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## APPENDIX A

# CITY CONTRACT DOCUMENTS

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1. Residential Solid Waste Disposal Contract between City of Philadelphia and Covanta Energy
2. Residential Solid Waste Disposal Contract between City of Philadelphia and Waste Management
3. Residential Recyclables Processing Contract between City of Philadelphia and Waste Management



Contract No. \_\_\_\_\_

**CITY OF PHILADELPHIA  
CONTRACT FOR MUNICIPAL WASTE PROCESSING AND DISPOSAL**

This Contract for Municipal Waste Processing and Disposal (the “Agreement” or the “Contract”) is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between **THE CITY OF PHILADELPHIA**, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, acting through its **DEPARTMENT OF STREETS** (the “City”), and **COVANTA SUSTAINABLE SOLUTIONS, LLC** (the “Contractor”), a Delaware State limited liability company authorized to do business in the Commonwealth of Pennsylvania (together, “Parties”).

**BACKGROUND**

- A. The City desires to ensure the provision of services for the processing and disposal of municipal solid waste in a reliable, cost-effective and environmentally sound manner.
- B. On January 24, 2019, the City, acting through its Procurement Department and the Department of Streets, issued a Request For Proposals (the “RFP”) for purchasing services for the processing and disposal of Municipal Solid Waste.
- C. On February 22, 2019, Contractor submitted to the City a proposal in response to the RFP. Contractor is a successful proposer to the RFP.
- D. Contractor has duly authorized its respective officials and officers to enter into and execute this Agreement.
- E. The RFP is hereby incorporated by reference as if fully set forth herein. The City and Contractor hereby agree to be bound by all of the terms and conditions contained in the RFP.

**NOW, THEREFORE**, the parties, in consideration of the mutual covenants, considerations, and promises contained herein, incorporating the above Background, and agreeing to be legally bound by this Agreement, agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

**1.01 Definitions.**

Words, phrases, or other expressions used in this Agreement shall have the meanings as described below:

- 1) Act 101 Plan - The plan prepared by the City, and approved by the Commonwealth, in accordance with the provisions of the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. § 4000.101 et seq. The Act 101 Plan may be amended in accordance with established City procedure and Applicable Laws.
- 2) Affiliates - Any Person that controls, is controlled by, or is under common control with Contractor.
- 3) Agreement - This Agreement between the City and Contractor, and all Exhibits attached hereto.
- 4) Agreement Date - The date first set forth above.
- 5) Agreement Year - A twelve (12) month period commencing on July 1 and ending on June 30 during the Term of this Agreement.
- 6) Alternate Facility - A Transfer Station(s) and/or Disposal Facility(ies) utilized by the City during a period of time that Contractor is unable to fulfill its obligations for receipt and/or disposal of Municipal Solid Waste in accordance with this Agreement.
- 7) Applicable Laws and Government Approvals – The Permits and any statute, law, constitution, charter, ordinance, judgment, order, decree, rule, regulation, directive, standard, policy or similarly binding authority, which shall be enacted, adopted, promulgated, issued or enforced by a Governmental Body relating to the Contractor, the City, the Transfer Station(s) and/or Disposal Facility(ies), and this Agreement, including without limitation, the Act 101 Plan.
- 8) Change in Law – As defined in Section 4.03.
- 9) Change in Law Adjustment – Shall mean for any period after the Disposal Fee Date and for any Change in Law the amount of any and all adjusted costs related to or based upon, directly or indirectly, the delivery and disposal of Municipal Solid Waste at the Designated Transfer Station(s) and/or Disposal Facility(ies), including capital costs, operating, design, construction, equipment maintenance, closure and/or post-closure care, start up, costs of the Designated Transfer Station(s) and/or Disposal Facility(ies) and any tax created after the Disposal Fee Date and any increase in governmental fees, federal, state and City imposed host community fees or surcharges (but excluding any locally imposed host community fees or surcharge and any adjustment in the tax rate to a tax existing prior to the Disposal Fee Date

including, but not limited to, the United States corporate income tax, the state income tax and real property taxes) resulting from the Change in Law.

10) Change in Law Costs shall mean costs actually incurred by a Contractor pursuant to a Change in Law and as set forth in Change in Law Adjustment.

11) Commencement Date – The start date of this Agreement, \_\_\_\_\_, 2019.

12) Commissioner – The Commissioner of the Department of Streets of the City (including an individual serving in an acting capacity) or his/her designee(s).

13) Commonwealth shall mean the Commonwealth of Pennsylvania.

14) Construction and Demolition Debris shall mean concrete, bricks and other construction and demolition waste.

15) Contract – This Agreement.

16) Contract Term – The Initial Term of the Contract plus City-option terms, if any.

17) Contractor – The entity named and designated in the first paragraph of this Agreement.

18) Day – A calendar day during the Term of this Agreement.

19) Designated Disposal Facility - The Disposal Facility(ies), including the sites, buildings, equipment and supplies which Contractor shall utilize to perform the Work set forth herein, and designated by Contractor in Exhibit “C” (as Exhibit “C” may be subsequently amended to reflect additional Disposal Facility(ies) offered by Contractor and accepted by the City) and approved by the City’s Act 101 Plan for the final disposal of Municipal Solid Waste under this Agreement.

20) Designated Transfer Station - The Transfer Station(s), including the sites, buildings, equipment, and supplies which Contractor shall utilize to perform the Work set forth herein, as designated by Contractor in Exhibit “C” (as Exhibit “C” may be subsequently amended to reflect additional Transfer Station(s) offered by Contractor and accepted by the City) and approved by the City’s Act 101 Plan for the final disposal of Municipal Solid Waste under this Agreement.

21) Disposal Facility - A property or properties used for the final disposal of Municipal Solid Waste in accordance with all Applicable Laws.

22) Disposal Fee(s) – The per Ton price paid by the City for the disposal of Municipal Solid Waste, Construction and Demolition Debris and/or Residual Waste at the Designated Transfer Station(s) and the Designated Disposal Facility(ies) as provided in Exhibit E.

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23) Disposal Fee Date - The last day on which the Contractor submitted proposed Disposal Fees for the consideration of the City in response to the City's RFP.

24) Disposal Permit - The permit issued by the Pennsylvania Department of Environmental Protection for a solid waste disposal and/or processing facility permit applicable to a Transfer Station.

25) Event of Default – A default as set forth in Article 6 of this Agreement.

26) Electronic Waste or E-Waste – Shall mean those materials collected by or on behalf of the City for processing and disposal as identified in Exhibit "I."

27) Exhibit(s) – The exhibits attached to this Agreement or as subsequently modified at the mutual agreement of the City and Contractor and incorporated by reference in this Agreement.

28) Finance Director - The Director of the Department of Finance of the City (including an individual serving in an acting capacity), or his/her designee.

29) Force Majeure Event shall have the meaning set forth in Section 6.04 of this Agreement.

30) Fiscal Year or FY – The City's budget year, comprised of the twelve (12) month period between July 1 and June 30.

31) Governmental Body shall mean, as appropriate, any one or several of: the United States of America, the Commonwealth, the City, any state, county or local unit of government or any agency, authority, regulatory body or subdivision of any of the foregoing as may have jurisdiction over or power and authority to regulate the City, Contractor, the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies), the Work, or this Agreement.

32) Guaranteed Annual Quantity – The minimum annual quantity of Municipal Solid Waste to be delivered to the Designated Transfer Station(s) by the City or accepted by Contractor from the City as set forth in Section 3.01 of this Agreement in any Agreement Year.

33) Holiday - All holidays designated on an official City calendar to be provided annually by the City to Contractor as it becomes available.

34) Initial Term shall have the meaning set forth in Section 2.01 of this Agreement.

35) Maximum Daily Quantity – The maximum quantity of Municipal Solid Waste that the City may by right deliver to the Designated Transfer Station(s) and/or may by right have the Contractor accept at the Designated Disposal Facility(ies) from the Northwest Transfer Station on a given Day during the Term. The Maximum Daily Quantity shall not include Residual Waste, Construction and Demolition Debris or Christmas trees delivered by the City pursuant to Section 3.02 of this Agreement.

## Exhibit A

36) Municipal Solid Waste - Waste that is categorized as Municipal Waste under Section 103 of the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.103 and collected by or on behalf of the City in accordance with its Regulations Governing Municipal Refuse Collection. Municipal Solid Waste may also include (a) limited quantities of oversized bulky wastes collected as part of normal refuse collection such as appliances, furniture, mattresses, tires, and other such large objects, and (b) materials cleaned from City storm sewer street inlets and non-residential municipal waste collected from various City facilities. Municipal Solid Waste shall not include Construction and Demolition Debris which is sufficiently segregated so it may be recycled or disposed of as such, or Unacceptable Waste that is not included in subsections (a) or (b) herein.

37) Northwest Transfer Station - The Transfer Station owned and operated by the City and located at Domino Lane and Umbria Street, Philadelphia, Pennsylvania.

38) Performance Bond – A bond provided to ensure performance of this Agreement, as further defined at Section 5.01 of this Agreement.

39) Person shall mean any individual, general partnership, limited partnership, corporation, joint venture or association or other entity.

40) Residual Waste shall mean that waste which is categorized as Residual Waste under Section 103 of the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.103.

41) RFP shall have the meaning set forth in Section B. of the Background of this Agreement.

42) Term shall mean the Initial Term and any and all Additional Term(s).

43) Ton – A short ton of two thousand (2,000) pounds.

44) Transfer Station shall mean a property or properties permitted for the receipt of Municipal Solid Waste and for the transfer of such materials into vehicles for hauling to a Disposal Facility or for reuse in accordance with all Applicable Laws.

45) Unacceptable Waste shall mean:

a) any material that by reason of its quantity is ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies);

b) any material that by reason of its composition or characteristics is ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) pursuant to the provisions of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., and the regulations thereunder, except for those small quantities normally found in household or commercial solid waste which the City and Contractor are authorized to handle as Municipal Solid Waste;

- c) any material that by reason of its composition or characteristics is ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) pursuant to any other Applicable Law(s), including without limitation: (i) Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (ii) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.; (iii) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; (iv) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; (v) the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq.; or (vi) the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.101 et seq.; or
- d) any materials which any Governmental Body having appropriate jurisdiction shall determine from time to time to be harmful, toxic, hazardous, dangerous, or otherwise ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies).

46) Work shall mean the performance of all of Contractor's activities expressly required by this Agreement and all activities necessary or desirable for meeting the requirements of this Agreement.

47) Wrongfully Rejected Waste shall have the meaning set forth in Section 3.02 of this Agreement.

**ARTICLE 2**  
**TERM**

**2.01 Initial Term.**

(1) Except as provided in Subsection 2.01 (2), the initial term (the "Initial Term") of this Agreement shall commence on July 1, 2019 (the "Commencement Date"), and terminate four (4) years thereafter or upon earlier termination under the terms of this Agreement.

(2) For E-Waste disposal and processing services, offered under Alternative 3 of the RFP, the initial term (the "E-Waste Initial Term") shall commence on July 1, 2019 (the "E-Waste Commencement Date"), and terminate two (2) years thereafter or upon earlier termination under the terms of this Agreement.

**2.02 Additional Term(s).**

(1) Except as provided in Subsection 2.01(2), the City may, at its sole option, amend this Contract to add on an annual basis up to three (3) successive one (1) year terms ("Additional Terms"). Unless otherwise amended, the same terms and conditions applicable in the Initial Term shall be applicable in the Additional Term(s). The City shall give Contractor ninety (90) days written notice of its intent to amend this Contract to add an Additional Term prior to each annual Additional Term. Each Additional Term shall be subject to appropriation of funds by City Council for such Additional Term. There shall be no liability or penalty to the City for electing

not to amend the term of this Contract to add Additional Terms. Each Additional Term of this Contract shall be deemed to constitute a separate contract, whose term shall not exceed one (1) year.

(2) For E-Waste disposal and processing services, the City may, at its sole option, request the Contractor to amend the E-Waste term to add up to three (3) additional one (1) year terms (“Additional E-Waste Term(s)”). Contractor may for any reason decline to amend either the first one-year Additional E-Waste Term request from the City or a subsequent request. Unless otherwise amended, the same terms and conditions applicable in the Initial E-waste Term shall be applicable in the Additional E-Waste Term(s). The City shall give Contractor written notice of its interest in amending the E-Waste Term of the Agreement at least ninety (90) days prior to end of any E-Waste Term. The Agreement will be amended unless Contractor notifies the City of its rejection of the City’s request to amend the E-Waste Term within thirty (30) days of the City’s request. Each Additional E-Waste Term shall be subject to appropriation of funds by City Council for such Additional E-Waste Term. There shall be no liability or penalty to either Party for electing not to amend the E-Waste Term of this Agreement to add Additional E-Waste Terms.

**ARTICLE 3**  
**FACILITIES AND OPERATIONS**

**3.01 Disposal Rights and Obligations.<sup>1</sup>**

(1) At all times during the Term of this Agreement, Contractor shall own, or control through contract or otherwise, the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) and represents, warrants and agrees that:

(a) the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) shall at all times during the Term of this Agreement be properly zoned and permitted to allow the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) to be used for the purposes contemplated by this Agreement and the RFP and be in compliance with all Applicable Laws; or in the case of a Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) that requires approval of Disposal Permits during the Term, Contractor shall provide reasonable assurances that the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) will have necessary Disposal Permits for the Term, such reasonable assurances describing the Contractor’s efforts to obtain or maintain Disposal Permits and the termination dates of the existing Disposal Permits shall be incorporated in the Agreement as Exhibit “F”;

(b) Contractor has sufficient Municipal Solid Waste transfer and disposal capacity available through reservation, contract or otherwise for the sole benefit of the City in an amount equal to the Maximum Daily Quantity of Municipal Solid Waste throughout the Term of this Agreement; or in the case of a Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) that requires Disposal Permits approvals to accept Municipal Solid Waste for transfer and/or disposal for the Term, Contractor shall provide reasonable assurances in

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<sup>1</sup> Please note that pursuant to Section 3.13, Article 3 does not apply to E-Waste.



