

LICENSE AGREEMENT BETWEEN
ALLIED WASTE TRANSPORTATION, INC.,
A WHOLLY OWNED SUBSIDIARY OF REPUBLIC SERVICES, INC.
AND
THE TOWN OF PARADISE VALLEY

This LICENSE AGREEMENT (this “Agreement”) is made on this 11th day of January 2018 (the “Effective Date”) between the Town of Paradise Valley, an Arizona municipal corporation (the “Town”) and Allied Waste Transportation Inc., a Wholly Owned Subsidiary of Republic Services, Inc. (the “Licensee”).

RECITALS

A. The Town issued a Request for Proposals (“RFP”), attached as Exhibit A, seeking proposals from vendors for residential solid waste, recycling, and specialty waste collection and disposal services (the “Services”).

B. The Licensee submitted a proposal for the Services within the Town of Paradise Valley in response to the RFP (the “Proposal”), attached as Exhibit B.

AGREEMENT

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

1. Scope of Work. The scope of work is set forth in the RFP and the Licensee’s proposal and as further modified or reiterated on Exhibit C to this Agreement, which is incorporated herein as though set forth in full (the “Scope of Work”). Licensee shall carry out the Scope of Work in a satisfactory and proper manner as determined by Town for the Town of Paradise Valley (the “Service Area”), excluding, for the first three years of this contract, any area with a Home Owners’ Association that has an existing contract for Services and which chooses not to participate in the benefits of the License (the “Excluded Properties”).

2. Representations.

2.1 Relationship of the 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 Licensee is advised that taxes or Social Security payments will not be withheld from any municipal payments issued hereunder and Licensee agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

2.2 Representations by Town. The Town represents to the Licensee that it is duly organized and existing in good standing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement. The Town further represents that the person signing on its behalf has been properly authorized and empowered to enter into

this Agreement and that the Town agrees to be bound by this Agreement.

2.3 Representations by Licensee. The Licensee represents to the Town that at the time of execution of this Agreement:

A. Authority. The Licensee is duly qualified and in good standing to do business in the State and is duly qualified and in good standing to do business wherever necessary to carry on the business and operations contemplated by this Agreement. The Licensee further represents that the person signing on its behalf has been properly authorized and empowered to enter this Agreement. The Licensee further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

B. Licenses; Materials. The Licensee has obtained all applicable environmental and other governmental permits, licenses, permits and authorizations that are (1) necessary for providing the Services and (2) required to be issued under Federal, State, local law, regulation, rule or ordinance. Licensee shall maintain in current status all Federal, State and local licenses, permits and authorizations required for the operation of the business conducted by the Licensee. The Town has no obligation to provide Licensee, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The Town has no obligation to provide tools, equipment or material to Licensee.

C. Insurance/Bonds. The Licensee has obtained and submitted to the Town: (1) certificates of insurance for all required insurance coverages specified in this Agreement; and (2) documentation of Performance Bond as required by this Agreement.

No Legal Action Pending. To the best of the Licensee's knowledge, there is no action, suit or proceeding, at law or equity, before or by any court or government authority, pending or threatened against the Licensee, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Licensee of its obligation hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other contract or instrument entered into by the Licensee in connection with the transactions contemplated hereby. Licensee agrees that it shall take all steps necessary to ensure that the representations set forth in this Section 2.3 shall remain true and correct for the entire Term of this Agreement.

3. Term of Agreement.

3.1 Initial Term. Unless sooner terminated in accordance with the provisions in this Agreement, the term of this Agreement shall commence on June 1, 2018 ("Commencement Date") and shall continue in effect for seven (7) years (the "Initial Term"), that is, until May 30, 2025 (the "Expiration Date").

3.2 Exercise of Option to Renew. After the Initial Term, the Town shall have the option in its sole discretion to renew this Agreement for up to three additional one-year terms (each, a "Renewal Term"). The Initial Term and any Renewal Terms shall be collectively referred to herein as the "Term." To exercise the option, the Town shall provide written notice to Licensee not later than 30 calendar days preceding the scheduled date of expiration of the then-current Term. This provision in no way limits the Town's right to terminate this Agreement at any time during the Term pursuant to the provisions in this Agreement. The option to renew shall further be conditioned upon Licensee's meeting conditions further described in this Agreement.

4. Fees for the Services. The Fees to be charged for the Services to the Customer are set forth on Exhibit C.

5. Manner of Providing Services. Unless otherwise stated in this Agreement, the Licensee shall be solely responsible for all aspects of the management, operations and maintenance and equipment relating to the Services including, but not limited to, the following:

5.1 Records. The maintenance of complete and accurate records, including billing records, and the provision of reports to the Town in accordance with the requirements of this Agreement.

5.3 Maintenance. The preventive maintenance, maintenance, and repair of systems and equipment including vehicles, buildings, grounds and other equipment.

5.4 Clean-up. The prevention and clean-up of litter, spillage, dust and odor as set-forth in this Agreement.

5.5 Personnel. The recruitment, hiring, and training of all managerial, supervisory, and operating personnel providing the Services.

5.6 Carts. Cart maintenance and delivery of new solid waste carts and recycling carts, as applicable, once the program begins. Licensee shall also be solely responsible for storage of unused carts.

5.7 Part-Time Residents. Licensee shall provide each residential property the opportunity to suspend service temporarily for a period not less than three continuous months upon notification by the subscriber. The allowed fees for suspension of service shall be in the amounts set forth in Exhibit C.

