

AGREEMENT FOR TRASH AND RECYCLE MATERIAL BETWEEN CITY OF APACHE JUNCTION AND REPUBLIC SERVICES

THIS AGREEMENT made and entered into by and between the CITY OF APACHE JUNCTION ("City"), an Arizona municipal corporation, and REPUBLIC SERVICES, a Delaware corporation ("Contractor"), both of which may be hereinafter referred to collectively as the "Parties" or individually as a "Party", for the project entitled "Trash and Recycle Material."

RECITALS

- A. In response to City's Notice Inviting Bid Proposals dated March 29, 2017, any addendums applicable thereto, Contractor submitted a proposal date April 13, 2017, in which Contractor asserts its willingness, ability and qualifications to provide this material; and
- B. City has complied with the public bidding requirements under Arizona Revised Statutes Title 34 and Apache Junction City Code Article 3-7; and
- C. City and Contractor desire to set forth herein their respective responsibilities and the manner and terms upon which Contractor shall render the services.

AGREEMENT

NOW, THEREFORE, City retains Contractor to perform, and Contractor agrees to render the services in accordance with the terms and conditions set forth as follows:

- 1. **PROJECT DESCRIPTION:** Contractor shall do and perform or cause to be done and performed in a good workmanlike manner, the work in accordance with the contract documents as fully described in the Notice Inviting Bid Proposals for Project No. PW 2017-11 which includes required specifications in Exhibit A and Exhibit B.
- 2. **PRICE:** The contract shall be the amount payable by the City to the Contractor with an annual cost of \$12,109.68 for the performance of the work under the contract documents except for changes authorized by the City Representative.
- 3. **CONTRACT TERM:** The terms of this Contract shall be from the date of written notice of the acceptance of this Agreement by the city council to June 30, 2018. The Agreement will be renewed automatically and continuously for four (4) successive periods of one (1) year, from the original signing of the Agreement as long as 1) City budgets for and appropriates funds for the successive renewal terms; and 2) neither Party terminates this Agreement. This provision does not limit the liability of Contractor for actual damages sustained by the City as a result of any breach of contract or warranty by the Contractor.

4. **LABOR AND MATERIALS:** Unless otherwise provided in the contract documents, Contractor shall provide, pay and insure under the requisite laws and regulations for all labor, materials, equipment, tools and machinery, utilities, transportation, other facilities and services necessary for the proper execution and completion of work whether temporary or permanent, and whether or not incorporated or to be incorporated in the work.

5. **BUSINESS AND PRIVILEGE TAX LICENSE AND PAYMENT OF PRIVILEGE AND USE TAXES:** Contractor represents and warrants that any license necessary to perform the work under this Agreement is current and valid. Contractor understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Contractor agrees to obtain a business license pursuant to Article 8-2 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement. Contractor also acknowledges that the tax provisions of the Apache Junction Tax Code, Chapter 8A, may also apply and if so, shall obtain a transaction privilege tax license and/or other licenses as may be required by the city code. Any activity by subcontractor within the corporate city limits will invoke the same licensing regulations on any subcontractors, and Contractor ensures its subcontractors will obtain any and all applicable licenses. If there are taxable activities, a business license shall be converted to a transaction privilege tax license by the Contractor and any subcontractors through the City Clerk's Office. Further, Contractor agrees to pay all applicable privilege and use taxes that are applicable to the activities, products and services provided under this Agreement.

6. **INDEPENDENT CONTRACTOR:** Contractor shall at all times during Contractor's performance of the services retain Contractor's status as an independent Contractor. Contractor's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes, or provide workers compensation or unemployment insurance for or on behalf of them or Contractor. Contractor shall supervise and direct the delivery of the materials using its best skill and attention. Except as provided in this Agreement, Contractor shall be solely responsible for all means, methods, techniques, sequences and procedures, and for coordinating all portions of the work required by the contract documents. Contractor shall be responsible to City for the acts and omissions of its employees.

7. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its elected and appointed officers, officials, agents, and employees from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including attorney and expert witness fees, arising from or connected with or alleged to have arisen from or connected with, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of this Agreement. Contractor's duty to defend, hold harmless and indemnify City, its special districts, elected and appointed

officers, officials, agents, and employees shall arise in connection with any tortious 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 an Contractor's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of Contractor, any tier of Contractor's subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services Contractor may be legally liable.

8. **ENFORCED DELAYS (FORCE MAJEURE)**: Neither City nor Contractor, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the Project. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular consultants, subcontractors, vendors or investors desired by Contractor in connection with the Project. Contractor agrees that Contractor alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

9. **GOVERNING LAW AND VENUE**: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

10. **INSURANCE:** Contractor, at its own expense, shall purchase and maintain the minimum insurance and other additional requirements set forth herein.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the City constitute a material breach of this Agreement.

Contractor's insurance shall be primary insurance as respect to City, and any insurance or self-insurance maintained by City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect City.

