave, vacation leave, or any other fringe benefits. Further, Contractor acknowledges that he is exempt from coverage of the Comprehensive Benefit and Retirement Act (COBRA). Any such fringe benefits shall be the sole responsibility of Contractor.

11. **Confidentiality of Records:** The contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that information contained in its records or obtained from the City or from others in carrying out its functions under the

contract shall not be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of contractor as needed for the performance of duties under the contract.

12. **Ordering Process:** Upon award of a contract by the City of Peoria, Materials Management Division may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate contractor. The award of a contract shall be in accordance with the City of Peoria Procurement Code and all transactions and procedures required by the Code for public bidding have been complied with. A purchase order for the awarded material and/or service that cites the correct contract number is the only document required for the department to order and the contractor to delivery the material and/or service.

    Any attempt to represent any material and/or service not specifically awarded as being under contract with the City of Peoria is a violation of the contract and the City of Peoria Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

13. **Billing:** All billing notices to the City shall identify the specific item(s) being billed and the purchase order number. Items are to be identified by the name, model number, and/or serial number most applicable. Any purchase/delivery order issued by the requesting agency shall refer to the contract number resulting from this solicitation.

14. **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.

15. **Cancellation:** The City reserves the right to cancel the whole or any part of this contract due to failure by the contractor to carry out any obligation, term or condition of the contract. The City will issue written notice to the contractor for acting or failing to act as in any of the following:

    a. The contractor provides material that does not meet the specifications of the contract;

    b. The contractor fails to adequately perform the services set forth in the specifications of the contract;

    c. The contractor fails to complete the work required or to furnish the materials required within the time stipulated in the contract;

    d. The contractor fails to make progress in the performance of the contract and/or gives the City reason to believe that the contractor will not or cannot perform to the requirements of the contract.

    Upon receipt of the written notice of concern, the contractor shall have ten (10) days to

provide a satisfactory response to the City. Failure on the part of the contractor to adequately address all issues of concern may result in the City resorting to any single or combination of the following remedies:

e. Cancel any contract;

f. Reserve all rights or claims to damage for breach of any covenants of the contract;

g. Perform any test or analysis on materials for compliance with the specifications of the contract. If the results of any test or analysis find a material non-compliant with the specifications, the actual expense of testing shall be borne by the contractor;

h. In case of default, the City reserves the right to purchase materials, or to complete the required work in accordance with the City Procurement Code. The City may recover any actual excess costs from the contractor by:

   i. Deduction from an unpaid balance;

   ii. Collection against the bid and/or performance bond, or;

   iii. Any combination of the above or any other remedies as provided by law.

IN WITNESS WHEREOF, WMA and the City have executed this Agreement as of the Effective Date written above.

Date Awarded: March 20, 2012

WMA

By: _____

Its: Area Vice President

Date: 3/19/12

CITY OF PEORIA, an Arizona municipal corporation

By: _____

Carl Swenson

Its: City Manager

Date: 3/28/12

Address for Notice:
Waste Management
1580 E. Elwood
Phoenix, AZ 85040

Address for Notice:
City of Peoria
8401 West Monroe
Peoria, AZ 85345

APPROVED AS TO FORM:

_____

Stephen M. Kemp, City Attorney

ATTESTED BY:

_____

Wanda Nelson, City Clerk

CITY OF PEORIA

LCON01312

EXHIBIT A

SINGLE STREAM SPECIFICATIONS

City shall deliver Commingled Recyclables, consisting of recyclable aluminum, cans, plastics, and paper:

Materials Accepted: Aluminum food and beverage containers
Ferrous (Iron) cans
Glass food and beverage containers – brown, clear, or green
PET plastic containers with the symbol #1 – narrow neck containers only
HDPE natural plastic containers with the symbol #2 – narrow neck containers only (milk and water bottles)
HDPE pigmented plastic containers with the symbol #2 – narrow neck containers only (detergent, shampoo, bleach bottles, etc. without caps)
Plastics with symbols #1- #7-narrow and screw top containers
Newsprint
Old corrugated cardboard
Magazines
Catalogs
Cereal boxes
Telephone books
Printer paper
Copier paper
Mail
All other office paper without wax liners

- All tin cans, bi-metal cans, and aluminum cans must be empty and contain less than 5% food debris.
- All aerosol cans must be empty with less than 5% content
- All plastic containers must be empty, caps removed; less than 5% food debris.
- All fiber must be dry and free of food debris and other contaminating material. Tissues, paper towels or other paper that has been in contact with food is not acceptable.