6. Personnel. Licensee shall assign a qualified person or persons who will be in charge of its operations within the Town and authorized to make decisions on Licensee's behalf and shall provide the name, office telephone number, mobile phone number, email address and facsimile number of Licensee's representatives and key personnel to the Town Manager. Licensee agrees that the Town shall have 24 hour access to said representative via a non-toll call from the corporate limits of the Town. Such records shall be updated as personnel or contact information changes. In addition, Licensee shall adhere to the following requirements:

6.1 Key Personnel. Licensee shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. Licensee agrees to assign specific individuals to key positions. Licensee agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the Town. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Licensee shall immediately notify the Town of same and shall, subject to the concurrence of the Town, replace such personnel with personnel of substantially equal or superior ability and qualifications.

6.2 Uniforms. Licensee shall furnish each employee involved in the performance of this Agreement with a uniform and safety vest, shirt or jacket which clearly displays the name of Licensee. Such uniforms and safety equipment shall make the employee readily visible to other motorists. Licensee's employees shall wear complete uniforms and safety vest, shirt or jacket at all times.

6.3 Safety Training. Licensee shall provide regularly scheduled, on-going operating and safety training for all employees. In addition, Licensee's employees shall be trained to perform their duties at all times. All temporary and newly hired permanent collection personnel and supervisory employees must receive comprehensive safety and operational training prior to working on the collection

vehicles or performing duties under this Agreement. Training manuals and schedules shall be maintained at the local office of Licensee and available for review at any time by Town Manager or designee.

6.4 General Training. All employees involved in the performance of this Agreement including office and all collection personnel, must be provided adequate training before and during their employment with the Licensee. This training shall familiarize employees with the required duties and standards of performance, specific requirement on routes to which they will be assigned, teach the route layouts previously established and approved and provide necessary knowledge to eliminate delays and missed collections. All supervisory and collection employees must be provided equipment and supplies prior to and during the performance of their duties. All collection, administrative, supervisory and customer service personnel must receive customer service training prior to and during the time they are employed by the Licensee.

6.5 Contact with Others. Licensee's employees shall treat all customers, co-workers, Town employees and any individual with whom they come in contact in the performance of their duties in a polite and courteous manner. Rudeness, belligerence and the use of profanity are strictly prohibited. The Town reserves the right to direct Licensee to remove any employee who violates this policy from providing Services to the Town.

6.6 Compliance with Laws. In performance of Services, Licensee's employees must adhere to municipal, State and Federal laws. The Town reserves the right to make a complaint regarding any employee of the Licensee who violates any provision herein, or who is wanton, negligent or discourteous in the performance of his/her duties. The Town may recommend appropriate action be taken by the Licensee and may require the Licensee to remove any unacceptable employee, as determined by the Town, from service to the Town.

7. Spillage and Leakage, Litter, Dust and Odor.

7.1 Spillage and Leakage. Licensee shall clean up any spilled or blowing materials as well as fluids spilled or leaked from Licensee's vehicles by the Licensee, Licensee's employees or authorized person or entity providing service to the Licensee. During transport all materials shall be contained, covered, and enclosed so that leaking, spilling and blowing of materials does not occur. Licensee shall perform all cleanups within two hours of the spillage or leakage.

7.2 Dust and Odor. If Licensee operates a disposal facility or a recycling facility within the Town, such facilities shall be operated so as to prevent the escape of dust and odors and the Licensee shall routinely clean the tip floor and the process and storage areas of said facilities.

8. Recordkeeping, Reporting, Audited Financial Statements and Reporting Format.

8.1 Recordkeeping. The Licensee shall create, maintain and make available records as defined in, and required by, all applicable local, State and Federal laws, rules and regulations, the RFP and any reports as are reasonably necessary to the Services.

8.2 Availability of Documents. All of Licensee's records shall be available to the Town and its representatives at reasonable times and places throughout the term of this Agreement and for a period of five years after termination.

8.3 Reporting.

A. Initial Reports.

1. Transition Plan. The Licensee shall provide a transition plan 90 calendar days prior to Commencement Date. This plan shall detail transition to the Licensee providing the Services. This transition plan will be submitted for approval by the Town Manager.

2. Hazardous Waste Contingency Plan. The Licensee shall provide a hazardous waste contingency plan, 30 calendar days prior to the Commencement Date, to the Town Manager. This plan shall detail what actions shall be taken by the Licensee upon discovery of hazardous waste. The plan shall include a copy of a signed contract(s) with a permitted hazardous waste transporter(s) to handle any hazardous waste discovered. The plan must comply with all State and Federal regulations regarding the handling of hazardous waste. Non-conformance with any State or Federal regulation shall be cause for rejection of the plan. This hazardous waste contingency plan will be submitted for approval by the Town Manager.

B. Monthly Reports. Licensee shall submit monthly reports, including customer service reports, to the Town Manager or authorized designee within seven calendar days following the end of each calendar month consistent with the information required in the RFP and/or accepted proposal..

C. Annual Reports. Licensee shall submit annual reports to the Town Manager or authorized designee within 30 calendar days following the end of the fiscal year.

8.3 Audited Financial Statements. The Licensee will be required to submit audited financial statements prepared by an external accounting firm for itself as a whole within 120 calendar days of the end of the Licensee's fiscal year end. The audited financial statements shall contain detailed information of collection which shall include at a minimum Licensee's income statement and balance sheet; proof that all insurance policies relative to this Agreement are in effect; and information on any outstanding lawsuits that might adversely impact the Town. In the event Licensee is acquired, the Licensee shall notify the Town of the transfer in ownership, whereupon the Town shall have the option to require that the audited financial statements be submitted by the acquiring entity. The Town's approval of the transfer of the license shall not to be unreasonably withheld. In the event Licensee is acquired, the Town shall have the option to require that the acquiring entity provide a guaranty agreement in a form acceptable to the Town Manager. The financial basis records shall be kept in accordance with generally accepted accounting principles.