The insurance policies, except Workers Compensation, shall contain waiver of transfer rights of recovery (subrogation) against City, its agents, officers, officials and employees for any claims arising out of Contractor's acts, errors, mistakes, omissions, work or services.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and City, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

City reserves the right to request and to receive within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of City's right to insist on strict fulfillment of Contractor's obligations under this Agreement. The insurance policies, except Workers Compensation, required by this Agreement, shall name City, its agent, officers, officials and employees as additional insured parties.

REQUIRED COVERAGE

Commercial General Liability:

Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement

which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011-93 or any replacement thereof. In addition, automobile liability coverage of at least \$1 million per occurrence or a combined single limit of at least \$1,000,000 is required. The auto liability policy should contain endorsements for hired autos, non-owned autos and scheduled vehicles, as applicable to the Contractor's business.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office Inc.'s Additional Insured, Form CG 20101185, and shall include coverage for Contractor's operations and products and completed operations.

If required by this Agreement, if Contractor sublets any part of the work, services or operations, Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Agreement, City and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Contractor's work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues Contractor's General Liability insurance.

Workers Compensation:

Contractor shall carry Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

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

CERTIFICATE OF INSURANCE

Prior to commencing work or services under this Agreement, Contractor shall furnish the City with Certificates of Insurance, or formal endorsements as required by Agreement, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect.

In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of

the Contractor's work or services and as evidenced by annual Certificates of Insurance, to be filed with the City Clerk of City.

If a policy does expire during the life of the Agreement, a renewal certificate must be sent to City thirty (30) days prior to the expiration date. All Certificates of Insurance shall be identified with bid serial number and title.

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days' prior written notice to City.

11. **SUCCESSORS & ASSIGNS:** City and Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the contract documents. Neither party to the contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall Contractor assign any monies due or to become due to or to become due to it without the previous written consent of City.

12. **WRITTEN NOTICE:** Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity, or to an office of the corporation for whom it was intended or if delivered at or sent registered or certified mail, return receipt requested, and first class postage prepaid to the last business address known to them who gives the notice.

13. **SAFETY:** Contractor and/or its subcontractors shall be solely responsible for job safety at all times.

14. **RIGHTS & REMEDIES:** The duties and obligations imposed by the contract documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by City or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any action or failure to act constitute an approval of or an acquiescence to any breaches hereunder except as may be specifically agreed to in writing.

15. **TERMINATION OF CONTRACT:** If, for any reason, the Contractor shall fail to fulfill in a timely and proper manner his/her obligations under the contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of the contract, the City shall thereupon have the right to terminate the Agreement by giving notice to the Contractor of such termination and specifying the effective date thereof.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Contractor.

The City may terminate the Agreement at any time by giving at least twenty-four (24) hours notice in writing to the Contractor. If the Agreement is terminated by the City as provided herein, the Contractor will be paid for the time expended and expenses incurred up to the termination date.

16. APPEALS: All contractual grievances shall be submitted in writing to the City Manager within five (5) calendar days after the difference of opinion or grievance occurs relating to any of the provisions of the terms of this Agreement. Within five (5) calendar days of receiving a written grievance, the City Manager shall respond in writing to the company. The City Manager's decision shall be final and binding, subject only to a further appeal in the Pinal County Superior Court pursuant to A.R.S. § 12-901, *et seq.*

17. RECORDS: Records of Contractor's labor, payroll and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Contractor shall maintain records for a period of at least three (3) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours.

18. AMENDMENT: It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that oral understandings or agreements not incorporated herein shall not be binding on the parties.

19. SEVERABILITY: City and Contractor each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

20. CONFLICT OF INTEREST: This Agreement is subject to and may be terminated by City in accordance with the provisions of A.R.S. § 38-511.

21. TIME IS OF THE ESSENCE: Time is of the essence with respect to all provisions in this Agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement.

22. PROHIBITION TO CONTRACT WITH CONTRACTORS WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL: The Parties acknowledge A.R.S. § 35-393 through 35-393.03, as amended, which forbids public entities from contracting with Contractors who engage in boycotts of the State of Israel. Should Contractor under this Agreement engage in any such boycott against the State of Israel, this Agreement is automatically terminated. Any such boycott is a material breach of contract and will subject Contractor to monetary damages, including but not limited to, consequential and liquidated damages.

23. COMPLIANCE WITH FEDERAL AND STATE LAWS: Contractor understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the services performed under this Agreement.

As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor will verify the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. City at its option may terminate this Agreement after the third violation. Contractor shall not be deemed in material breach of this Agreement if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works under this Agreement to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.

24. COOPERATIVE USE OF CONTRACT: City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures ("SAVE") cooperative. This contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of the Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency. Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. City shall not be responsible for any disputes arising out of transactions made by others.

25. PROPOSITION 206: City shall have the right to require Contractor to furnish payroll and sick leave documentation of all employees assigned to this Agreement during the Term of this contract as more fully addressed in Proposition 206, effective January 1, 2017.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed by their duly authorized representative as of this _____ day of _____, 2017.