Exhibit “F” that the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) will have disposal capacity for the Term;

(c) all access roadways and structures subject to vehicular traffic are designed for AASHTO H-20 loading; all roadways are a minimum of twenty-four (24) feet in width; and sufficient queuing space is available within the confines of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) for all vehicles awaiting tipping;

(d) a minimum of two scales are present at each Designated Transfer Station(s) and/or Designated Disposal Facility(ies) which are at least ten (10) feet wide, seventy (70) feet long, and capable of weighing a sixty (60) Ton load;

(e) the scales must incorporate a fully automated, computerized weighing, identification and accounting system fully compatible with the City's system, as may be updated from time to time.

(f) the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall meet all of the minimum design specifications set forth in the RFP;

(g) Contractor shall provide an adequate number of clean restrooms for both its employees and City personnel. Contractor shall provide access to the Contractor’s telephone for City employees on official business and a public telephone for other use by City employees. The City shall require that City employees who use the restrooms and telephones comply with the Contractor’s rules and regulations for restroom and telephone use set forth in Exhibit “H”; and

(h) the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall be equipped with adequate bumper logs to prevent vehicles from backing into disposal pits. Bumper logs shall be designed and placed to prevent damage to unloading vehicles and to facilitate efficient unloading.

(2) Under no circumstances shall Municipal Solid Waste delivered to Contractor by or on behalf of the City pursuant to this Agreement be disposed of at any Transfer Station(s) and/or Disposal Facility(ies) that has/have not been included in the City’s approved Act 101 Plan.

(3) Contractor shall also use reasonable efforts to accommodate the City by providing additional capacity as requested by the City at rates contained in this Agreement.

(4) On an annual basis, thirty (30) Days prior to the commencement of each Agreement Year, Contractor shall certify to the City that adequate capacity remains at the Designated Transfer Station(s) and/or the Designated Disposal Facility to meet Contractor’s obligations hereunder.

(5) Contractor shall guarantee acceptance of the Maximum Daily Quantity during the times set forth in Exhibit “H” for the Term.

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(a) However, if the Contractor has failed to obtain or maintain a Disposal Permit for a Designated Transfer Station(s) and/or a Designated Disposal Facility(ies) that requires a Disposal Permit during the Term in accordance with Section 3.01(1)(a) and is therefore unable to accept the Maximum Daily Quantity, and the Contractor has provided notice to the City at least 270 days in advance of the last permitted disposal date, the guarantee shall extend only to the termination date of the Disposal Permit as provided in Exhibit “F”.

(b) In the event that the Contractor cannot accept the Maximum Daily Quantity due to a failure to obtain or maintain Disposal Permits required under Section 3.01(1)(a), the City at its sole discretion may offer additional Work to one or more contractors under agreement with the City for the remainder of the Term.

(6) During each Agreement Year, the City shall deliver a Guaranteed Annual Quantity of Municipal Solid Waste to Contractor, except where Contractor has failed to obtain or maintain Disposal Permits for a Designated Transfer Station(s) and/or a Designated Disposal Facility(ies) or as provided under Article 6 of this Agreement.

(7) The Guaranteed Annual Quantity shall equal Seventy Five Percent (75%) of the Maximum Daily Quantity set forth in Exhibit “D” multiplied by 260. The Guaranteed Annual Quantity shall be adjusted by subtracting from the multiplier of 260, the number of Days that City deliveries to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) were restricted by any failure of Contractor to receive Municipal Solid Waste or any Force Majeure Event, calculated as follows:

**Guaranteed Annual Quantity = .75 X Maximum Daily Quantity X (260 - (Days Contractor unable to accept Municipal Solid Waste + Force Majeure Event Days))**

(8) For each Additional Term hereunder, if any, the City may adjust the Maximum Daily Quantity for each Agreement Year to reflect changes in the total quantity of Municipal Solid Waste collected by or for the City’s Department of Streets. That is, should the total annual quantity of Municipal Solid Waste collected by or on behalf of the City increase or decrease, as for example, by population or demographic changes, source reduction, recycling, changed collection practices, deletion of Municipal Solid Waste collected by other City agencies and legal or regulatory changes, the City may adjust the Maximum Daily Quantity by the percentage change in total Municipal Solid Waste collected. At least ninety (90) Days prior to the beginning of each Additional Term, if any, the City shall inform Contractor in writing of changes in the total annual quantity of Municipal Solid Waste collected, estimating the annual quantity to be collected for the next Agreement Year and at the City’s sole option establishing a new Maximum Daily Quantity. Such new Maximum Daily Quantity shall remain in effect throughout the applicable Agreement Year and shall continue through the remainder of the Term unless subsequently modified by the City in accordance with this subsection.

### **3.02 Amounts in Excess of Maximum Daily Quantity; Unacceptable Waste.**

(1) Contractor may not reject any delivery of Municipal Solid Waste by or on behalf of the City, unless the Maximum Daily Quantity is exceeded or delivery occurs outside of the

required operating hours as set forth in Exhibit “C”. The provisions of this subsection shall apply only to Contractor's right to reject Municipal Solid Waste and shall not abrogate any of Contractor's other obligations (including the payment of damages) under the terms of this Agreement.

(2) If the City, or any person on behalf of the City, delivers Unacceptable Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), the City shall be promptly notified of such delivery. The City may reload and remove the Unacceptable Waste or the City may request Contractor to dispose of such Unacceptable Waste. The City shall pay the actual, reasonable and necessary costs incurred by Contractor with respect to the proper disposal of such Unacceptable Waste. The Guaranteed Annual Quantity shall not include any Unacceptable Waste. In no event shall the City be responsible for the handling and disposal costs of any Unacceptable Waste delivered to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) unless it can be clearly demonstrated that such waste was delivered by the City or caused to be delivered by the City.

(3) Nothing in this Agreement shall be construed to mean that the City guarantees the composition or quantity of any Municipal Solid Waste as it pertains to the proportion of any material contained therein. The obligations of Contractor hereunder shall not be diminished due to any variation in the composition of any Municipal Solid Waste which is delivered to the Designated Transfer Station and/or Designated Disposal Facility(ies).

(4) Any Municipal Solid Waste that is delivered to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) by or on behalf of the City that is rejected without a permitted rejection right shall constitute “Wrongfully Rejected Waste”. Such Wrongfully Rejected Waste shall be transported to and disposed of at an alternate location provided by Contractor or, if Contractor fails to provide an alternate location, to a site determined by the City. The City shall use reasonable efforts to transport and dispose of any Wrongfully Rejected Waste in the most economical manner practicable, consistent with Applicable Laws and then current market conditions so as to mitigate the amount of damages payable by Contractor hereunder.

(5) Contractor shall pay the City as damages the actual cost incurred by the City for the transfer, transportation and disposal of Wrongfully Rejected Waste. The City shall deliver an invoice to Contractor promptly following determination of amounts due for Wrongfully Rejected Waste, and payment shall be due within thirty (30) Days of receipt of such invoice.

**3.03 Methods of Operation.**

The Contractor shall inform the City in advance concerning plans for performing each part of the Work. If at any time the Designated Transfer Station(s), Designated Disposal Facility(ies), or Contractor's methods of executing the Work appear to the City to be inadequate to ensure the required reliability, safety, quality, or rate of progress of the Work, the City may request the Contractor to increase or improve its Designated Transfer Station(s) and/or Disposal Facility(ies) and/or methods; but neither compliance with such requests nor failure of the City to issue such requests shall relieve Contractor from its obligation to secure the degree of reliability,

safety, quality of the Work, and the rate of progress required by this Agreement. The Contractor shall be solely responsible for the reliability, safety, adequacy, and efficiency of its operations, Designated Transfer Station(s), and/or the Designated Disposal Facility(ies) and/or methods.

**3.04 City's Use of an Alternate Facility.**

(1) If for any reason (except for a Force Majeure Event as defined in Section 6.04 of this Agreement) the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) cannot accept delivery of the Maximum Daily Quantity as required under this Agreement at any time during the Term of this Agreement, the City shall have the right (in addition to any other rights or remedies available to the City under this Agreement, at law or in equity) to dispose of the Maximum Daily Quantity at an Alternate Facility and to hold the Contractor liable for all excess costs (including, but not limited to, increased tipping fees and additional City transportation costs) incurred by the City until such time as the City can deliver the Municipal Solid Waste to the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) or the Contractor can deliver Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Contractor shall have no claim or right to any benefit accruing to the City through its use of an Alternate Facility.

(2) Nothing contained in this Section 3.04 shall be construed to limit the City's right to proceed at any time under the provisions of Article 6 of this Agreement (Defaults and Remedies). Should the City elect to proceed under Article 6 of this Agreement by issuing a notice to cure, the Contractor shall remain liable under the provisions of this Section 3.04 for the City's excess costs in utilizing the Alternate Facility until the date the Contractor cures the breach to the satisfaction of the City or the City declares the Contractor in default hereunder and exercises the rights and remedies available to the City under Article 6 of this Agreement.

**3.05 Inspection.**

(1) At any time, the Commissioner or authorized representative may inspect the Designated Transfer Station(s), and/or the Designated Disposal Facility(ies) and the Work performed to determine compliance with this Agreement. Contractor shall furnish all reasonable assistance required for its inspection. Such inspection shall not relieve the Contractor from any obligation to perform the Work strictly in accordance with this Agreement.

(2) The City may have such representatives on site at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) during any or all operating hours. Contractor shall cooperate in all respects with the City's representatives, who shall have full access to all parts of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) and may at any time inspect the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), equipment, operating procedures, materials and records, including without limitation, scale and maintenance records.

(3) In exercising their rights under this Section 3.05, the Commissioner and other authorized representatives of the City shall not be obstructed and shall be free at all times to perform their inspection of the Designated Transfer Station(s) and/or the Designated Disposal

Facility(ies) but shall not interfere unreasonably with Contractor's operations during such inspections.

(4) Contractor shall provide for reasonable access to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) by the President of the City Council of Philadelphia and representatives of Councilmanic Districts (as requested by City Council) to monitor and record information pursuant to Applicable Laws on the environmental performance of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Councilmanic District representatives shall be granted reasonable visitation rights to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) located within their Councilmanic District. Contractor shall provide written notice to the City Council members in Councilmanic Districts (as requested by City Council) of any written violation notices issued by any Governmental Body.

**3.06 Receipt of and Title to Municipal Solid Waste.**

(1) Responsibility for and title to all Municipal Solid Waste delivered or caused to be delivered by the City to the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) shall vest in Contractor at such time as the Municipal Solid Waste is discharged from the delivering vehicle into the receiving spaces of the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies). Contractor shall have the right to designate the point of discharge within the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) of each load of Municipal Solid Waste, provided that such designation does not detain the delivery vehicles.

(2) At all times during the Term of this Agreement, Contractor shall operate and maintain the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in a manner that will permit weighing, delivery and exiting of vehicles delivering Municipal Solid Waste pursuant to this Agreement in not more than 20 minutes.

(3) Title to Unacceptable Waste shall not vest with Contractor.

(4) The Designated Transfer Station(s) and its transfer operation and/or the Designated Disposal Facility(ies) shall be designed and operated to accommodate all Municipal Solid Waste to be delivered in accordance with the Maximum Daily Quantity.

**3.07 Facility Maintenance.**

(1) Contractor shall have the sole responsibility for the operation and maintenance of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) utilized by the Contractor under this Agreement and shall maintain the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in a proper state of repair with due allowance made for reasonable wear and tear. The City may hold payment of invoices if it is determined that the Contractor is not in compliance with the provisions provided below.

(2) The Contractor shall maintain all of the Contractor's vehicles and containers used

in the performance of the Work in a clean and repaired condition.

(3) The Contractor shall be responsible for maintaining complete accessibility and clear passage through all necessary roadways at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) during all hours of operation, and shall plow all roads as necessary to maintain this condition.

(4) During the Term of this Agreement, Contractor shall be responsible for all major capital replacement(s), improvements, redesign, or other changes to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). The Contractor shall notify the City of any proposed material changes to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Changes shall be scheduled by the Contractor to avoid interruption in the operation of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Any redesign or installation of equipment shall not interfere with the ability of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) to meet all requirements of this Agreement.

(5) At all times during the Term of this Agreement, Contractor shall operate and maintain the Designated Transfer Station(s) and/or Designated Disposal Facility(ies): (i) in a safe and sound manner; (ii) in a manner that permits weighing and delivery of Municipal Solid Waste at all times during the hours of operation required under this Agreement; and (iii) as otherwise required by Applicable Laws and Government Approvals. Contractor shall be responsible for maintaining and renewing all licenses and permits and other Government Approvals required for operation of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in effect at all times and operating the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in accordance with Applicable Laws and Government Approvals.

(6) The Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall be maintained in a manner that will prevent odors from escaping the building. No detectable odors shall be present outside the boundaries of the Designated Transfer Station(ies) and/or the Designated Disposal Facility(ies). The Designated Transfer Station(s) and /or the Designated Disposal Facility(ies) shall be kept free and clear of all litter and debris at all times.

(7) The facility maintenance obligations described in this Section 3.07 shall not apply to the Designated Transfer Station(ies) and/or the Designated Disposal Facility(ies) that are owned, operated and maintained by third parties. Contractor shall use reasonable best efforts to ensure that such facilities owned by third parties are properly maintained and available to the City throughout the Term.

**3.08 Hauling of Municipal Solid Waste by or for Contractor.**

(1) Any hauling of Municipal Solid Waste by the Contractor shall be done with fully enclosed equipment so that the possibility of dripping, spilling, or scattering is kept to a minimum. Should any of these occur, Contractor shall be responsible, at its sole cost and expense, for prompt and timely cleanup of any such materials.

(2) The Contractor is required to comply with all State licensing requirements for transfer vehicles and any City waste management licensing requirements.

(3) In the event of a spill, leak or loss of Municipal Solid Waste at the Designated Transfer Station(s) and/or during transit to the Designated Disposal Facility(ies), Contractor shall immediately arrange for the clean-up and transportation of Municipal Solid Waste to the Designated Disposal Facility(ies) at Contractor's sole cost and expense, shall pay any resulting fines, assessments, penalties and damages resulting therefrom, and shall indemnify and hold harmless the City from any liability in connection with the foregoing.