8.4 Report Format. Within 14 days after the Commencement Date, the Licensee will be required to submit to the Town for its approval the format and sample contents of the records to be maintained and the monthly and annual reports to be generated in fulfillment of the requirements of the Agreement. Licensee shall submit all reports in electronic format approved by the Town and in hard copy.

9. Customer List, Billing and Collections, Payment and Annual Adjustments.

9.1 Customer List. On or prior to March 1, 2019, the Town shall provide Licensee with a residential property service customer file. Regardless of the customer list, Licensee shall provide Services to all residential property in the Town that is in the Service Area, exclusive of the Excluded Properties.

9.2 Billing and Collection.

A. The Licensee shall bill for the Services in accordance with Exhibit B.

1. Understandable Bills. Bills will be clear, concise and

understandable. Bills must be fully itemized, clearly delineating all activity during the billing period, including optional charges, rebates and credits.

2. Uniform Billing. Licensee shall bill all residential properties in a uniform, non-discriminatory manner, regardless of level of service. Payment shall be due no sooner than the 30th day of each billing period, and the due date shall be listed on each bill. Bills shall be mailed no later than the first day of the billing period.

3. Customer Dispute. In case of a bill dispute, the Licensee must respond to a written complaint from a resident within 15 days.

4. Refunds. Refund checks will be issued promptly, but no later than the next billing cycle following resolution of the request or 30 days, whichever is earlier. Credits for service will be issued no later than the next billing cycle following the determination that a credit is warranted.

5. Individual Rights. Licensee shall not deny service, deny access, or otherwise discriminate against citizens on the basis of race, color, religion, national origin, sex, age, or disability. Licensee shall comply at all times with all other applicable federal, state, and local laws and regulations, and as amended from time to time, relating to nondiscrimination.

6. Equal Opportunity. Licensee shall strictly adhere to applicable equal employment opportunity requirements of federal, state, and local regulations as amended from time to time.

7. Protection of Privacy.

a. At the time of delivery of the carts to a residential service unit and at least once a year thereafter, Licensee shall provide notice in the form of a separate, written statement to each residential service unit that clearly and conspicuously informs the occupant of:

(1) The nature of personally identifiable information collected or to be collected and the nature of the use of such information.

(2) The nature, frequency, and purpose of any disclosure which may be made of such information, including any identification of the types of persons to whom the disclosure may be made.

(3) The period during which such information will be maintained by the Licensee.

(4) The times and place at which the customer may have access to such information.

(5) The limitations provided by this section with respect to the collection and disclosure of information by Licensee and the right of the customer to enforce such limitations.

b. For purposes of the subsection, the term “personally identifiable information” does not include any record aggregate data which does not identify particular persons.

c. Except as provided in herein, Licensee shall not disclose personally identifiable information concerning any customer without the prior written or electronic consent of the customer concerned.

d. Licensee may disclose such information if the disclosure is:

(1) Necessary to render, or conduct a legitimate business activity related to Services provided by the Licensee to the customer.

(2) Made pursuant to a court order authorizing such disclosure, if the customer is notified of such order by the person to whom the order is directed.

e. A customer shall be provided, free of charge, access to all personally identifiable information regarding that customer which is collected and maintained by Licensee. Such information shall be made available to the customer at reasonable times and at a convenient place designated by Licensee. A customer shall be provided reasonable opportunity to correct any error in such information.

f. Licensee shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or court orders for access to such information.

8. Licensee shall establish a procedure for addressing delinquent accounts and shall be solely responsible for courteous resolution of any collection matters. The Licensee shall be permitted to pick up the solid waste cart, and recycling cart from any residential service unit for which fees for service have become delinquent by more than 60 days after the first notice of delinquency by the Licensee to the customer. The Licensee shall not receive any payment from the Town on account of excessive delinquencies.

10. Ownership of Solid Waste and Recyclable Materials. Title to solid waste and recyclable materials shall pass to the Licensee once the Licensee takes possession of the materials.

11. Liquidated Damages. Licensee understands that if Licensee does not timely perform its obligations pursuant to the terms of this Agreement, the Town will suffer damages which are difficult to determine and adequately specify. The acts or omissions set forth in this Section 11 shall be considered a breach of the Contract. In addition to remedying the breach, the Licensee shall be liable for liquidated damages amount(s) upon determination of the Town that performance has not occurred consistent with the provisions of the Agreement. The Town shall notify the Licensee in writing or electronically of each act or omission in this Agreement reported to or discovered by the Town. It shall be the duty of the Licensee to take whatever steps or action may be necessary to remedy the cause of the complaint. The Licensee agrees, in addition to any other remedies available to the Town, that the Town may deduct the full amount of any damages from any payment due to the Licensee. The remedy available to the Town under this paragraph shall be in addition to all other remedies which the Town may have under law or at equity.

11.1 Missed Collection. \$25 for each missed collection above two misses per collection day, to be assessed at the end of each collection month. A “missed collection” occurs when (A) a resident reports that their material was set at the curb by 6:00 AM, local time, and was not collected by 6:00 PM of the designated collection day for such residential service unit; and (B) the address was not reported by the Licensee as a late set-out or an improper set-out. Licensee may dispute the designation as a missed collection to the Town Manager. In the case of a dispute, the Town Manager’s determination shall be final as to whether a set-out is a missed collection.