Materials Not Accepted: All materials not set forth are unacceptable ("Unacceptable Marterials"), including but not limited to:
Microwave trays
Mirrors
Window or auto glass
Light Bulbs

Ceramics
Porcelain
Plastics unnumbered
Plastic bags and other film plastic
Coat hangers
Glass cookware/bakeware
Household items such as cooking pots, toasters, etc.
Green Waste -tree branches / yard clippings
Automotive parts - batteries
Diapers
Large Bulk Metal Items
Garden Hoses

REQUEST FOR SINGLE SOURCE

Return to: Materials Management

MATERIALS MANAGEMENT
Procurement
8314 W Cinnabar Avenue
Peoria, Arizona 85345-6560

Telephone: (623) 773-7115
Fax: (623) 773-7118

Date: 3/5/12 From: Maher Hazine

Single Source Request for the Purchase of: Solid Waste Disposal

Requested Supplier: Waste Management Phone: 602 763 9226
Supplier's Address: 2425 S. 48th St. Fax: 602 470 0692
Phoenix AZ 85034 Funding Source: 2760 52530 / contract
Contact: Brandon Esguer Est. Expenditure: $ depends on option

Statement of Need:

The department's recommendation for single source is based upon an objective review of the product/service being required and appears to be in the best interest of the City. I am aware of no conflict of interest or compromising action. Personal familiarity with particular brands, types of equipment, materials or firms has not influenced the request to single source this purchase. **Refer to the attached single source justification as prepared by our department and to the attached review of available products/services.**

Signature of Requesting Division Manager — Date: 3-5-2012

for Approval of Department Director — Date: 03-05-2012

Materials Management Comments:

Materials Management Approvals:

Material Manager — Date: 3-5-12

City Manager — Date: 4/3/12

Single Sourcing:

All Single Source requests shall contain the following information:

1. Full explanation of the product or service required.
2. A full explanation of the existence of a single source condition which explains the rational for noncompetitive procurement.
3. A detailed summary of efforts made to locate other potential sources, methods to locate them, and the reasons for selection or rejection of each potential source.

Examples of a single source procurement would be:

1. Immediate or past experience with a supplier which could impact price or quality.
2. Critical delivery schedule.
3. Current contractual involvement.

Please note, a single source procurement is not a vehicle to circumvent competition in the market place nor should it be used as a result of poor planning, a desire to not write specifications, or end of year budget expiration. Single Source procurement should be utilized with extreme caution to avoid problems such as failure to recognize the true market value of the product or service, motivation of the supplier to perform quality work, lack of backup supplier in the event of nonperformance, and lack of negotiation leverage. The positives should outweigh the negatives.

Please submit single source request in advance to allow sufficient time for review and negotiation of a contract (if needed).

LCON01312

Request for Single Source

Public Works – Utilities Division, Solid Waste
March 05, 2012

1) *Explanation of the product or service required.*
Disposal of Solid Waste for the City of Peoria is necessary as the City does not own nor operate a transfer station or landfill. Solid Waste must be disposed of at a facility which is permitted to accept and handle the collected waste. Peoria generated slightly more than 64,000 tons of waste (recycling and trash) in Fiscal Year 2011.

2) *Explanation of the existence of a single source condition which explains the rational for non-competitive procurement.*
Solid waste disposal options are limited by adjacency to landfill sites and distances traveled. For the City of Peoria there are several landfills owned by other municipalities which we are utilizing under IGA's at this time for some of our solid waste disposal and material recycling needs when it is advantageous to do so. The bulk of the city's solid waste is disposed of utilizing a contract with Waste Management. The only other service provider in the area is further away and has not expressed any interest in providing services under the current City of Peoria business model. Waste Management has built a solid foundation for accepting and handling Peoria's wastes. Exceptional working partnership has resulted in enhanced services to include accepting special waste (solids) at the Deer Valley Transfer Station and the Northwest Regional Land Fill. This allows for an efficient operational management of our collection routing resulting in reduced the travel time. Waste Management works with the City to accept delivery on holidays and to accept special waste an hour earlier for optimal delivery.

3) *Summary of efforts made to locate other potential sources, methods to locate them, and the reason for selection or rejection.*
The City of Peoria has entered into IGA's with the City of Phoenix for the sale of recycled waste and also with the City of Glendale for the use of their landfill for the disposal of approximately 10 percent of the City of Peoria's residential solid waste and special waste (Solids) from our Water Treatment Facilities at the City's discretion. The City of Glendale IGA agreement is to primarily dispose of the last load of the day so that operators will be closer to base during high volume traffic time. Contact was made with the only other firm that offers disposal services in this area and they chose not to provide information that was reflective of services being done under our current business model. Additional disposal options exist but are not prudent, nor cost effective to the City mainly due to disposal commute distance.

LCON01312