**3.09 Hours of Operation.**

(1) Designated Transfer Station(s). The Designated Transfer Station(s) shall be open to accept delivery of Municipal Solid Waste during the days and hours set forth in Exhibit "C". Contractor may, at its option and at no additional cost to the City, open the Designated Transfer Station(s) at additional times to receive Municipal Solid Waste delivered by or on behalf of the City subject to applicable permit and regulatory limitations.

(2) Residual Waste. Contractor shall accept Residual Waste delivered by the City to the Designated Disposal Facility(ies) in accordance with Exhibit "C".

**3.10 Weighing Devices.**

(1) The number of Tons of Municipal Solid Waste delivered to the Designated Transfer Station(s) and/or Designated Disposal Facility(s) by or on behalf of the City and the number of Tons of Municipal Solid Waste from the Northwest Transfer Station shall be determined by obtaining an incoming and an outgoing weight for each delivery truck, roll-off container, or transfer vehicle on certified scales located at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies). Both the City and Contractor shall have the right at any time to require the weighing or reweighing of any vehicle.

(2) The Contractor shall be required to have the weight scales certified at any time but no more often than once a quarter, or upon request of the City. The Contractor shall furnish evidence of a maintenance agreement for the scales providing quarterly inspection and service maintenance. All costs and expenses associated with the installation, inspection, certification, and maintenance of the weight scales shall be borne exclusively by the Contractor.

**3.11 Disposal Information.**

(1) Daily Reports. By 12:00 noon each Day that Contractor is required to accept Municipal Solid Waste, Contractor shall provide the City with a report of each and every one of the previous Day's scale transactions at each scale at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) related to this Agreement. If the City has delivered Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) on a Saturday, Contractor shall provide the Friday and Saturday reports on the following Monday. This report will include a daily computer file in a DBF format or other format designated by the City

containing the following information in a file structure acceptable to the City: (a) names of Designated Transfer Station(s) and/or Designated Disposal Facility(ies); (b) date; (c) time of arrival and departure in military time; (d) sequential ticket number; (e) commodity code; (f) vehicle number; (g) gross vehicle weight at ingress; (h) gross vehicle weight at egress; (i) net weight of load; and (j) source code of City Department delivering the Municipal Solid Waste. With reasonable notice, the City may require that additional information be provided.

(2) **Monthly Reports.** In addition to any other reports required by any other provision of this Agreement, Contractor shall furnish to the City monthly written reports, together with such statements, documentary data or other information as the City may require, relative to any matter pertaining to Contractor's compliance with any provision of this Agreement. The data included in the detailed report shall be sufficiently detailed to facilitate analysis and shall be acceptable to the City. The monthly report shall include, without limitation, (a) any changes in the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) operating plans including anticipated outages scheduled for the next month, (b) quantity of Municipal Solid Waste transported from the Designated Transfer Station(ies) to the Designated Disposal Facility(ies), and (c) quantity of Municipal Solid Waste received at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). The monthly report shall be submitted on the 20th Day of the month following the month for which the report is submitted.

(3) **Annual Reports.** Contractor shall submit to the City an annual report within sixty (60) days following the end of each Agreement Year that incorporates a summary of monthly operations reports for the preceding Agreement Year.

(4) **Late or Inadequate Reports.** In the event that Contractor files a report required under this Agreement after the date that it is due or files an inadequate report (the adequacy or inadequacy of such report being in the sole discretion of the City), payment of all amounts due to Contractor for the period covered by the late or inadequate report may be deferred until all late or inadequate reports are submitted or corrected to the satisfaction of the City. The City shall retain the last payment due under this Agreement until Contractor has provided all reports required in this Section.

### **3.12 Rules and Regulations.**

(1) The City shall require its employees, agents, contractors and representatives to comply with Contractor's rules and regulations in performance of its duties under this Agreement attached hereto and marked as Exhibit "H", provided however, that all such rules and regulations shall be consistent with this Agreement, lawful, reasonable and uniformly applied to all haulers delivering waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies).

(2) Contractor may implement additional rules and regulations that are not inconsistent with this Agreement and Applicable Laws and which apply equally to all haulers delivering Municipal Solid Waste to the Designated Transfer Station(s) and Designated Disposal Facility(ies), upon thirty (30) Days prior written notice thereof to the City; provided however, that such additional rules and regulations may be implemented earlier than upon thirty (30) Days prior written notice if such implementation is required in order to avoid an emergency or to protect the health, safety and welfare of Contractor, its employees or Persons delivering



Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies).

(3) Contractor may refuse to receive Municipal Solid Waste from any vehicle operated by a hauler who repeatedly or intentionally violates the rules and regulations set forth in Exhibit “H”.

(4) The terms of payment and the rights and obligations of the parties shall be governed by the terms of this Agreement and not by any such rules and regulations set forth in Exhibit “H”.

**3.13 E-Waste.**

Unless otherwise stated, the services and procedures, rights and obligations described in Article 3 of this Agreement regarding Municipal Solid Waste shall not apply to E-Waste. All procedures regarding the transportation, processing, and disposal of E-Waste shall be in accordance with those identified in Exhibit “I” to this Agreement.

**ARTICLE 4**  
**CONSIDERATION**

**4.01 Invoices.**

(1) The City shall pay to Contractor for the performance of the Work and the discharge by Contractor of all of its obligations as set forth in this Agreement, and the Contractor shall accept the per Ton price set forth in this Agreement as full and complete compensation and payment. Payment of such compensation shall be in the manner and at the time provided for in this Agreement.

(2) Contractor shall tender itemized invoices to the City in form and content acceptable to the City on a not more frequently than weekly basis on the Tuesday following a Work week for the Municipal Solid Waste delivered by the City during the applicable billing period. At a minimum, the invoice shall include the following: (a) Designated Transfer Station(s) location and/or the Designated Disposal Facility(ies) for Municipal Solid Waste from the Northwest Transfer Station; (b) date; (c) ticket numbers; (d) vehicle identification; (e) gross vehicle weight; (f) vehicle tare weight; (g) net payload; (h) Disposal Fee; and (i) summary daily report.

(3) The City shall pay (or cause to be paid) the invoice amount to Contractor in accordance with this Section 4.01 for the performance by the Contractor of its obligations hereunder. The City will pay said invoices in accordance with its standard payment procedures, normally within forty-five (45) Days from the date of receipt of a proper invoice.

(4) The City may offset against the invoice amount any amounts payable by Contractor to the City as damages.

- (5) Invoices shall be mailed to:

City of Philadelphia Streets Department  
Municipal Services Building, Room 730  
1401 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19102

**4.02 Disposal Fees.**

The City shall pay to Contractor the disposal fees described in Exhibit “E” (each a “Disposal Fee”; collectively, the “Disposal Fees”) in consideration of Contractor performing the Work under this Agreement:

(1) The City shall pay a per Ton price for Municipal Solid Waste delivered to the Designated Transfer Station(s) (or for the Guaranteed Annual Quantity in the event that the Guaranteed Annual Quantity has not been provided, as calculated pursuant to Section 4.01 of this Agreement) during the Initial Term of this Agreement and thereafter in accordance with the price schedule for any and all Additional Terms set forth in Exhibit “E”.

(2) The City shall pay a per Ton price for Residual Waste delivered directly to Contractor’s Designated Disposal Facility(ies) during the Initial Term of this Agreement and thereafter in accordance with the price schedule for any and all Additional Term(s) in Exhibit “E”. The City shall have no obligation whatsoever to provide any minimum quantity of Residual Waste to Contractor under this Agreement.

(3) The City may at any time agree to an offer by a Contractor to reduce the Disposal Fees in Exhibit “E”.

**4.03 Change in Law.**

- (1) Change in Law shall mean:

(a) the adoption, promulgation, initial application, issuance, modification or official change in interpretation, after the Agreement Date of any Applicable Law; and/or

(b) the imposition after the Agreement Date, of any condition on the issuance, reissuance or continued effectiveness of any existing Permit(s) or in any pending applications for Permit(s); and/or

(c) the order and/or judgment of any Governmental Body after the Agreement Date that would affect the obligations of the parties under this Agreement

(2) For each Change in Law that causes the Contractor to sustain Change in Law Costs, the City shall be assessed a share of such Change in Law Costs.

(a) All increases and decreases in surcharge fees assessed by the Commonwealth of Pennsylvania for the disposal of Municipal Solid Waste at a transfer station, landfill or resource recovery facility pursuant to, or in addition to Act 101 of 1988 and Act 90 of 2002, shall be added in full to or subtracted in full from the per ton disposal rate as a pass through cost increase or decrease to the City during the Term of the Agreement.

(b) For all other Change in Law Costs, Contractor shall within one hundred eighty (180) days of the effective date of any Change in Law, calculate the related per Ton Change in Law Adjustment that it has sustained as a result of such Change in Law, and shall give to the City written notice of the resulting per Ton assessment. The notice shall include, without limitation, information setting forth the assumptions, data, formula and calculations used in making the assessment and shall specify all applicable Changes in Law and the effective dates thereof. The City reserves the right to request from Contractor, and Contractor agrees to promptly provide to City, information in addition to that submitted with Contractor's notice under this Section 4.03(1)(b). In the event Contractor fails to notify the City in strict accordance with the terms of this Section 4.03(1)(b), Contractor shall have waived its right to assess the City for the Change in Law.

(c) Within sixty (60) Days of receiving written notice from Contractor under Section 4.03(1)(b), the City may challenge Contractor's assessment of the Change in Law by notifying Contractor in writing. If challenged, the City, at its sole cost and expense, may engage an independent consulting and/or accounting firm(s), reasonably acceptable to Contractor, to review and prepare an audit of Contractor's assessment. The City and Contractor hereby agree to be bound by the conclusion of the independent consulting and/or accounting firm(s) that may be engaged pursuant to this Section. In the event the City challenges Contractor's assessment of the Change in Law under this Section, and does not engage an independent consulting and/or accounting firm(s), the City and Contractor shall make good faith efforts to resolve the challenge in a reasonably prompt manner.

(d) Unless challenged under Section 4.03(1)(c) above, the City shall begin paying City's Change in Law Costs, subject to Section 4.03(3) below, on the later of the first day Contractor sustains increased costs as a result of a Change in Law or the date sixty (60) Days prior to the date that the City receives written notice of the Change in Law from Contractor. The per Ton assessment to the City under Section 4.03 shall be substantially equal to the increase charged to all users of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), as the case may be. If such Change in Law is subsequently eliminated or reduced, the City's Change in Law Costs shall be correspondingly eliminated or reduced.

(2) The City shall not be responsible for any Change in Law Adjustment related to a change in state law other than Pennsylvania law for any Designated Disposal Facility(ies) located outside of the Commonwealth.

(3) For Change in Law Costs in Section 4.03 (b) incurred on or after the Disposal Fee Date, the price per Ton increase from the Change in Law Adjustment shall be no more than five percent (5%) per year, and in no event shall the price per Ton increase from the Change in Law Adjustment be more than the following percentages over the corresponding periods:

<u>Years</u>	<u>Percent</u>
4	10
5	11.66
6	13.33
7	15.00

(4) For Change in Law Costs incurred after the Disposal Fee Date but prior to the Agreement Date, such Changes in Law and proposed Change in Law Adjustments shall be disclosed to the City on or before the Agreement Date. The City, at its sole discretion, may elect not to execute the Agreement due to Change in Law Adjustments.

**4.04 Patents.**

Royalties and fees for patents covering processes, materials, articles, apparatus, devices, or equipment used in connection with the Work shall be included in the Disposal Fee(s) amount and no additional payments therefor shall be due or payable by the City. Contractor shall satisfy, at its sole cost and expense, all demands that may be made at any time for such royalties or fees, and Contractor shall be liable for any damages or claims for patent infringements. Contractor shall, at his own cost and expense, defend all suits or proceedings that may be instituted against the City for infringement or alleged infringement of any patents involved in the Work; and in case of an award of damages Contractor shall pay such award.

**4.05 E-Waste Pricing.**

All fees and payments for E-Waste services shall be as identified in Exhibit “I” to this Agreement.

**4.06 Illegal Dumping and Keep Philly Beautiful COP Programs**

All payments by Contractor regarding City’s programming to reduce illegal dumping and other Keep Philly Beautiful programs shall be as described in Exhibit “J.”

**ARTICLE 5**  
**GENERAL CONDITIONS**

**5.01 Performance Bond.**

(1) Upon execution of this Agreement, Contractor shall provide security for the faithful performance of the Work and for compliance with the terms of this Agreement in the form of a performance bond (the “Performance Bond”), with an approved surety company as surety thereon, in a sum equal to one-half the anticipated value (as determined by the City) of the Revenue Payment to be paid during the first year of this Agreement. The Performance Bond shall be in the form set forth in Exhibit A and issued by a surety company duly authorized and licensed to do business in the Commonwealth and approved by the City.

(2) During each subsequent Agreement Year, Contractor shall provide the City with a Performance Bond certificate thirty (30) Days prior to the commencement of each subsequent Agreement Year. The value of the Performance Bond shall be adjusted to an amount equal to one-half the anticipated value (as determined by the City) of the anticipated Revenue Payments for the upcoming Agreement Year.

(3) The Performance Bond must be issued by a surety listed on the then-current annual "Surety List" promulgated by the Commonwealth Insurance Department. The Performance Bond amount must be in an amount permitted by the Surety List. If the surety issuing the Performance Bond fails to meet the requirements of this Section 5.01, Contractor shall have thirty-five (35) Days from the date the inadequate Performance Bond was rejected by City to obtain a Performance Bond issued by a surety that meets the requirements of the Surety List.

## **5.02 Letter of Credit**

(1) In lieu of the Performance Bond, Contractor shall have the right to substitute a Letter of Credit for the performance bond required hereunder at the beginning of any fiscal year of the City (July 1) and maintain in effect such Letter of Credit in lieu of such performance bond for each City fiscal year (July 1 to June 30) for all of the remaining Term and any Additional Term if the Contractor fulfills all of the provisions as set forth in this Section 5.02.