11.2 Missed Block. \$250 for each incident of the Licensee failing to pick up material on a block. A “missed block” occurs when one side of a street between cross streets or an entire cul-de-sac where residents from at least three households on that street report that they had their material out before 6:00 AM, local time, and the material was not collected by 6:00 PM of the designated collection day for the missed block of residential service units, and the material was properly sorted and the addresses of the missed block were not reported by the Licensee as a late set-out. Licensee may dispute the designation of a missed block to the Town Manager. In the case of a dispute, the Town Manager’s determination shall be final as to whether a block is a missed block.

11.3 Less than Majority Collected. \$2,500 for each incident for failure to complete a majority (50%) of the collections on a given day.

11.4 Failed Spill Clean-up. \$250 for each incident for failure to clean up material spilled or littered by Licensee within six hours of verbal or written notification.

11.5 Failed Vehicle Maintenance. \$100 for each incident for failure to maintain vehicle in manner which prevents nuisances such as leaky seals or hydraulics.

11.6 Failed Correction of Missed Collection. \$250 for each incident for failure or neglect to collect materials from a missed collection location within 24 hours.

11.7 Fail to Timely Complete Reports. \$250 for each incident for failure to timely provide a complete monthly or annual report.

11.8 Failure to Return Carts. \$100 for each incident for failure to return carts or containers to their original locations after collection. For the purposes of this subsection, “original location” shall mean within ten feet of the location at which the cart was placed immediately prior to the Licensee picking it up for service. Licensee shall not be penalized for any carts returned to their original location which are subsequently moved by a third party.

11.9 Failed Customer Complaint Response. \$100 per Business Day thereafter per incident for failure to respond to any customer complaint received by the close of the following business day.

11.10 Failure to Accept Materials. \$3,000 for each day for failure to be able to accept materials on any day after the date upon which Service begins on which materials are to be collected.

11.11 Video Records – Licensee shall install and operate video monitoring equipment in each vehicle involved in collection services in the Town. Said video equipment shall adequately record the location of carts, or lack thereof, at time of collection. If said video monitoring equipment does not provide a date and time stamp, a separate GPS system shall be installed and recorded to identify the location and time of vehicles collecting in the Town.

12. Performance Guaranty. Licensee shall furnish the Town with a performance bond covering faithful performance of this Agreement (the “Performance Bond”). The Performance Bond shall be submitted within 45 days following the Effective Date, but in no event later than the Commencement Date. The Performance Bond shall be in an amount not less than annual value (based on total anticipated revenue) of this Agreement and shall be in a form approved by the Town Manager. The term of the Performance Bond shall be not less than one year beginning on the Commencement Date. The Licensee shall furnish the Town with a renewal of the Bond for an additional term of not less than one year from the expiration date of the Performance Bond then in effect for each year this Agreement is in effect. The renewal of the Performance Bond shall be submitted at least 30 days prior to the expiration date of the Performance Bond

then in effect. Notwithstanding the foregoing, the Surety shall not be obligated to renew the Performance Bond for any successive year. The Performance Bond shall be limited to one and only one surety which shall be issued by a Surety Company authorized to do business in the State of Arizona and have an A.M. Best rating of "A" or better and the "T" underwriting limitation is not exceeded by this Performance Bond.

13. Taxes. Licensee shall be responsible for and shall pay all sales, consumer, use and other taxes. When equipment, materials or supplies generally taxable to the Licensee are eligible for a tax exemption due to the nature of the item, Licensee shall assist the Town in applying for and obtaining such tax credits and exemptions which shall be paid or credited to the Town.

14. Compliance with Laws and Regulations. The Licensee shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Licensee is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services including the following: (i) existing and future Town and County ordinances and regulations, (ii) existing and future State and Federal laws, (iii) existing and future Occupational Safety and Health Administration ("OSHA") standards, (iv) applicable laws, statutes, codes, rules and regulations related to or prohibiting discrimination in employment in the performance of its work under this Agreement and (v) requirements as established by the Congress of the United States in the Fair Labor Standards Act, as amended from time to time.

15. Town Inspection Rights/Video Requirements.

15.1 Town's Right to Inspect Records, Books, Data and Documents. The Town or any of its duly authorized representatives shall have access, within 24 hours of notification, to all books, records, data and documents of the Licensee for inspection and audit, at the Town's expense. Additionally, the Licensee shall give the Town written notice of any other professional relationships it enters into with the Town or any of its agencies or component units during the period of this Agreement.

15.2 Town's Rights to Inspect Facilities and Equipment. The Town or any of its duly authorized representatives shall have access, within 24 hours of notification, to inspect Licensee's facilities, including the disposal facility and recycling facility if operated by the Licensee, and equipment and perform such inspections, as the Town deems reasonably necessary, to determine whether the Services required to be provided by Licensee under this Agreement conform to the terms hereof and/or the terms of this Agreement. The Town shall conduct the inspection of facilities and equipment during hours of operation. Licensee shall make available to the Town all reasonable facilities and assistance to facilitate the performance of inspections by the Town's representatives.

15.3 Video Records – Licensee shall install and operate video monitoring equipment in each vehicle involved in collection services in the Town. Said video equipment shall adequately record the location of carts, or lack thereof, at time of collection. If said video monitoring equipment does not provide a date and time stamp, a separate GPS system shall be installed and recorded to identify the location and time of vehicles collecting in the Town.

16. Dispute Resolution.

16.1 Interpretation of Agreement. Except as provided otherwise in this Agreement and to the extent permitted by law, the Town Manager shall be responsible for interpreting this Agreement to resolve disputes that may arise hereunder. The parties agree that any decision rendered by the Town Manager in connection with such matters shall be final and binding upon Licensee, the customer, and the Town.