CONTRACTOR:
REPUBLIC SERVICES, a Delaware
corporation:

By: _____

Title: _____

CITY:
CITY OF APACHE JUNCTION, an Arizona
municipal corporation

By: Jeff Serdy _____

Title: Mayor _____

ATTEST:

Kathleen Connelly
City Clerk

APPROVED AS TO FORM:

Richard J. Stern
City Attorney

STATE OF _____)
) ss.
COUNTY of _____)

The foregoing was subscribed and sworn to before me this ____ day
of _____, 20____, by _____ as _____ of Republic
Services, a Delaware corporation.

Notary Public

My Commission Expires:

(seal)

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing was subscribed and sworn to before me this ____ day
of _____, 20____, by Jeff Serdy, as Mayor of the City of Apache
Junction, Arizona, an Arizona municipal corporation.

Notary Public

My Commission Expires:

(seal)

**CERTIFICATE OF INSURANCE
CITY OF APACHE JUNCTION**

The _____ certifies that the following insurance policies have been issued on behalf of:

NAME OF INSURED:

ADDRESS OF INSURED:

	Type of Insurance	Policy Number	Effect. Date	Expire Date	Limits of Liability
1.	Workman's Compensation				\$100,000 Each Accident; \$100,000 Each Disease, \$500,000 Disease Policy Limit
2.	Commercial General Liability				\$1,000,000 Each Occurrence; \$2,000,000 Products/Completed Operations Aggregate; \$2,000,000 General Aggregate Limit
3.	Contractual Bodily Injury & Property Damage				\$1,000,000 Each Occurrence
4.	Professional Liability				\$1,000,000 Each Claim
5.	Automobile Bodily Injury & Property Damage				\$1,000,000 Each Occurrence

It is further agreed that these policies shall not expire, be canceled or changed until all work has been completed and the project has been accepted by the City of Apache Junction. If a policy does expire during the life of the contract, a renewal Certificate of the required coverage must be sent to the City of Apache Junction not less than thirty (30) calendar days prior to expiration date. This Certificate is not valid unless countersigned by an authorized representative of the Insurance Company. The Certificate of Insurance must also provide that the City, its officers, employees and agents are additional insured parties.

Date: _____ Countersigned by: _____

Title: _____

SUBSCRIBED AND SWORN TO before me this _____ day of _____ 2017.

by _____ as Insurer.

Notary Public My Commission
Expires: _____

Exhibit A

Current List of Containers and Locations Project No. PW 2017-11

PRICE INCLUDES DELIVERY AND APPLICABLE TAXES

*Republic calculates by a monthly cost not weekly

City Department	Site Address	# Containers	Size	Pick Ups	Days	Weekly *Monthly Cost
Public Works	575 E Baseline Ave	2	3	2	Mon/Thurs	\$116.80
	Mixed Recycling	1	6	2	Mon/Thurs	\$88.33
Library	1177 N Idaho Dr	1	6	3	Mon/Wed/Fri	\$151.98
Police Department	1001 N Idaho Rd	1	8	2	Mon/Thurs	\$128.17
Paws and Claws	725 E Baseline Ave	1 with a locking mechanism	6	1	Tuesday	\$50.66
City Hall Complex	300 E Superstition Blvd	1	6	2	Mon/Thurs	\$101.32
Prospector Park	3015 N Idaho Rd	1	8	2	Tues/Fri	\$128.17
	Mixed Use Recycling	1	8	1	Tuesday	\$55.42
Multi Generational Building	1035 N Idaho Rd	1	6	2	Tues/Fri	\$101.32
	Mixed Use Recycling	1	6	1	Tuesday	\$44.17
AJ Water District	660 W 16 th Ave	1	3	1	Tuesday	\$42.80

- All trash dumpsters will need to be same color citywide.
- Recycling dumpsters can be blue and/or delineated with recycling insignia.

Tax Rate: 0.00%

Yearly Total:

\$12,109.68

Yearly total in Words: Twelve thousand One hundred Nine dollars and sixty-eight cents

Exhibit B

**COST PROPOSAL
PROJECT NO. PW2017-11**

COMPANY: Republic Services

CONTACT PERSON: Lonnell Harris

ADDRESS: 4811 W. Lower Buckeye Rd, Phoenix, AZ 85043

TELEPHONE: 602-237-2078

DATE: April 10, 2017

EMAIL: LHarris2@republicservices.com

ROLLOFFS:

20 YARD	\$ <u>50.00</u>	Delivery
	\$ <u>125.00</u>	Haul Away
	\$ <u>38.00</u>	Cost Per Ton
40 Yard	\$ <u>50.00</u>	Delivery
	\$ <u>125.00</u>	Haul Away
	\$ <u>38.00</u>	Cost Per Ton

Cost for Replacement Containers:

3 Yard \$200.00, 6 Yard \$200.00, 8 Yard \$200.00

Describe any unit pricing deviations in Exceptions, Additions, Corrections (Exhibit D)

PRICE INCLUDES DELIVERY AND APPLICABLE TAXES



Signature

Tricia PonceDeLeon

Printed Name

4-12-17

Date

General Manager

Title