(a) The Letter of Credit shall comply with all applicable requirements of the Agreement.

(b) The Letter of Credit and/or each Letter of Credit thereafter shall be available to draw against up to and including the maximum amount thereof for any and all claims that may arise during the Term and the Additional Term for ninety (90) days after the expiration of the then-current Letter of Credit, if no acceptable renewal Letter of Credit or performance bond is timely provided or required.

(c) The Letter of Credit shall be issued by a bank that has a long-term credit rating of at least AA by Standard and Poors, Inc. and Aa by Moodys Investors Service, Inc. ("Acceptable Credit Rating") and shall be approved by the City, which approval shall not be unreasonably withheld. If the bank issuing the Letter of Credit is incorporated/chartered outside the United States of America and does not have a domestic branch, the Letter of Credit must be confirmed by a domestic bank with an Acceptable Credit Rating. If the credit rating of the bank issuing the Letter of Credit or the confirming bank drops below an Acceptable Credit Rating, the Contractor must supply a substitute Letter of Credit with an Acceptable Credit Rating within thirty-five (35) days of notice to or knowledge of the Contractor of such event.

(d) The Contractor shall furnish or shall cause to be furnished a legal opinion acceptable to the City from independent counsel or the bank's counsel stating that the Letter of Credit is legally enforceable in the United States as to the issuing bank, and, if applicable, the confirming bank.

(e) The duly authorized representatives of the City for the Letter of Credit are the Finance Director and/or the Streets Commissioner as well as those serving in an acting capacity for said positions.

(f) The Letter of Credit shall be in a form acceptable to the City.

(g) The issuing bank must furnish an acceptable form of draw certificate and sight draft with the Letter of Credit.

(2) The Letter of Credit shall be for a sum equal to one-half the value (as determined by the City) of the anticipated Revenue Payments for the upcoming Agreement Year. The Letter of Credit shall provide for annual renewal, after successful completion of the first (12) months of operation following the Operations Commencement Date. During each subsequent twelve (12) month period, the stated amount of the Letter of Credit amount shall be adjusted to an amount equal to one-half the anticipated value of the Disposal Fees for that period.

(3) Any Letter of Credit issued during the Term shall contain a clause providing for the automatic annual renewal of the Letter of Credit on the beginning day of the City's fiscal year (July 1) at which time it shall renew for ninety (90) days in satisfaction of the requirements outlined in this Section. Any Letter of Credit issued for an Additional Term shall run from July 1 up to June 30 of the following year at which time it shall renew for ninety (90) days after the expiration of the then-current Letter of Credit if no acceptable renewal Letter of Credit or performance bond is timely provided or required in satisfaction of the requirements of this Section.

(4) In the event the Letter of Credit is not automatically renewed as contemplated in Section 5.03 (3), a substitute Letter of Credit or performance bond shall be delivered to the City for each annual renewal period at least sixty (60) days before the expiration of the Letter of Credit. Substitution of a performance bond for a Letter of Credit during the Term or the Additional Term is contingent on provision of a Letter of Credit for a period of ninety (90) days after the expiration of the then-current Letter of Credit in satisfaction of the requirements of this Section.

### **5.03 Economic Opportunity Plan.**

(1) In accordance with the Philadelphia Code Section 17-1600 et seq., as it exists on the Commencement Date, the City has established a requirement for Economic Opportunity Plan(s) ("EOP") for this Agreement. The EOP attached hereto as Exhibit "B" constitutes the entire EOP approved by the Office of Economic Opportunity for this Agreement. Contractor agrees to comply with and abide by the EOP attached to this Agreement as Exhibit "B."

(2) In accordance with Section 17-1402(f) of the Philadelphia Code, Contractor shall during the Term of the Contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Contractor, any officer, director or management employee of the Contractor, or any person representing the Contractor that a particular Person could be used by the Contractor to satisfy any goals established in the Contract for participation of

minority, women, disabled or disadvantaged business enterprises. The Contractor shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by the Department, and the form shall be signed and filed with the Department within five Business Days after the Contractor as so advised. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

**5.04 Notices.**

Contractor shall maintain an office within the City during the Term of this Agreement. Notices provided for herein shall be sufficient if hand delivered or mailed by certified mail (postage prepaid) to the City at the following address:

City of Philadelphia Streets Department  
Municipal Services Building, Room 730  
1401 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19102  
Attn.: Commissioner

with a copy to:

City of Philadelphia Law Department  
1515 Arch Street, 16<sup>th</sup> Floor  
Philadelphia, Pennsylvania 19103-2081  
Attention: Chief Deputy City Solicitor, Regulatory Affairs Unit

for Contractor:

Derek Veenhof  
Executive Vice President  
Covanta Sustainable Solutions, LLC  
445 South Street  
Morristown, NJ 07960

with a copy to:

Covanta Holding Corporation  
445 South Street  
Morristown, NJ 07960  
Attn: General Counsel

or to such other respective addresses as the parties may, from time to time, designate to each other in writing.

**5.05 Applicable Laws and Permits.**

(1) This Agreement shall be entered into under the laws of the Commonwealth and interpretation and construction shall be governed by such laws. Both parties shall observe and comply, at their sole cost and expense, with all Applicable Laws in connection with this Agreement. Contractor certifies that the Facility is in compliance with Applicable Laws and applicable Permits, and the Facility shall remain in compliance with Applicable Laws and applicable Permits during the Term of this Agreement. Throughout the Term of this Agreement, the City may from time to time request reasonable assurances from Contractor that Contractor's operations, the Facility is in compliance with Applicable Laws and applicable Permits. Contractor shall respond to the City's request for such assurances within ten (10) days of such request.

(2) Contractor shall obtain and maintain, at its sole cost and expense, all Permits, certificates of authority, approvals and inspections required by federal, state, and local supervisory agencies for the performance of the Work.

(3) Failure of the Contractor's Facility to comply with Applicable Laws or Contractor's failure to provide reasonable assurances of compliance may result in the suspension or termination of the delivery of Recyclable Materials to the Facility by the City under this Agreement.

**5.06 Independent Contractor.**

At all times during the Term of this Agreement, the relationship of Contractor to the City shall be that of an independent contractor.

**5.07 Subcontracting and Assignment.**

(1) Contractor shall be responsible during the Term of this Agreement for complete supervision and control of its subcontractors as though they were its own forces. Notice to Contractor shall be considered notice to all of Contractor's subcontractors.

(2) Contractor shall be liable for the failure of its subcontractors in any phase of the Work. Contractor shall be as fully liable, responsible, and accountable to the City for the acts and omissions of its subcontractors and of persons employed by them as it is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relationship or liability between any of Contractor's subcontractors and the City unless so elected by the City in writing.

(3) Contractor shall neither assign nor subcontract the Work, or any part thereof without the prior written consent of the City, nor shall Contractor assign, by power of attorney or otherwise, any of the money payable under this Agreement unless the prior written consent of the City has been obtained. The granting or denial of the City's consent under this Section shall be in the City's sole discretion.



(4) The City reserves the right to assign this Agreement to any other party. This Agreement shall be binding upon the parties hereto, their heirs, administrators, successors and assigns.

**5.08 Payment for Labor and Supplies.**

Contractor agrees to promptly pay all Persons, which have furnished labor or supplies in connection with the Work required under this Agreement and shall provide, upon request of the City, evidence that the same have been fully paid or satisfactorily secured. In addition to any other indemnification obligations under this Agreement, Contractor shall indemnify, defend and hold the City harmless from all claims, suits or actions for labor and supplies furnished in connection with this Agreement.

**ARTICLE 6**  
**DEFAULTS AND REMEDIES**

**6.01 Default of the Contractor.**

The occurrence of one (1) or more of the following events shall constitute an event of default under this Agreement (each an “Event of Default”):

(1) Except for Force Majeure Events as defined in Section 6.04 of this Agreement or a failure to obtain or maintain Disposal Permits as described in Section 3.01(5) an Event of Default shall occur immediately if Contractor is unable to accept Municipal Solid Waste from City for more than three (3) consecutive days that Contractor is obliged to receive such Municipal Solid Waste pursuant to the terms of this Agreement.

(2) Except for Force Majeure Events as defined in Section 6.04 of this Agreement or a failure to obtain or maintain Disposal Permits as described in Section 3.01(5), an Event of Default by Contractor shall occur if one (1) or more of the following occurs and Contractor fails to cure the same within ten (10) Days after receiving written notice thereof from City, unless Contractor has promptly commenced and is continuing diligently and in good faith to cure such default and does cure such default within thirty (30) Days of such notice (except for a default under Section 6.01(2)(c) or (d) below):

(a) Contractor cannot accept delivery of Municipal Solid Waste in the Maximum Daily Quantity agreed to under this Agreement at any time during the Term of this Agreement;

(b) Contractor fails to perform any Work to be performed by it under this Agreement;

(c) the filing of a petition by or against Contractor for relief as a bankruptcy or insolvency or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of Contractor property; or, an assignment by Contractor for the benefit of creditors; or, the taking possession of the

property of Contractor by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or liquidation of Contractor or for the operating, either temporary or permanent, of Contractor's business, provided, however, that if any such action is commenced against Contractor, the same shall not constitute an Event of Default if Contractor causes the same to be dismissed or discharged within sixty (60) Days after the filing of same;

(d) the filing of a petition by or against Guarantor for relief as a bankruptcy or insolvency or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of Guarantor property; or, an assignment by Guarantor for the benefit of creditors; or, the taking possession of the property of Guarantor by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or liquidation of Guarantor or for the operating, either temporary or permanent, of Guarantor 's business, provided, however, that if any such action is commenced against Guarantor, the same shall not constitute an Event of Default if Guarantor causes the same to be dismissed or discharged within sixty (60) Days after the filing of same; and/or

(e) Contractor fails to fulfill any other terms, conditions, obligations or covenants contained in this Agreement, including Section 5.03 (Economic Opportunity Plan) provided such failure to comply with Section 5.03 was not the direct result of a default of the M/W/DSBE subcontractor(s) in the performance of contractual obligations to the Contractor.

**6.02 Remedies of the City Following the Contractor's Default.**

(1) The rights and remedies afforded to the City under the terms of this Agreement shall not be deemed to be exclusive but shall be cumulative, and the City shall have and reserves any and all other rights and remedies provided at law or in equity, and the City may elect the manner in which it shall proceed.

(2) Upon an Event of Default by Contractor, the City may elect to terminate this Agreement and award a new contract to a substitute contractor. In lieu of termination, the City may temporarily suspend delivery of Municipal Solid Waste to Contractor and dispose in an Alternate Facility in accordance with Section 3.04 of this Agreement. Regardless of how the City elects to proceed upon an Event of Default by Contractor, Contractor, its surety under Section 2.01 above, and Guarantor shall be liable to the City for all damages (including but not limited to excess costs) sustained by the City by reason of an Event Default by Contractor under this Agreement.

(3) The Work to be performed hereunder by the Contractor involves the health and safety of the residents of the City. In the event of an anticipatory breach or an Event of Default under this Agreement by the Contractor, the City shall be and Contractor consents that the City is entitled to injunctive relief enjoining and restraining Contractor from doing any act in violation of this Agreement, or mandating that such act or acts be done by Contractor to carry out the terms of this Agreement. The application by the City for an injunction or mandate to any court shall not be, and shall not be construed to be, a waiver by the City of any other right or remedy available to the City under this Agreement, at law or in equity, and shall not be deemed a waiver of any other or further breaches of condition or failure to perform hereunder. The exercise of such right or rights by the City shall not prejudice in any manner whatsoever the rights of the City to enforce or secure any

other rights or remedies, including but not limited to, the right to seek damages (including excess costs) for breach of this Agreement.

(4) It is also agreed by the parties hereto that upon an Event of Default under Section 6.01(2)(c) above, this Agreement shall not be an asset of the Contractor in any proceeding set forth in Section 6.01(2)(c).

**6.03 Nonwaiver.**

Neither party hereunder shall be deemed to have waived any part, provision, language, covenant, condition or requirement of this Agreement unless such waiver is in writing and signed by such party. Any partial waiver shall not be deemed to be in any manner the waiver of any other part, provision, language, covenant, condition or requirement, and where any waiver is made, either partially or otherwise, of any provision, condition, or requirement, it shall be strictly construed and deemed to be a waiver of no more than that which is clearly expressed in writing. Any ambiguity shall be resolved in favor of the City.

**6.04 Force Majeure.**

(1) Contractor or City shall not be excused nor relieved from any act or responsibility of performance under the terms of this Agreement except for the following events of Force Majeure (each a “Force Majeure Event”) which prevent the Contractor or City from performing under this Agreement:

(a) an Act of God;

(b) state of declared war, insurrection, labor strike, but as to the Contractor, only those labor strikes against a third party (excluding Contractor’s Affiliates) occurring off the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) which substantially interrupts the supply of materials and equipment needed to construct or operate the Designated Transfer Station(s) and/or Designated Disposal Facility(ies);

(c) any conditions (excluding costs) which are clearly beyond the control of the party claiming the Force Majeure Event and, as to the Contractor, without the fault or negligence of Contractor or Contractor's agents, employees, subcontractors or suppliers provided, however, that the party claiming the Force Majeure Event shall exhaust every available reasonable remedy to correct the condition and promptly report to the other party in writing the circumstances which justify non-performance;

(2) Upon the occurrence of a Force Majeure Event which prevents the Contractor or the City from performing any of its obligations under this Agreement, the non-performing party shall notify the other party as soon as is reasonably practicable regarding the Force Majeure Event and shall diligently endeavor to eliminate the cause of the Force Majeure Event.

(3) In the event a Force Majeure Event prevents the Contractor from performing responsibilities or obligations hereunder with respect to the receipt of Municipal Solid Waste at the

Designated Transfer Station(s) and/or Designated Disposal Facility(ies), Contractor shall use reasonable best efforts to provide alternative arrangements which are acceptable to the City for the receipt of the Municipal Solid Waste during the Force Majeure Event, and Contractor shall continue to perform and comply with all portions of this Agreement with which it is possible for the Contractor to perform and comply. Any proposed alternative arrangement submitted to the City for its approval shall be at no greater cost to the City than the City would have incurred under this Agreement (transportation costs and Disposal Fees included) and any savings accruing to Contractor as a result of such arrangement shall be credited to the City.