16.2 Definition of Claim. As used herein “claim” means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of the Agreement terms, or other relief, arising under or relating to this Agreement. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this subsection. However, where the submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim for the purpose of this subsection. A claim by the Licensee shall be made in writing and submitted to the Town Manager. When a controversy cannot be resolved by mutual agreement, the Licensee shall submit a written request for final decision to the Town Manager. The written request shall set forth all the facts surrounding the controversy.

16.3 Process for Dispute Resolution. In connection with any claim under this clause, the Licensee, at the discretion of the Town Manager, may be afforded an opportunity to be heard and to offer evidence in support of its claim. The Town Manager shall render a written decision on all claims within 30 Business Days of receipt of the Licensee’s written claim, unless the Town Manager determines that a longer period is necessary to resolve the claim. The decision shall be furnished to the Licensee by certified mail, return receipt requested, or by any other method that provides evidence of receipt. If a decision is not issued within 30 calendar days, the Town Manager shall notify the Licensee of the time within which a decision shall be rendered and the reasons for such time extension. The Town Manager’s decision shall be final and conclusive. Pending resolution of a claim, the Licensee shall proceed diligently with the performance of the Agreement in accordance with subsection 16.4 below.

16.4 Operations during Dispute. In the event that any dispute arises between the Town and Licensee relating to this Agreement performance or compensation hereunder, Licensee shall continue to render Service and receive compensation in full compliance with all terms and conditions of this Agreement as interpreted, in good faith, by the Town, regardless of such dispute. The Licensee expressly recognizes the paramount right and duty of the Town to provide adequate Services to its residents and further agrees, in consideration of the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court without first negotiating with Town in good faith for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute shall present the matter to mediation in the courts of Arizona. If mediation fails, Licensee shall present the matter to a court in Arizona. Notwithstanding the other provisions in this subsection, the Town reserves the right to terminate this Agreement at any time whenever the Service provided by Licensee fails to meet reasonable standards of the trade, after the Town provides written notice to Licensee pursuant to Section 20.1 of this Agreement. Upon termination, the Town may call the Performance Bond and apply the cash and surety bond for the cost of service in excess of that charged to the Town by the firm engaged for the balance of the Agreement period.

17. Force Majeure. Except for any payment obligation by either party, if the Town or Licensee is unable to perform or is delayed in its performance of any of its obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the Town or Licensee to correct the adverse effect of such event of force majeure. An event of “Force Majeure” shall mean the following events or circumstances to the extent that they delay the Town or Licensee from performing any of its obligations (other than payment obligations) under this Agreement: acts of God, tornadoes, hurricanes, floods, sinkholes, fires and explosions (except those caused by negligence of Licensee, its agents and assigns), landslides, earthquakes, epidemics, quarantine, pestilence and extremely abnormal and excessively inclement weather, acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances or national or international calamities, suspension, termination or interruption of utilities necessary to the operation of either the disposal facility or the recycling facility. In order to be entitled to the benefit of this Section, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure

the event of Force Majeure.

18. Indemnification. To the fullest extent permitted by law, the Licensee, as Indemnitor, shall indemnify, defend and hold the Town, its officers, officials, employees, agents and volunteers (“Indemnitees”) harmless from and against any and all liability, claims, losses, suits, actions, damages and expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation (collectively “Claims”) for any personal injury, bodily injury, loss of life or loss or damage to property or any violation of any Federal, state or local law or ordinance or other cause related to or arising out of Licensee’s performance of its obligations pursuant to the terms of this Agreement, caused, in whole or in part by the negligent or intentional acts or omissions of Licensees, its owners, officers, directors, employees, subcontractors or agents or on account of the performance or character of this Agreement. This indemnity includes any claim or amount arising out of or recovered under the Workers Compensation Law or arising out of the failure of Indemnitor to conform to any Federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Indemnitor from and against any and all Claims. It is agreed that Licensee will be responsible for primary loss investigation defense and judgment costs where this indemnification is applicable. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

19. Insurance.

19.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Licensee, Licensee shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town’s option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Licensee. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Licensee from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. 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 are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

E. Primary Insurance. Licensee’s insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

F. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or Services of Licensee. Licensee shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

G. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Licensee shall be solely responsible for any such deductible or self-insured retention amount.

H. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Licensee shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Town and Licensee. Licensee shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

I. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Licensee will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Licensee's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the Services and the Town's acceptance of the Licensee's work or Services and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Licensee's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

1. The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

a. Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.

b. Auto Liability - Under ISO Form CA 20 48 or equivalent.

c. Excess Liability - Follow Form to underlying insurance.

2. Licensee's insurance shall be primary insurance as respects

performance of the Agreement.

3. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against the Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Licensee under this Agreement.

4. A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

19.2 Required Insurance Coverage.

A. Commercial General Liability. Licensee shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$3,000,000 for each occurrence, \$5,000,000 Products and Completed Operations Annual Aggregate and a \$5,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent Licensees, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Licensee shall maintain Business Automobile Liability insurance with a limit of \$2,000,000 each occurrence on Licensee's owned, hired and non-owned vehicles assigned to or used in the performance of the Licensee's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Workers' Compensation Insurance. Licensee shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Licensee's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

19.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially change without 30 calendar days' prior, written notice to the Town.