(4) Notwithstanding any other terms in this Article 6, if Contractor fails to perform its obligations under this Agreement resulting from a Force Majeure Event for sixty (60) consecutive Days the City may terminate the Parties' obligations under the Agreement that are impacted by the Force Majeure Event.

(5) If the Force Majeure Event prevents the City from performing responsibilities or obligations hereunder with respect to the delivery of Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) and such Force Majeure Event continues for a period of sixty (60) consecutive Days, Contractor shall have the right to terminate the Parties' obligations under the Agreement that are impacted by the Force Majeure Event.

**ARTICLE 7**  
**TERMINATION AND SUSPENSION**

**7.01 Termination and Suspension.**

(1) Termination. Upon an Event of Default by Contractor, the City may elect to terminate this Agreement and award a new contract to a substitute contractor pursuant to Section 6.02(2). The City shall provide written notice to the Contractor. Except in circumstances where continuing the Agreement may endanger the health or safety of the City or its residents, the City shall provide a minimum of thirty (30) Days' notice of termination.

(2) Suspension. If the City elects to suspend the Contractor's Work following an Event of Default, suspension shall not constitute a waiver or release of any liability of Contractor for such Event of Default or any of the City's damages or other remedies arising out of such Event of Default; nor shall such suspension be deemed an election of remedies in derogation of any other remedy. Contractor acknowledges that the City shall have the right, at its sole discretion, to suspend Contractor's performance in the event City Council does not appropriate funds for the performance of this Contract. In the event that the City issues a suspension notice to Contractor, such suspension shall continue from the effective date specified in the notice until a date specified in the notice which shall be not more than one hundred and eighty (180) days after the effective date (the "Suspension Period"). On or prior to the expiration of the Suspension Period, the City shall either terminate this Contract by giving a termination notice pursuant to Section 6.02(2), or by notice to Contractor, instruct Contractor to resume the Work pursuant to this Contract upon the expiration of the Suspension Period. After issuing a Suspension Notice, the City shall pay any invoices submitted by Contractor for Work rendered prior to the commencement of the Suspension Period or otherwise payable by the City to Contractor under this Contract, subject to all of the City's rights and remedies against Contractor, including but

not limited to its rights of set off and its right to review and accept Work prior to payment therefor.

**7.02 Contractor Responsibilities Upon Termination or Suspension.**

(1) Upon the City's transmission of a Termination Notice or a Suspension Notice under any provision of this Contract, Contractor and its agents, employees and Subcontractors, shall:

(a) take immediate action in an orderly manner to discontinue Work and demobilize work forces to minimize the incurrence of costs; and

(b) The City's termination or suspension of this Contract shall not affect any obligations or liabilities of either Party accruing prior to the effective date of such termination or suspension.

(c) There shall be no liability, cost or penalty to the City for termination or suspension of this Contract.

**7.03 Payments to Contractor and City upon Termination or Suspension.**

(1) Upon termination or suspension of this Contract by the City for an Event of Default or a Force Majeure Event, Contractor and the City may each be entitled to payments to be determined by the parties and subject to audit, as shall compensate them for such amounts as may be due and owing as of the termination date or suspension date; provided, however, that:

(a) no allowance shall be included for termination or suspension expenses or for anticipated profits, unabsorbed or underabsorbed overhead, or unperformed Work; and

(b) the City shall deduct from any amount due and payable to Contractor prior to the termination date, but withheld or not paid, the total amount of fees, costs or additional expenses incurred by the City in order to satisfactorily complete the Work required to be performed by Contractor under this Contract, including the expense of engaging another party for this purpose, and such other damages, costs, losses and expenses of the City as may be incurred or result from such termination for an Event of Default.

**ARTICLE 8**  
**INSURANCE AND LIABILITY**

**8.01 Maintenance of Insurance.**

(1) Unless otherwise approved by the City's Risk Manager in writing, Contractor shall throughout the Term of this Agreement, at its sole cost and expense, and Contractor shall cause its subcontractors, at their sole cost and expense, to procure and to maintain in full force and effect, the types and minimum limits of insurance specified below. All insurance shall be procured from reputable insurers admitted to do business on a direct basis in the Commonwealth or otherwise acceptable to the City. All insurance herein, except Environmental Impairment

Liability and Workers' Compensation, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Work be performed under this Agreement until the required evidence of insurance has been furnished. The insurance shall provide for at least thirty (30) Days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or non-renewed. The City, its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance Policy. An endorsement is required stating that the City, its officers, employees, and agents, shall be named as additional insureds on the General, Environmental/Pollution & Umbrella Liability Insurance Policies.

- (a) Workers' Compensation and Employers' Liability
  - (i) Workers' Compensation: Statutory Limits
  - (ii) Employers' Liability:
    - \$500,000 Each Accident – Bodily Injury by Accident;
    - \$500,000 Each Employee – Bodily Injury by Disease;
    - \$500,000 Policy Limit – Bodily Injury by Disease.
  - (iii) Other States' Endorsement
- (b) General Liability Insurance
  - (i) Limit of Liability: \$2,000,000 per occurrence for bodily injury including death) and property damage liability.
  - (ii) Coverage: Premises operations; collapse, explosion and underground hazards, blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).
- (c) Automobile Liability Insurance
  - (i) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
  - (ii) Coverage: Owned, non-owned, and hired vehicles.
- (d) Environmental Impairment or Pollution Liability Insurance
  - (i) Limit of Liability: \$5,000,000 each incident/\$5,000,000 aggregate for bodily injury (including death) and property damage.
  - (ii) Coverage: Shall include sudden, accidental and gradual occurrences and may be written on a claims-made basis provided that coverage for occurrences happening during the term of this

contract be maintained in full force and effect under the policy or “tail” coverage for a period of at least two (2) year following the Term of this Agreement.

- (e) Umbrella Liability Insurance: at limits totaling \$10,000,000 per occurrence when combined with insurance required under (b), (c), and (d) above.

**8.02 Evidence of Insurance Coverage.**

(1) The original certificate of insurance must be submitted to the City’s Risk Manager at the following address:

City of Philadelphia  
Division of Risk Management  
1515 Arch Street, 14<sup>th</sup> Floor  
Philadelphia, PA 19102

(2) The original Certificates of Insurance shall be submitted to the Risk Manager at the above address, at least ten (10) Days prior to the commencement of any rights exercisable by Contractor hereunder and no more than three (3) business days following the expiration of any policy required hereunder. The actual endorsement adding the City as an additional insured must be submitted to the City Risk Manager at the above address. The City reserves the right to require Contractor to furnish written responses from its insurance representatives to all inquiries made pertaining to the insurance required under the Agreement at any time upon ten (10) days written notice to Contractor. Questions must be mailed to

Derek Veenhof  
Executive Vice President  
Covanta Sustainable Solutions, LLC  
445 South Street  
Morristown, NJ 07960

The City also reserves the right, in any event, not more frequently than once every year, to reasonably adjust the amounts, types and deductibles of the insurance coverage required hereunder, upon thirty (30) Days’ notice to Contractor.

- (3) A copy of the certificate of insurance shall be submitted to:

City of Philadelphia Streets Department/Sanitation Division  
Municipal Services Building, Room 730  
1401 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19102  
Attn.: Commissioner

**8.03 No Limit of Liability.**

The insurance requirements set forth in this Article 8 shall in no way be intended to limit, modify or reduce the indemnification, made in this Agreement or to limit Contractor's liability to the limits of the policies of insurance required hereunder.

**8.04 Indemnification.**

Contractor shall indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liability and expenses including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, hazardous substances, contamination or adverse effects on the environment, failure to pay such subcontractors and suppliers, any breach of this Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret) resulting from Contractor's negligent acts or omissions or the negligent acts or omissions of Contractor's agents, subcontractors, officers, employees or servants under or in connection with this Agreement. This obligation to indemnify, defend and hold harmless City, its officers, employees and agents, shall survive the termination of this Agreement.

**ARTICLE 9**  
**ADDITIONAL REPRESENTATIONS AND COVENANTS OF CONTRACTOR**  
**RELATING TO CERTAIN APPLICABLE LAWS**

In addition to the representations, warranties and covenants made by Contractor in Article 8, Contractor further represents, warrants and covenants that, to the extent of their applicability to Contractor, Contractor is in compliance with the laws, ordinances, regulations and executive orders described below. By executing this Contract, Contractor thereby certifies to such compliance. Contractor further certifies that the representations, warranties and covenants provided pursuant to this Article shall continue to remain true throughout the Term of this Contract or any other period of time required by such laws. In the event said representations, warranties and covenants are or become untrue or inaccurate, Contractor shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty or covenant is untrue or inaccurate. The provisions of this Article are not intended to limit the applicability of the other provisions of this Contract, including, without limitation, Contractor's agreement to comply with all Applicable Law.

**9.01 Non-Discrimination; Fair Practices.**

This Contract is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Contract, Contractor shall not discriminate or permit discrimination against any individual because of race, color, religion, ancestry or national origin, sex, gender identity, sexual orientation, age or disability. Nor shall Contractor discriminate or permit discrimination against individuals in employment,



housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 9.01 (Non-Discrimination; Fair Practices), the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

**9.02 Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations.**

(1) In accordance with Chapter 17-400 of the Code, Contractor agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting the applicability of Article 6 (Defaults and Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(2) Contractor agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Code. Contractor's failure to so cooperate shall constitute, without limiting the applicability of Article 6 (Defaults and Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

**9.03 Federal Laws.**

Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. Section 794), the Age Discrimination Act of 1975, (42 U.S.C. Sections 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

**9.04 Americans With Disabilities Act.**

Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from providing services or materials under this Contract. By executing and delivering this Contract, Contractor covenants to comply with all provisions of the Americans With Disabilities Act (the "ADA"), 42 U.S.C.

§§12101 - 12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Contractor; (b) to the benefits, services, materials, activities, facilities and programs provided in connection with this Contract; (c) to the City, or the Commonwealth of Pennsylvania; (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth; and (e) if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its funds, benefits, services, activities, facilities and programs applicable to this Contract. Without limiting the applicability of the preceding sentence, Contractor shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, facilities, programs and activities provided by the City through contracts with outside contractors.

**9.05 Northern Ireland.**

(1) In accordance with Section 17-104 of the Code, Contractor (including any parent company, subsidiary, exclusive distributor or company affiliated with Contractor) (1) confirms that it does not have, and agrees that it will not have at any time during the Term of this Contract (including any extensions of the Term), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) agrees that no product to be provided to the City under this Contract will originate in Northern Ireland, unless Contractor has implemented the fair employment principles embodied in the MacBride Principles.

(2) In the performance of this Contract, Contractor agrees that it will not use any suppliers, Subcontractors or subconsultants at any tier (1) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (2) who will provide products originating in Northern Ireland unless said supplier, subconsultant or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles.

(3) Contractor agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Code. Contractor expressly understands and agrees that any false certification or representation in connection with this Section 9.05 (Section 17-104 of the Code) and any failure to comply with the provisions of this Section 9.05 (the Section 17-104 of the Code) shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law (including, but not limited to, Section 17-104 of the Code) or in equity. In addition, Contractor understands that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

**9.06 Limited English Proficiency.**

Contractor understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, Contractor shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order No.

12250 of the President of the United States, publication of the Mayor of the City of Philadelphia entitled, "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Contractor, (b) to the benefits, services, activities and programs provided in connection with this Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Contractor shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

**9.07 Business, Corporate and Slavery Era Insurance Disclosure.**

(1) In accordance with Section 17-104 of the Code, the Contractor, after execution of this Contract, will complete an affidavit certifying and representing that the Contractor (including any parent company, subsidiary, exclusive distributor or company affiliated with Contractor) has searched any and all records of the Contractor or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

(2) The Contractor expressly understands and agrees that any false certification or representation in connection with this Section and/or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law (including, but not limited to, Section 17-104 of the Code) or equity and the Contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

**9.08 Protected Health Information.**

(1) The City of Philadelphia is a "Covered Entity" as defined in the regulations issued pursuant to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The City's business activities include both (1) functions which make the City a Covered Entity, and, therefore, subject to HIPAA, and (2) functions that are not subject to HIPAA. In accordance with 45 CFR §164.105(a)(2)(iii)(D), the City has designated certain departments and units of the City as health care components that must comply with HIPAA ("Covered Components"). The Covered Components of the City as of August 1, 2013 include: Ambulatory Health Services, a unit of the Philadelphia Department of Public Health ("PDPH"); the Office of Behavioral Health and Intellectual Disability Services; the Philadelphia Nursing Home (a unit of PDPH); the Benefits Administration Unit of the Office of Human Resources; Emergency Medical Services (a unit of the Philadelphia Fire Department); and the Philadelphia Public Health Laboratory (a unit of PDPH). This list is subject to change, and any department or unit of the City that the City in

the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Section 9.08.

(2) To the extent (1) this Contract is entered into by the City for or on behalf of a Covered Component and/or requires the performance of services that will be delivered to or used by a Covered Component (whether or not the City department or unit through which the City entered the Contract is a Covered Component), and/or (2) Contractor is a “Business Associate” of the City, as defined in 45 CFR §160.103, Contractor shall comply with the City’s Terms and Conditions Relating to Protected Health Information (“City PHI Terms”) posted on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link). The City PHI Terms are hereby incorporated in this Section 9.08 as if fully set forth herein. (A printed version of the City PHI Terms, in the City’s sole discretion, also may be attached to this Contract.)

**9.09 Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century Minimum Wage and Benefits Standard and Mayoral Executive Order 03-14.**

(1) Contractor is a “Service Contractor” in that by virtue of entering into this Contract, Contractor has entered into a “Service Contract,” as those terms are defined in Section 17-1302 of the Code and Mayoral Executive Order 03-14, entitled, “Policy Regarding Minimum Wage and Benefits to be Provided by City Contractors and Subcontractors,” which supplements Chapter 17-1300 of the Code, entitled “Philadelphia 21<sup>st</sup> Century Minimum Wage and Benefits Standard.” Additionally, any Subcontract between Contractor and a Subcontractor to perform work related to this Contract is a “Service Contract” and such Subcontractors are also “Service Contractors” for purposes of Chapter 17-1300 and the Executive Order. (Chapter 17-1300 is accessible at <http://www.amlegal.com/library/pa/philadelphia.shtml> and Executive Order 03-14 is accessible at <http://www.phila.gov/ExecutiveOrders/Executive%20Orders/EO%203-14.pdf>.) If Contractor or any Subcontractor is also an “Employer,” as that term is defined in Section 17-1302 (more than 5 employees), and as the term “Employer” is further described in Section 17-1303 of the Code, absent a waiver, Contractor shall provide, and cause any such Subcontractors to provide their covered Employees (persons who perform work for a covered Employer that arises directly out of a Service Contract with the City), with the minimum wage standard and minimum benefits standard stated in Chapter 17-1300 of the Code and Executive Order 03-14. A summary of the current requirements is as follows:

**Minimum Wage**

(a) Between January 1, 2019 and June 30, 2019, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$12.40/hour;

(b) Between July 1, 2019, and June 30, 2020, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$13.25/hour;

(c) Between July 1, 2020, and June 30, 2021, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$13.75/hour;

(d) Between July 1, 2021, and June 30, 2022, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$14.25/hour;

(e) Between July 1, 2022 and June 30, 2023, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$15.00; and

(f) Starting July 1, 2023, and each year thereafter, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$15.00 multiplied by the then current CPI Multiplier as annually adjusted, as described in Section 9.09(1)(g).

(g) For purposes of determining the minimum hourly wage required under 9.09(1)(f) above, the CPI Multiplier shall be calculated annually by the Director of Finance, for wages to be provided on and after July 1 of each year, by dividing the most recently published Consumer Price Index for all Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, by the most recently published CPI-U as of July 1, 2022.

**Minimum Benefits**

(a) to the extent Contractor (or its Subcontractor under Subcontract) provides health benefits to any of its employees, provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Contractor (or its Subcontractor); and

(b) provide to each full-time, non-temporary, non-seasonal covered Employee at least the minimum number of earned sick leave days required by Code Section 17-1305(2).

(2) If covered, absent a waiver, Contractor shall promptly provide to the City all documents and information as the City may require verifying its (and its Subcontractors' compliance with the requirements of Chapter 17-1300 and Executive Order 03-14. Contractor and its Subcontractors shall notify each affected employee what wages are required to be paid pursuant to Chapter 17-1300 and Executive Order 03-14.

(3) Absent a waiver, a Contractor subject to Chapter 17-1300 and Executive Order 03-14 shall comply with all their requirements as they exist on the date when the Contractor entered into this Contract with the City or when this Contract is amended. Absent a waiver, Contractor shall also be responsible for the compliance of its Subcontractors with the requirements of Chapter 17-1300 and Executive Order 03-14. Contractor shall take such steps as are necessary to notify its Subcontractors of these requirements, including, without limitation, incorporating this Section 9.09, with appropriate adjustments for the identity of the parties, in its Subcontracts with such Subcontractors. A Contractor or any of Contractor's Subcontractors subject to Chapter 17-1300 and the Executive Order that fail to comply with their provisions may, after notice and hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. Furthermore, the Council may, by resolution adopted

after a public hearing, determine that there are reasonable grounds to believe that an employer subject to Chapter 17-1300 has failed to comply with its provisions, and that if such failure is established, then debarment would be an appropriate remedy for such failure. A copy of any such adopted resolution shall be forwarded to the Director of Finance, or such other officer or agency designated by the Mayor, who shall without undue delay provide appropriate notice and opportunity for hearing, and after such hearing, make a final determination as to whether there has been a violation of Chapter 17-1300, and whether debarment, as provided by Chapter 17-1300, should be imposed. Such debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract. The debarment procedure by Council resolution shall be in addition to any other procedure for debarment or suspension from City contracts established under Chapter 17-1300.

(4) Without limiting the applicability of Article 6 (Defaults and Remedies) above, Contractor's failure to comply, or the failure of Contractor's Subcontractors to comply with the requirements of Chapter 17-1300 or Executive Order 03-14 shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(5) Contractor's covered employees shall be deemed third-party beneficiaries of Contractor's representation, warranty, and covenant to the City under this Section 9.09 only, and the covered employees of a Subcontractor of Contractor performing under a Subcontract shall be deemed third-party beneficiaries of their employer's representation, warranty and covenant to Contractor under this Section.

(6) The Office of Labor Standards may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code. An overview offering guidance on the applicability of, and requirements placed on City contractors and their first tier Subcontractors by Chapter 17-1300 of the Code and Executive Order 03-14 is available on the City's website (at <https://secure.phila.gov/eContract/> under the "About" link) (see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors").

(7) The City expressly waives all requirements related to life partners under Chapter 17-1900 of the Philadelphia Code. Contractor extends equal benefits to same-sex spouses and different-sex spouses of its full-time employees and will continue to do so for the duration of this Contract.

**9.10 Chapter 17-1400 of the Philadelphia Code: Contributions and Other Mandatory Disclosures.**

(1) Contractor confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made, and agrees that none shall be made during the Term of this Contract, and any Additional Term, by Contractor, any Subcontractor, or any party from which a contribution can be attributed to the Contractor or Subcontractor, that would render the Contractor or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of Sections 17-1404(1) and 17-1405 of the Code; and that disclosures made as part of its application to receive a Non-Competitively Bid

Contract contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Contract voidable at the City's option, and, as to contributions made by or attributable to Contractor, shall make the Contractor liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Contractor allowed under the Contract, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this Section 9.10 (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Contractor shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Section 9.10, and as described elsewhere in this Contract, shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

(2) Contractor shall, during the term of the Contract, any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance the Contractor, or any Subcontractor or Consultant utilized by Contractor in connection with this Contract, has made, or any individual or entity has made if such contributions can be attributed to Contractor, or such Subcontractor or Consultant pursuant to the attribution rules of Section 17-1405, during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.

(a) Such disclosure shall be made on a form provided by the Department awarding the Contract, and the form shall be signed and filed with such Department within five (5) business days of the contribution. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Contractor or of a Consultant.

(b) It shall not be a violation of Section 9.10 if Contractor fails to disclose a contribution made by a Consultant because the Contractor was unable to obtain such information from the Consultant, provided the Contractor demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(i) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the Contract, and before the Consultant communicated with a City department or office, official or employee on behalf of the Contractor;

(ii) Including in such agreement a provision requiring the Consultant to provide the Contractor in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by the Contractor if the Consultant fails to provide all required information on a

timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of the Contractor as of the date of such termination;

(iii) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit the Contractor to comply with the provisions of Chapter 17-1400; and

(iv) Invoking the termination provisions of the written agreement in a full and timely manner.

(3) The Contractor shall, during the Term of the Contract, any Additional Term, and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401 of the Code) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in Section 17-1401 of the Code) given to any Person in response to any such request. The Contractor shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.

(a) Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five (5) business days after a request was made or a payment in response to a request was made, as the case may be.

(b) The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Director of Finance, Procurement Department, and the Department of Records.

(c) The Contractor shall, during the Term, and any Additional Term, of the Contract disclose the name and title of each City officer or employee who directly or indirectly advised the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor that a particular Person could be used by the Contractor to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Contractor shall also disclose the date the advice was provided, and the name of such particular Person.

(i) Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five business days after the Contractor was so advised.

(ii) The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.



**9.11 Executive Order 03-11: Gifts.**

(1) Pursuant to Executive Order 03-11, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment, invitation, food, drink or loan, unless consideration of equal or greater value is conveyed in return, from any of the following sources:

- (a) A person seeking to obtain business from, or who has financial relations with the City;
- (b) A person whose operations or activities are regulated or inspected by any City agency;
- (c) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;
- (d) A person seeking legislative or administrative action by the City; or
- (e) A person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.

(2) Contractor understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, Contractor shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

**ARTICLE 10**  
**MISCELLANEOUS**

**10.01 Governing Law.**

This Contract shall be deemed to have been made in Philadelphia, Pennsylvania. This Contract and all disputes arising under this Contract shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to principles of Pennsylvania law concerning conflicts of laws.

**10.02 Amendments; Waiver.**

This Contract may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written Amendment signed by the Parties. Except to the extent that the Parties may have otherwise agreed in writing in an Amendment, no waiver, whether express or implied, by either Party of any provision of this Contract shall be deemed: (a) to be a waiver by that Party of any other provision in this Contract; or (b) to be a waiver by that Party of any breach by the other Party of its obligations under this Contract. Any forbearance by a Party in

seeking a remedy for any noncompliance or breach by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

**10.03 Integration.**

The Contract Documents forming this Contract, including the Contractor Agreement and the General Provisions and the exhibits incorporated by reference therein, contain all the terms and conditions agreed upon by the Parties, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties (except to the extent specifically set forth herein). No other prior or contemporaneous agreements, covenants, representations or warranties, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any Party or to vary any of the terms contained in this Contract.

**10.04 No Joint Venture.**

The Parties do not intend to create, and nothing contained in this Contract shall be construed as creating, a joint venture arrangement or partnership between the City and Contractor with respect to the Work.

**10.05 No Third-Party Beneficiaries.**

With the exception of the remedy provided to third party beneficiaries by Article 9, nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights, remedies, or other benefits, including but not limited to third-party beneficiary rights, under or by reason of this Contract. This Contract shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of this Contract.

**10.06 Counterparts.**

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

**10.07 Severability and Partial Invalidity.**

The provisions of this Contract shall be severable. If any provision of this Contract or the application thereof for any reason or in any circumstance shall to any extent be held to be invalid or unenforceable, the remaining provisions of this Contract and the application of such provision to Persons, or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

**10.08 Survival.**

Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Contract shall survive the expiration or earlier termination of this Contract, along with the following: Contractor's representations, warranties and covenants set forth in Article 9 (Additional Representations and Covenants of Contractor Relating to Certain Applicable Laws) above; and Contractor's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section 8.04 (Indemnification) above.

**10.09 Dispute Resolution.**

(1) In the event a dispute arises between the Parties regarding the application or interpretation of any provision of this Contract, the aggrieved Party shall promptly give notice in writing to the other Party invoking the provisions of this Section and the Parties shall negotiate in good faith and attempt to resolve such dispute. If the Parties fail to resolve the dispute within thirty (30) days after delivery of such notice, each Party shall have the right to require, by written notice to the other Party containing a brief description of the dispute, that each Party nominate and have a senior officer of its management meet with the other Party's nominated senior officers at a City office or at any other mutually agreed location, within fifteen (15) business days of such request, in order to attempt to resolve the dispute.

(2) Should the Parties be unable to resolve the dispute to their mutual satisfaction within fifteen (15) days after such meeting, then, if the Parties in their respective discretion so agree, the Parties may submit to non-binding mediation on terms to be mutually agreed, in which event any applicable statute of limitations shall be tolled. The mediation shall be conducted in the City of Philadelphia. Each Party shall pay its own expenses of mediation. The fees of, and authorized expenses incurred by, the Mediator shall be equally divided between the Parties. The Mediator shall be an attorney or other professional mutually acceptable to the Parties who has no prior, current, or on-going relationship to either Party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the Parties reach agreement with respect to the disputed matter or one Party determines in its sole discretion that its interests are not being served by the mediation.

(3) In the event that the Parties do not agree to proceed to such mediation or in the event and to the extent such dispute remains unresolved following any such mediation, each Party shall have the right to pursue any and all remedies available to it.

(4) During the process described in this Section neither Party may suspend or terminate the performance of its obligations under the Contract.

**10.10 Interpretation of Certain Words.**

Whenever in this Agreement, the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words or phrases of like import are used, it shall be understood that

the order, direction, requirements, permission, or allowance of the City is intended only to the extent of judging compliance with the terms of this Agreement. None of these terms shall imply the City has any authority or responsibility for supervision of Contractor's forces or operations, such supervision and the sole responsibility therefore being strictly reserved solely to Contractor. Similarly, the words "approved," "reasonable," "suitable," "acceptable," "proper," "satisfactory," or words of like effect and import, unless otherwise provided, shall mean approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of the City, subject to limitation as provided in the preceding sentence.

**10.11 Headings.**

The titles, captions or headings of Articles, Sections and Exhibits or schedules in this Contract are inserted for convenience of reference only; do not in any way define, limit, describe or amplify the provisions of this Contract or the scope or intent of the provisions, and are not a part of this Contract.

**10.12 Oral Statements Not Binding; Amendments**

The written terms and provisions of this Agreement shall supersede all oral statements of any representatives of the parties. Oral statements shall not be effective or be construed as being a part of this Agreement. This Agreement shall not be changed or modified except as specifically provided herein or by a duly executed written amendment between the City and Contractor.

**10.13 Statutes and Other Citations.**

All statutory or other citations of law referenced in the Contract shall refer to the statute or citation referenced, as it may be amended or superseded from time to time.

**10.14 Days.**

Any references to a number of days in this Contract shall mean calendar days unless this Contract specifies business days.

**10.15 Forum Selection Clause; Consent to Jurisdiction.**

The Parties irrevocably consent and agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two (2) forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums on grounds of venue or *forum non conveniens*, and the Parties expressly consent to the jurisdiction and venue of these two (2) forums. The Parties further agree that service of original process in any such

lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Section 5.04 of this Agreement.

**10.16 Waiver of Jury Trial.**

Contractor hereby waives trial by jury in any legal proceeding in which the City is a party and which involves, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to this Contract or the relationship created or evidenced hereby. This provision is a material consideration upon which the City relied in entering into this Contract.

**10.17 Notices.**

All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under this Contract shall be in writing and shall be deemed to have been duly made (a) when received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (*e.g.*, Federal Express or United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile; and (d) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested. In each case notices shall be sent to the addresses set forth in Section 5.04 of this Agreement.