20. Termination; Cancellation.

20.1 By the Town for Cause. In the event there should occur any Material Breach or

Material Default in the performance of any covenant or obligation of Licensee which has not been remedied within 30 days after receipt of written notice from the Town specifying such breach or default (or such longer period of time as is reasonably necessary to cure any such breach or default which is not capable of being cured within 30 days, provided that the Licensee has undertaken the cure within such 30 days and proceeds diligently thereafter to cure in an expeditious manner; provided further that such cure period shall not exceed 90 days), the Town, may if such breach or default is continuing, terminate this Agreement upon written notice to the Licensee. The following events shall, without limitation, constitute a “Material Breach” or a “Material Default” by Licensee for purposes of this Section: (i) Licensee has abandoned, as hereinafter defined, the performance of collection services for a period of five consecutive calendar days unless caused by event of Force Majeure. As used herein, the term “abandon” shall refer to voluntary cessation of performance of collection service; (ii) if the Licensee’s hazardous substance contingency plan as required by this Agreement hereof shall fail to comply with all Federal and State regulations regarding the handling of hazardous waste; (iii) if Licensee is not paying its debts when they become due; shall have filed, or consented by answer or otherwise to the following against it, a petition for relief or reorganization and bankruptcy or insolvency law of any jurisdiction; shall make an assignment for the benefit of its creditors in lieu of taking advantage of any such bankruptcy or insolvency law; shall consent to the appointment of custodian, receiver, trustee or other officer with similar powers with respect to any substantial part of its property; shall be adjudicated insolvent or shall take corporate action for the purpose of any of the foregoing; (iv) the default by Licensee with respect to any obligation to any third party pertaining to the Licensee or to collection services, which may permit any third party, either immediately or following notice and/or the passage of time to accelerate the maturity of any obligation of the Licensee, to assume control of the Licensee or take possession of or to transfer or caused to be transferred to any third party any portion of the assets of the Licensee, but only if such default materially interferes with or prevents Licensee’s performance under the terms of this Agreement; and (v) failure to perform the services promised in Exhibits A, B and C.

A. Failure to Cure. If the Licensee shall fail to cure its Material Breach or Material Default as specified in this Section, the Town may terminate this Agreement upon ten days written notice (a “Notice of Termination”). In such case, the Licensee shall not be entitled to receive further payment for Services rendered from the effective date of the Notice of Termination.

B. Notice of Termination. Upon receipt of Notice of Termination, Licensee shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available to the Town all data, drawings, specifications, reports, estimates, summaries, and such other information as may have been required under the terms of Agreement whether completed or in process.

C. Town’s Right to Mitigate. In addition, the Town may enter into a separate contract for the completion of the Agreement, according to its terms and provisions, or use such other methods as in the Town’s sole opinion shall be required for the completion of the Agreement. All damages, costs and charges incurred by the Town, together with the cost of completing the terms and provisions of the Agreement, shall be deducted from any monies due or which may become due to Licensee. In case the damages and expenses so incurred by the Town shall exceed the unpaid balance, then Licensee shall be liable and shall pay to the Town the amount of such excess.

D. Licensee Not in Breach. If after Notice of Termination it is determined for any reason that Licensee was not in Material Breach or Material Default, then the rights and obligations of the Town and the Licensee shall be the same as if the Notice of Termination had not been issued pursuant to the termination for cause clause set forth in subsection 1.A of this Section.

20.2 For Town’s Convenience. This Agreement is for the convenience of the Town and, as such, may be terminated without cause after receipt by Licensee of written notice by the Town. In such

instance, an adjustment shall be made to the Licensee, for the reasonable costs of the work performed through the date of termination. Termination costs do not include lost profits, consequential damages, delay damages, unabsorbed or under absorbed overhead of the Licensee or its subcontractors and/or failure to include termination for convenience clause into its subcontracts and material purchase orders. Licensee shall not expose the Town to liability for lost profits in conjunction with a termination for convenience settlement or equitable adjustment. Licensee expressly waives any claims for lost profit or consequential damages, delay damages, or indirect costs which may arise from the Town's election to terminate this contract in whole or in part for its convenience.

20.3 Due to Work Stoppage. This Agreement may be terminated by the Town upon 30 days' written notice to Licensee in the event that the Services are permanently abandoned.

20.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligation by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies 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 or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

20.5 Gratuities. The Town may, by written notice to the Licensee, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Licensee or any agent or representative of the Licensee to any officer, agent or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is cancelled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Licensee an amount equal to 150% of the gratuity.

20.6 By Licensee For Cause. In the event there should occur any breach in the performance of any covenant or obligation of the Town which has not been remedied within 30 days after receipt of written notice from the Licensee specifying such breach or default (or such longer period of time as is reasonably necessary to cure any such breach or default which is not capable of being cured within 30 days, provided that the Town has undertaken the cure within such 30 days and proceeds diligently thereafter to cure in an expeditious manner), the Licensee, may if such breach or default is continuing, terminate this Agreement upon written notice to the Town. The following events shall, without limitation, constitute a breach by the Town for purposes of this Section: (i) the failure of the Town to pay amounts owed by the Town itself to the Licensee under the terms of this Agreement within 45 days after such amounts become finally due and payable; or (ii) if the Town shall have filed, or consented by answer or otherwise, to the following against it of a petition for relief or reorganization and bankruptcy or insolvency law of any jurisdiction; shall make an assignment for the benefit of its creditors in lieu of taking advantage of any such bankruptcy or insolvency law; shall consent to the appointment of custodian, receiver, trustee or other officer with similar powers with respect to any substantial part of its property; shall be adjudicated insolvent or shall take official action for the purpose of any of the foregoing. If the Town shall fail to cure its breach as specified in subsection 20.6 hereof, the Licensee may terminate this Agreement upon thirty days written notice. In such case, the Town shall not be entitled to receive further payment from the Licensee from the effective date of the Licensee's notice of termination.

21. Miscellaneous.

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

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

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

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

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

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

21.7 Exhibits. All Exhibits attached hereto contain additional terms of this Agreement and are incorporated into this Agreement by reference.

21.8 Independent Contractor. The Licensee acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Town. Licensee, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of Licensee, its employees or subcontractors. The Licensee and not the Town, shall determine the time of its performance of the Services provided under this Agreement so long as Licensee meets the requirements of its agreed scope of work. Licensee is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. The Town and Licensee do not intend to nor will they combine business operations under this Agreement.

21.9 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Licensee.

21.10 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement 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 Agreement will promptly be physically amended to make such insertion or correction.

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

supplemented, or otherwise affected by such action remain in full force and effect.

21.12 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. 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 Agreement. This Agreement shall be construed and interpreted according to its plain meaning and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of and entry into this Agreement.

21.13 Assignment. No right or interest in this Agreement shall be assigned by Licensee without prior, written permission of the Town signed by the Town Manager and no delegation of any duty of Licensee shall be made without prior, written permission of the Town signed by the Town Manager. Any attempted assignment or delegation by Licensee in violation of this provision shall be a breach of this Agreement by Licensee. This Agreement and the rights and obligation contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

21.15 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as a waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for Services, shall not release the Licensee from any responsibilities or obligations imposed by this Agreement or by law and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

21.16 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

21.17 Liens. All materials or services shall be free of all liens and, if the Town requests, a formal release of all liens shall be delivered to the Town.

21.18 Notices and Requests. Unless a specific time frame for notice is otherwise specifically set forth in this Agreement, any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if: (i) delivered to the party at the address set forth below; (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below; (iii) given to a recognized and reputable overnight delivery service,

to the address set forth below; or (iv) delivered by facsimile transmission to the number set forth below:

If to Town: Town Manager
Town of Paradise Valley
6401 E. Lincoln Drive
Paradise Valley, AZ 85253

With a copy to: Town Attorney
Town of Paradise Valley
6401 E. Lincoln Drive
Paradise Valley, AZ 85253

If to Licensee: _____

Facsimile: _____
Attn: _____

or at such other address and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (i) when delivered to the party, (ii) three Business Days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (iii) the following Business Day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following Business Day, or (iv) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

21.19 Confidentiality of Records. The Licensee shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Licensee's duties under this Agreement. Persons requesting such information should be referred to the Town. Licensee also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Licensee as needed for the performance of duties under this Agreement.

21.20 Records and Audit Rights. Licensee's and its subcontractor's books, records, correspondence, accounting procedures and practices and any other supporting evidence relating to this Agreement, including the papers of any Licensee and its subcontractors' employees who perform any work or Services pursuant to this Agreement to ensure that the Licensee and its subcontractors are complying with the warranty under subsection 21.21 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on Licensee's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (ii) evaluation of the Licensee's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 21.21 below. To the extent necessary for the Town to audit the Records as set forth in this subsection, Licensee and its subcontractors hereby waive any rights to

keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Licensee pursuant to this Agreement. Licensee and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give Licensee or its subcontractors reasonable advance notice of intended audits. Licensee shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

21.21 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Licensee and its subcontractors warrant compliance with all Federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Licensee's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

21.22 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the Agreement, the Scope of Work, the Fee Proposal, the RFP and the Licensee's Proposal, the documents shall govern in the order listed above.

21.23 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the State of Arizona, Maricopa County.

21.24 Israel Boycott. Licensee acknowledges this Agreement is subject to A.R.S. § 35-393.01, which prohibits the Town from contracting with any person who is currently, or during the Term or any renewal Term, participating in a boycott of Israel. Licensee warrants that it is not and will not participate in such prohibited activity in contravention of A.R.S. § 35-393.01 and has executed the affidavit attached as Exhibit D as assurance to the Town.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

“Town”

Town of Paradise Valley, an Arizona
municipal corporation

“Licensee”

By: Kevin Burke, Town Manager

ATTEST:

Town Clerk

Approved as to From:

Andrew Miller, Town Attorney

(ACKNOWLEDGEMENTS)

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20____,
by _____ as _____ of _____
_____, a(n) _____, on behalf of the corporation.

My Commission Expires:

Notary Public in and for the State of _____

EXHIBIT A
TO
LICENSE AGREEMENT BETWEEN
ALLIED WASTE TRANSPORTATION, INC.,
A WHOLLY OWNED SUBSIDIARY OF REPUBLIC SERVICES, INC.
AND
THE TOWN OF PARADISE VALLEY

REQUEST FOR
PROPOSAL

See following pages.

DRAFT

EXHIBIT B
TO
LICENSE AGREEMENT BETWEEN
ALLIED WASTE TRANSPORTATION, INC.,
A WHOLLY OWNED SUBSIDIARY OF REPUBLIC SERVICES, INC.
AND
THE TOWN OF PARADISE VALLEY

Allied Waste
Transportation Inc.,
September 6, 2017
Response to Town RFP

See following pages.

EXHIBIT C
TO
LICENSE AGREEMENT BETWEEN
ALLIED WASTE TRANSPORTATION, INC.,
A WHOLLY OWNED SUBSIDIARY OF REPUBLIC SERVICES, INC.
AND
THE TOWN OF PARADISE VALLEY

SCOPE OF WORK AND AMENDMENTS
OR ADDITIONS TO EXHIBIT B

See following page(s).

MUTUALLY AGREED UPON SCOPE OF WORK, TERMS, AND
CONDITIONS
PERTAINING TO THE SEPTEMBER 6, 2017 SUBMITTED
PROPOSAL BY ALLIED WASTE TRANSPORTATION, INC. A
WHOLLY OWNED SUBSIDIARY OF REPUBLIC SERVICES. INC.