*[Remainder of page is intentionally blank, signatures to follow]*

**IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first above written.**

**THE CITY OF PHILADELPHIA,**  
acting by and through its  
Department of Streets

**THE CITY OF PHILADELPHIA,**  
acting by and through its  
Procurement Department

BY: \_\_\_\_\_  
Carlton Williams  
Streets Commissioner

BY: \_\_\_\_\_  
Trevor Day  
Procurement Commissioner

APPROVED AS TO FORM:  
Marcel S. Pratt  
City Solicitor

BY: \_\_\_\_\_  
J. Barry Davis  
Chief Deputy City Solicitor

**CONTRACTOR**

BY: \_\_\_\_\_  
PRESIDENT/VICE PRESIDENT

BY: \_\_\_\_\_  
SECRETARY/TREASURER

SEAL

**EXHIBIT A**  
**PERFORMANCE BOND**

**EXHIBIT B**  
**ECONOMIC OPPORTUNITY PLAN**



City of Philadelphia  
Economic Opportunity Plan

**\*See Attachment Appendix  
(B1) EOP Philadelphia for  
Covanta Detailed Response**

[Municipal Waste Processing and Disposal for the City of Philadelphia]

Introduction, Definitions and Diversity Practices

A. Chapter 17-1600 of The Philadelphia Code requires the development and implementation of "Economic Opportunity Plan(s)" for certain classes of contracts and covered projects as defined in Section 17-1601. This Economic Opportunity Plan ("Plan") memorializes the Contractor's "Best and Good Faith Efforts" to provide meaningful and representative opportunities for Minority Business Enterprises ("MBEs"), Woman Business Enterprises ("WBEs") and Disabled Business Enterprises ("DSBEs") (collectively, "M/W/DSBEs" which also includes firms designated as Disadvantaged Business Enterprises or "DBEs"<sup>1</sup>) and employ an appropriately diverse workforce in [Waste Processing and Disposal] ("Project"). The term "Best and Good Faith Efforts," the sufficiency of which shall be in the sole determination of the City, means: a Contractor's efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives of Chapter 17-1600 within this project. Best and Good Faith Efforts are rebuttably presumed met, when a Contractor makes commitments and causes its professional services providers and contractors retained by Contractor (collectively, the "Participants" and each a "Participant") to make commitments within the M/W/DSBE Participation Ranges established for this Project and employ a diverse workforce as enumerated herein.

Any contract resulting from this RFP is subject to the Plan requirements as described in Section 17-1603 (1). Accordingly, by submission of this Plan, a responsive and responsible Contractor makes a legally binding commitment to abide by the provisions of this Plan which include its commitment to exercise its Best and Good Faith Efforts throughout the Project and its commitment to cause its Participants to use their Best and Good Faith Efforts to provide subcontracting opportunities for M/W/DSBEs in all phases of the Project and to employ a diverse workforce. This Plan expressly applies to all contracts awarded in connection with the Project. The objectives set forth in this Plan shall be incorporated in all Contractor requests for proposals, bids and solicitations and communicated to all Participant levels.

B. For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by the City of Philadelphia through its Office of Economic Opportunity ("OEO"). Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency<sup>2</sup> or identified in the OEO Registry will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at [www.phila.gov/oEO/directory](http://www.phila.gov/oEO/directory). If Contractor is certified by an approved certifying agency, a copy of that certification should be furnished with the proposal.

C. Contractor is required to submit a statement summarizing current and past practices relating to its diversity practices ("Diversity Practices Statement"). This statement shall identify and describe examples

<sup>1</sup> "DBE" or "Disadvantaged Business Enterprise" means a socially and economically disadvantaged minority or woman owned business that is certified under 49 C.F.R. Part 26. If applicant makes solicitation(s) and commitment(s) with a DBE, applicant shall indicate which category, MBE or WBE, is submitted for counting.

<sup>2</sup>A list of "OEO approved certifying agencies" can be found at [www.phila.gov/oEO](http://www.phila.gov/oEO)

of processes used to develop diversity at all levels of Contractor's organization including, but not limited to, board and managerial positions. This Diversity Practices Statement should also summarize Contractor's strategic business plans specific to its current or past practices of M/W/DSBE utilization on its government and non-government projects and procurement activities. The Statement shall specifically identify, for the last three years preceding the execution of this EOP (or such greater period of time as may have been set forth in the record retention requirement of an applicable EOP), all City contracts and financial assistance containing an EOP obligating Contractor and any of Contractor's "related corporate entities." "Related corporate entities" shall mean any business entity controlled by a person or business with a majority interest in the Contractor's business. For these identified contracts containing an EOP, Contractor shall enumerate the levels of M/W/DSBE participation and diverse workforce attainment achieved, comparing Contractor's achievement to the participation ranges and workforce goals contained in each identified EOP. Attachment "A" to this Plan is provided for this purpose and should be submitted with Contractor's proposal although the City reserves the right to request it at any time prior to contract award.

D. Contractor also agrees to identify in this Plan, any "Equity Ownership" which shall mean the percentage of beneficial ownership in the Contractor's firm or development team that is held by minority persons, women and disabled persons. In the event Equity Ownership is identified, Contractor agrees to abide by the reporting requirements enumerated in Section 17-1603 (1)(g)(.3).

E. Contractor and its Participant(s) hereby verify that all information submitted to the City including without limitation, the Plan and all forms and attachments thereto, are true and correct and are notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities. Contractor and its Participants also acknowledge that if awarded a contract/subcontract resulting from this RFP, it is a felony in the third degree under 18 Pa.C.S. Section 4107.2 (a)(4) if, in the course of the contract/subcontract, Contractor and/or its Participant(s) fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

Goals

A. M/W/DSBE Participation Ranges

As a benchmark for the expression of Best and Good Faith Efforts to provide meaningful and representative opportunities for M/W/DSBEs in the contract, the following participation ranges have been developed. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable on this Project through the exercise of Best and Good Faith Efforts. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the size and scope of the project and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract:

	MBE Ranges		WBE Ranges
[Waste Processing and Disposal]	15%-17%	And	10%-15%

EOP *[Wastes Processing and Disposal]*  
 City of Philadelphia/OEO/City Council  
 2018

## B. Workforce Diversity Goals and Requirements

Contractor and its Participants agree to exhaust their Best and Good Faith Efforts to employ minority persons, by race and ethnicity, and females in its workforce of apprentices and journeypersons at the following levels<sup>3</sup>:

African American Journeypersons – 22% of all journey hours worked across all trades

Asian Journeypersons – 3% of all journey hours worked across all trades

Hispanic Journeypersons – 15% of all journey hours worked across all trades

Female Journeypersons – 5% of all journey hours worked across all trades

Minority Apprentices – 50% of all hours worked by all apprentices

Female Apprentices – 5% of all hours worked by all apprentices

## III. Contractor Responsiveness and Responsibility

A. Contractor shall identify all its M/W/DSBE commitments on the form entitled, "M/W/DSBE Solicitation For Participation and Commitment Form." The Contractor's identified commitment to use an M/W/DSBE on this form constitutes a representation by Contractor, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Contractor has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by Contractor further represents that if Contractor is awarded the contract, Contractor will subcontract with the listed firm(s) for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, Contractor shall apply the standard mathematical rules in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern. Contractor is to maintain the M/W/DSBE percentage commitments throughout the term of the contract which shall apply to the total amount of the contract and any additional increases. In the event the Contractor's contract is increased by change order and/or modification, or amendment, it shall be the responsibility of the Contractor to apply its Best and Good Faith Efforts to the amended amount in order to maintain any participation ranges committed to on the total dollar amount of the contract at the time of contract completion.

### 1. Commercially Acceptable Function

A contractor that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort in that regard only if its M/W/DSBE subcontractor performs a commercially acceptable function ("CAF"). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing

<sup>3</sup> These goals have been informed by the City of Philadelphia Fiscal Year 2017 Economic Opportunity Plan Employment Composition Analysis. Contractor and its Participants are responsible for maintaining records that demonstrate an appropriately diverse workforce for this Project which may include customary hourly wage records.

and supervising the work involved; M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees. The City may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF and in determining the amount of credit the Contractor receives towards the participation ranges. For example, a contractor using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

B. Upon award, letters of intent, quotations, and any other accompanying documents regarding commitments with M/W/DSBEs, including the M/W/DSBE Participation and Commitment Form, become part of the contract. M/W/DSBE commitments are to be memorialized in a written subcontract agreement and are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). Any change in commitment, including but not limited to termination of the subcontract, reduction in the scope of committed work, substitutions for the listed firms, changes or reductions in the listed dollar/percentage amounts, must be pre-approved in writing by OEO. Throughout the term of the contract, Contractor is required to continue its Best and Good Faith Efforts.

C. In the event Contractor does not identify on the M/W/DSBE Participation and Commitment Form that it has made M/W/DSBE commitments within the participation ranges established for this Contract, Contractor must complete and submit a *Documentation of Best and Good Faith Efforts Form* ("BGFE Form"), documenting its solicitations and any commitments with M/W/DSBEs, and detailing any efforts made to include M/W/DSBEs in the contract. The submission of the BGFE Form is an element of proposal responsiveness and failure to include this form may result in the rejection of the Proposal. The BGFE Form must include at a minimum, certification and documentary evidence that the following actions were taken:

1. Solicitation directed to M/W/DSBEs registered with OEO and qualified M/W/DSBEs certified by agencies approved by OEO. Contractor must provide a list of all certification directories used for soliciting participation for this Contract. Contractor must determine with reasonable certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without follow up, is not acceptable; and

2. Contractor provided interested M/W/DSBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation; and

3. Contractor negotiated in good faith with interested M/W/DSBEs. A Contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and would take a firm's price and capabilities as well as the objectives of the Plan into consideration; and

4. Documentation of the following:

- i. Any commitments to use M/W/DSBEs in its bid for subcontracted services and materials supply even when Bidder would otherwise prefer to self-perform/supply these items; and
- ii. Correspondence between the Bidder and any M/W/DSBE(s) related to this Bid; and
- iii. Attendance logs and/or records of any scheduled pre-bid meeting; and

5. Certification and evidence that the following actions were taken or documentation of the following, or an explanation why these actions were not taken or why documentation does not exist:

- i. Any arms length business assistance provided to interested M/W/DSBEs which may include access/introduction to major manufacturer/suppliers, lines of credit and union halls; and
- ii. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that are owned by M/W/DSBEs and/or focus on M/W/DSBEs; and
- iii. Telephone logs of communications related to this Bid; and
- iv. Notification of and access to bid documents at the Bidder's office or other office locations for open and timely review; and
- v. Bidder sought assistance from jobs training and employment referral agencies such as the Urban Affairs Coalition, PA CareerLink Philadelphia, Philadelphia OIC and Philadelphia Works to identify candidates for employment and to perform employment outreach; and
- vi. Bidder published its policy of nondiscrimination in the hiring, retention and promotion of employees; and
- vii. Any agreement with an apprenticeship or training program that targets the employment of minority persons, disabled persons and women.

IV. Evaluation of Responsiveness and Responsibility

A. Evaluation and Determination

1. The City, acting through its OEO, will evaluate the responsiveness of the Plan to these requirements. OEO reserves the right to request further documentation and/or clarifying information at any time prior to the award of the contract which may result in Contractor's amendment of its M/W/DSBE Participation and Commitment Form or BGFE Form.

B. Administrative Reconsideration

- 1. If the OEO determines that the Contractor has not made sufficient Best and

Good Faith Efforts, the Contractor will be notified that its proposal is nonresponsive and may file a written appeal with OEO within forty-eight (48) hours of the date of notification. The decision of OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Chief Operating Officer of the Commerce Department or his designee whose decision shall be final. If it is determined that the Contractor did not make sufficient Best and Good Faith Efforts, its Proposal will be rejected.

2. Notwithstanding compliance with the requirements set forth herein, the City reserves the right to reject any or all proposals as deemed in the best interest of the City.

#### V. Compliance and Monitoring of Best and Good Faith Efforts

A. The Contractor shall file a hard copy of this Plan, as certified below by OEO, with the Chief Clerk of City Council within fifteen (15) days of receiving a Notice of Award. The Plan shall be filed with:

Michael Decker, Chief Clerk of City Council  
Room 402 City Hall  
Philadelphia, Pennsylvania 19107

The Contractor also agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, within the time limits prescribed by OEO, all documentation which may be requested by OEO relative to the awarded contract, including the items described below. The Contractor must provide as required and maintain the following contract documentation for a period of three (3) years following acceptance of final payment under the contract:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation;
- Telephone logs and correspondence relating to M/W/DSBE commitments; and
- Records relating to Workforce Diversity.

#### B. Prompt Payment of M/W/DSBEs

The Contractor shall within five (5) business days after receipt of a payment from the City for work performed under the contract, deliver to its M/W/DSBE subcontractors their proportionate share of such payment for work performed (including the supply of materials). In connection with payment of its M/W/DSBE subcontractors, the Contractor agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

Each month of the contract term and at the conclusion of the contract, the Contractor shall provide to the OEO documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the Plan.

### C. Oversight Committee

1. For this project, the City, in its sole discretion, may establish a Project Oversight Committee consisting of representatives from the Contractor's company and the City ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.
2. If a Project Oversight Committee is established, the City will convene meetings of the Committee no later than one (1) month after issuance of the Notice To Proceed.

### VI. Remedies and Penalties for Non-Compliance

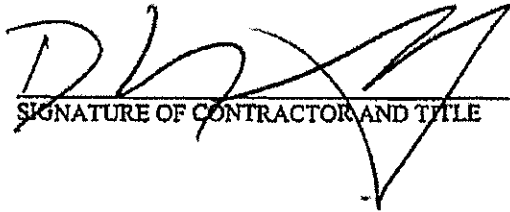
A. The Contractor agrees that its compliance with the requirements of the Plan is material to the contract. Any failure to comply with these requirements may constitute a substantial breach of the contract. It is further agreed and understood that in the event the City determines that the Contractor hereunder has failed to comply with these requirements the City may, in addition to remedies reserved under Section 17-1605 of The Philadelphia Code, any other rights and remedies the City may have under the contract, or any bond filed in connection therewith or at law or in equity, exercise one or more of the remedies below, which shall be deemed cumulative and concurrent:

- Withhold payment(s) or any part thereof until corrective action is taken.
- Terminate the contract, in whole or in part.
- Suspend/Debar the Contractor from proposing on and/or participating in any future City contracts for a period of up to three (3) years.
- Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: The "total dollar amount of the contract" shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the City.)