- I. All vehicles shall be of Compressed Natural Gas (CNG) with the exception of any small (less than 12' in length, by 8' in height and at or under six cubic yards) unit for purposes of collecting on hillside or narrow collection points.
- II. All carts (96 Gallon collection bins) shall be new upon commencement of the contract for each customer.
- III. Call center hours shall be maintained from 4:00 a.m. – 7:00 p.m. Arizona Time
- IV. Allied Waste shall provide a mobile app that allows customers to enroll, pay their bill and report problems with service.
- V. Paradise Valley Customers shall have the ability to pay by cash, check or credit card.
- VI. Failed or missed collections reported before 11 a.m. shall be retrieved the same day. Otherwise collections shall be within 24 hours of reported time.
- VII. Allied Waste shall install and operate video cameras and recordings on each vehicle operating in the Town. This will help confirm or dispute complaints including missed collections.
- VIII. Allied Waste shall have Geographic Position Systems (GPS) on each vehicle collecting in the Town so as to provide time and location of collections within the Town to aid in resolving complaints and performing licensed services.
- IX. Allied Waste to provide, either themselves or through a third party, annual Household Hazardous Waste collection consistent with the RFP as well as annual Christmas Tree collection and semi-annual shredding events.
- X. Allied Waste shall honor any contract for residential trash and recycling collection and disposal service entered into prior to July 14, 2017 for up to three years from the Commencement Date of this contract (a.k.a. "Most Favored Nation"). This shall apply to individuals or Home Owners Associations. Said contract shall stipulate contracted services (such a frequency, size of collection container, etc.) and price for the entire contract period. Upon expiration of the individual or HOA contract or upon the third anniversary of the Commencement Date, the customer shall move to the rate specified in this contract for selected services. Further, any HOA may remain with their contracted provider up to the third anniversary of the Commencement date consistent with the terms of the RFP.
- XI. The 2018 – 2019 pricing shall be consistent with the Alternate Proposal provided in Exhibit B in that Base Service, including HHW, Shredding and Christmas tree collections, shall be priced at 17.84 per month. Rate adjustments for the following six years may increase no more than 3.5%. Therefore, anticipated rate shall be no more than"
 - a. July 2018 – June 2019 = \$17.84
 - b. July 2019 – June 2020 = \$18.46
 - c. July 2020 – June 2021 = \$19.11
 - d. July 2021 – June 2022 = \$19.78
 - e. July 2022 – June 2023 = \$20.47
 - f. July 2023 – June 2024 = \$21.19
 - g. July 2024 – June 2025 = \$21.93

- XII. All other pricing shall increase by no more than 3.5%.
- XIII. The Town and Allied Waste agree that Standard Service (a.k.a. twice a week collection) will not be offered until October 1, 2018. Exception will be those subscribing under Section X above ("Most Favored Nation").
- XIV. Pricing for a second and additional 96 gallon container shall be reduced to \$5 per month regardless of Basic or Standard subscription.
- XV. Pricing for Back-Door service shall be reduced to \$25 per month for Basic Service and \$50 per month for Standard Service.
- XVI. Allied Waste shall provide an employee full time at the Paradise Valley Town Hall for a period of one week for enrollment and question and answer. Said week shall be mutually agreed upon by both parties but not later than June 1, 2018. Thereafter a dedicated phone number shall be provided through the term of the contract for Paradise Valley residents to call for sign-up and service related questions. Lastly, Allied Waste shall provide an office location for residents to visit for customer service.

EXHIBIT D
TO
LICENSE AGREEMENT BETWEEN
ALLIED WASTE TRANSPORTATION, INC.,
A WHOLLY OWNED SUBSIDIARY OF REPUBLIC SERVICES, INC.
AND
THE TOWN OF PARADISE VALLEY

AFFIDAVIT RE
ISRAEL BOYCOTT

See following page(s).

ATTACH THE COMPLETED AFFIDAVIT [SEE SAMPLE ON FOLLOWING PAGES]

AFFIDAVIT OF ISRAEL BOYCOTT

The Arizona legislature enacted legislation to prohibit public entities from contracting with companies currently engaged in a boycott of Israel. To ensure compliance with A.R.S. §35-393.01, this form must be completed and returned prior to the Town of Paradise Valley entering into any contract in order that the Town may determine compliance.

As defined by A.R.S. §35-393.01:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:

(a) In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.

(b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.

2. "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.

3. "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.

4. "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the State treasurer or retirement system owns shares or interests either:

(a) together with other investors that are not subject to this section.

(b) that are held in an index fund.

5. "Public entity" means this State, a political subdivision of this STATE or an agency, board, commission or department of this state or a political subdivision of this state.

6. "Public fund" means the state treasurer or a retirement system.

7. "Restricted companies" means companies that boycott Israel.

8. "Retirement system" means a retirement plan or system that is established by or pursuant to title 38.

You must select one of the following:

_____ My company **does not** participate in, and agrees not to participate in during the term of the contract a boycott of Israel in accordance with A.R.S. §35-393.01. I understand that my response will become public record.

_____ My company **does** participate in a boycott of Israel as defined by A.R.S. §35-393.01.

By submitting this affidavit, the undersigned person or entity with whom the Town of Paradise Valley is contracting agrees to indemnify and hold the Town of Paradise Valley, its officials, officers, directors, employees, volunteers and agents, harmless from any claims or causes of action relating to the Town of Paradise Valley's action based upon reliance on the above representations, including the

payment of all costs and attorney fees incurred by the Town of Paradise Valley in defending such an action.

Company Name

Signature of Person Authorized to Sign

Address

Printed Name

City

State

Zip

Title

DRAFT