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with the Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors. No privity of contract exists between the City and the M/W/DSBE subcontractor identified in the contract. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with subcontracted services under any law or Executive Order or by any reason of the Contract except such rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

DEREK VEENHOF EVP  
PRINT NAME OF CONTRACTOR AND TITLE

FEB 21/19  
DATE

 EVP  
SIGNATURE OF CONTRACTOR AND TITLE

FEB 21/19  
DATE

\_\_\_\_\_  
IOLA HARPER, EXECUTIVE DIRECTOR, OFFICE OF ECONOMIC OPPORTUNITY<sup>4</sup> DATE

[See Forms on following pages; these Forms, must be submitted by Contractor]

<sup>4</sup> Pursuant to Section 17-1603 (2) of The Philadelphia Code, the representative of the City of Philadelphia's Office of Economic Opportunity, the "certifying agency", certifies that the contents of this Plan are in compliance with Chapter 17-1600.



## STATEMENT OF DIVERSITY PRACTICES, POLICIES AND PAST ACHIEVEMENTS

*In compliance with Chapter 17-1600 of the Philadelphia Code, Section 17-1603(1) entitled "Equal Opportunity Plan: Contents," the Plan shall contain a statement from the contractor, developer and/or recipient of financial assistance, which shall include any of their related corporate entities<sup>5</sup>, summarizing past practices, and identifying and describing examples of processes used to develop diversity at any/all levels of its organization including, but not limited to, Board and managerial positions. This statement shall summarize strategic business plans specific to current or past practices of M/W/DSBE utilization on government and non-government projects and procurement. This statement must specifically identify past City of Philadelphia EOPs and goal attainment. The following should be included:*

1. Describe employment and recruitment policies used to achieve diversity in your workforce.  
**See Attachment: Appendix B(1) EOP Philadelphia**
2. Provide the race, gender, and residential (local) status of your
  - a) Board of Directors
  - b) Management
  - c) General Workforce**See Attachment: Appendix B(1) EOP Philadelphia**
3. Identify your organization's methods of solicitation and utilization of Minority, Woman and Disabled Businesses (M/W/DSBEs). Please be specific in describing outreach and any procurement policies that are focused on creating or sustaining business relationships with M/W/DSBEs.  
**See Attachment: Appendix B(1) EOP Philadelphia**
4. What percentage of your company's total spend with vendors and suppliers is attributable to M/W/DSBEs? Please include a list of the largest M/W/DSBEs used by your organization in the last 12 months. **Statistics are Related to Covanta 58th St T/S for Philadelphia Contract**
  - a) Identify the type of goods or services purchased **Transportation Companies**
  - b) Amount of the contract. **2018 - Total Paid to MBE/WBE Transporters \$2,499,881.00**
  - c) Indicate if any of these M/W/DSBEs are listed in the City of Philadelphia's Office of Economic Opportunity Registry. **Yes both United Trucking Inc & Caribbean Operators Inc**
  - d) Are these companies certified as M/W/DSBEs? Do you rely on any particular certifying agency? **Yes they are both Certified and Registered - No particular Agency**
  - e) If there is no previous M/W/DSBE utilization, the Plan shall contain a statement that explains the reason for the lack of M/W/DSBE participation in past contract(s) or project(s). **For Additional Information on Complete CSS Program**  
**See Attachment: Appendix B(1) EOP Philadelphia**
5. Describe any initiatives made by your organization to increase investment and promote equity ownership by minorities and women.  
**See Attachment: Appendix B(1) EOP Philadelphia**

<sup>5</sup> E.g., Developer may have been a signatory to an EOP, under a different name in the past three years.

6. Identify, for at least the past three years, each EOP that you or your related corporate entity has held with the City; show M/W/DSBE participation and Workforce Diversity under the EOP contrasting actual achievement with the goals contained in the EOP:

Name of EOP Project: City of Philadelphia 'Streets Dept' Waste Disposal Contract (58th St T/S Alternate #1)

M/W/DSBE Ranges 10-15% WBE 30-35% MBE Actual Achievement 50% MBE - 50% WBE

Workforce Goals 50% Total Workforce Actual Achievement 8 Total Employees  
2 African American  
2 Hispanic  
4 Caucasian  
50% Goal Achieved  
13% Woman Achieved

ANTIDISCRIMINATION POLICY SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM  
 Minority (MBE), Woman (WBE), Disabled (DBE) and Disadvantaged (DBE) Business Enterprises

DEPARTMENT OF COMMERCE  
 OFFICE OF ECONOMIC OPPORTUNITY (OEO)

Bid Number or Proposal Title: B1904538 Name of Bidder/Proposer: Columbia Sustainable Solutions, LLC Bid/RFP Opening Date: \_\_\_\_\_

List below ALL MBE/WBE/DBE/DBES that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.

Company Name	Address	City/State/Zip	Telephone Number	Fax Number	OEO REGISTRY #	CERTIFYING AGENCY	Work or Supply Effort to be Performed	Data Solicited		Commitment Made		Give Reason(s) if No Commitment
								By Phone	By Mail	Yes (as % per line)	NO	
<input checked="" type="checkbox"/> <b>United Trucking Inc</b>	Address 46 South Maple Ave	Northampton, NJ 08853					Waste Hauling	5/9/19		<input checked="" type="checkbox"/> 15.2		
<input checked="" type="checkbox"/> <b>Garl Kosch</b>	Address 2900 Orchard St. Building 10A	Suite 10A Philadelphia, PA 19137	(215) 821-3316	(857) 432-1418			Waste Hauling	5/9/19		<input checked="" type="checkbox"/> 12.04		
<input checked="" type="checkbox"/> <b>Operators Inc</b>	Address 10A Philadelphia, PA 19137		(215) 821-3316	(857) 432-1418			Waste Hauling	5/9/19		<input checked="" type="checkbox"/> 15.2		
* If a Bidder/Proposer makes solicitation(s) and commitment(s) with a DBE, Bidder/Proposer shall indicate which class type, M-DBE or W-DBE, is submitted for credit.												

1. If Bidder/Proposer makes solicitation(s) and commitment(s) with a DBE, Bidder/Proposer shall indicate which class type, M-DBE or W-DBE, is submitted for credit.  
 2. Attach all quotations to this form.  
 09/2010

**EXHIBIT C**

**DESIGNATED TRANSFER STATIONS AND DISPOSAL FACILITIES**

**I. Designated Transfer Station(s)**

- (1) 58<sup>th</sup> Street Transfer Station  
2209 South 58<sup>th</sup> Street  
Philadelphia, PA 19143
  
- (2) ECOvanta Facility  
2209 South 58<sup>th</sup> Street  
Philadelphia, PA 19143

**II. Designated Disposal Facility(ies)**

Contractor has designated the following Disposal Facility(ies) for the disposal of Municipal Solid Waste under this Agreement. Upon incorporation of a Disposal Facility listed below into the City's Act 101 Plan, such Disposal Facility shall become a Designated Disposal Facility.

- (1) Plymouth Renewable Energy Facility  
1155 Conshohocken Road  
Conshohocken, PA 19428
  
- (2) Delaware Valley Resource Recovery Facility  
10 Highland Avenue  
Chester, PA 19103

Alternate Designated Disposal Facilities for 58th St Transfer Station

Covanta Lancaster  
1911 River Rd  
Bainbridge, PA 17502

Covanta Camden  
600 Morgan St  
Camden, NJ 08104

Conestoga Landfill  
420 Quarry Road  
Morgantown, PA 19543

Rolling Hills Landfill  
583 Longview Road  
Boyertown, PA 19512

**EXHIBIT D**

**MAXIMUM DAILY QUANTITY**

**Maximum Daily Quantity in Tons Per Day (TPD):**

<u>Name</u>	<u>Maximum Daily Quantity</u>
1. 58 <sup>th</sup> Street Transfer Station	665 tons per day
2. Delaware Valley Resource Recovery Facility Or Plymouth Renewable Energy Facility	270 tons per day

**EXHIBIT E**

**DISPOSAL FEES**

**Disposal Fees for Municipal Solid Waste**

Fiscal Year 2019 Disposal Fee shall be \$ 65.50 per ton for the first 120,000 tons per year of Municipal Solid Waste accepted at the 58<sup>th</sup> Street Transfer Facility and \$64.00 per ton for each ton delivered above 120,000 tons per year.

Fiscal Year 2019 Disposal Fee shall be \$58.50 per ton for direct delivery of Municipal Solid Waste by Transfer Trailer to the Delaware Valley Resource Recovery Facility.

Fiscal Year 2019 Disposal Fee shall be \$57.00 per ton for direct delivery of Municipal Solid Waste by Compactor Truck to the Delaware Valley Resource Recovery Facility.

Fiscal Year 2019 Disposal Fee shall be \$63.50 per ton for direct delivery of Municipal Solid Waste by Transfer Trailer to the Plymouth Renewable Energy Facility.

Fiscal Year 2019 Disposal Fee shall be \$59.00 per ton for direct delivery of Municipal Solid Waste by Compactor Truck to the Plymouth Renewable Energy Facility.

**Disposal Fees for Residual Waste**

Fiscal Year 2019 Disposal Fee shall be \$65.50 per ton for direct delivery of Residual Waste to the Plymouth Renewable Energy Facility and Delaware Valley Resource Recovery Facility. If Residual Waste is accepted for transportation by Covanta at a location within the City but not at a Designated Transfer Station, the Disposal Fee will be \$65.50 per ton.

**Escalation Rates**

Fiscal Year 2019-2025 Disposal Fees shall be escalated for each year, over the prior Fiscal Year's rate, using the following formula:

Using the month of April as the base index for the Consumer Price Index (CPI) All Urban Consumers – US City average.

Acceptance of Municipal Solid Waste will be either at the Plymouth Renewable Energy Facility and Delaware Valley Resource Recovery Facility.

For Residual Waste delivered to 58<sup>th</sup> Street Transfer Station, the material must meet the residual waste requirements of both the PADEP and the respective Site Permits.

Note:

*The entire Disposal Fee for each Ton of City Municipal Solid Waste delivered to the Contractor's Transfer Station(s) or Disposal Facility(ies) shall be the amount stated above which*

## **Exhibit A**

*includes the applicable Act 101 of 1988 Recycling Fee and Act 90 of 2002 Growing Greener Fee. If these fees are changed or eliminated the Disposal Fee shall be amended.*

**EXHIBIT F**

**PERMITS FOR TRANSFER STATIONS AND DISPOSAL FACILITIES**



**EXHIBIT G**  
**GUARANTY**

**EXHIBIT H**

**RULES AND REGULATIONS FOR DESIGNATED TRANSFER STATIONS,  
DISPOSAL FACILITIES, AND E-WASTE FACILITIES**

The Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall be open to accept delivery of Municipal Solid Waste as follows:

- (1) For general disposal:
  - a. Monday through Friday and on Saturdays following a Holiday from 7:00 a.m. to 6:00 p.m.
  - b. Clean Block Program deliveries on Spring and Summer Saturdays from 6:00 a.m. to 6:00 p.m., provided 24 hours' notice is given by the City.
- (2) For limited disposal at Designated Transfer Stations, provided notice is given before 4:00 p.m. on the previous day:
  - a. From 10:00 p.m. to 6:00 a.m. during weekdays, provided approval has been received from PA DEP.
  - b. Saturdays from 6:30 a.m. to 7:30 p.m.
  - c. Sundays from 10:00 a.m. to 6:00 p.m. during emergency situations or when needed (e.g. major snowstorm, natural disaster, labor disruption); provided approval has been received from PA DEP.

The Designated E-Waste Facility(ies) shall be open to accept delivery of E-Waste as follows:

- (1) Monday through Friday, 7:00 a.m. to 3:00 p.m.
- (2) Saturdays, upon request.

**EXHIBIT I**

**E-WASTE SCOPE OF WORK**

This Exhibit represents the Scope of Work for the collection and disposal of Electronic Waste or E-Waste. All terms and conditions of the Agreement apply to this Scope of Work and are to be interpreted as defined in the Agreement unless otherwise specified herein.

**1. Acceptable E-Waste Materials.**

Materials acceptable for E-Waste disposal are identified as follows:

- Televisions
- Monitors
- Computer/Laptops
- Peripheral Devices
- Electronic Toys & Games
- Answering Machines
- Audio Equipment
- Mp3 Players
- Cameras
- Cassette Players/Recorders
- Printers
- Projectors
- Cell Phones/Telephones
- Record Players
- Calculators
- Radios/Stereos
- Typewriters
- Computer Mice/Keyboards
- VCR/DVD/Blu-Ray Players
- Copiers/Fax Machines/Printers
- Video Cameras
- Diagnostic/Sensing/Control Equipment
- Household electrical items including but not limited to: toasters, microwaves, blenders, coffee makers, blow dryers, etc.
- Other items as agreed upon

Unacceptable E-Waste shall mean E-Waste not processed in the normal course of business by the Contractor, including electrical devices containing radioactive material such as smoke detectors, fire extinguishers, liquids, and Freon-containing devices.

**2. E-Waste Disposal Fees.**

The disposal rates for managing E-Waste shall be as follows:

	<b>City of Philadelphia Delivers E-Waste to ECOVanta</b>	<b>ECOVanta Arranges Roll Offs</b>	<b>ECOVanta Collects and Hauls</b>
Contract Year One	\$0.31/lb	\$0.35/lb	\$0.37/lb
Contract Year Two	\$0.32/lb	\$0.36/lb	\$0.38/lb
Option Year One	\$0.35/lb	\$0.39/lb	\$0.41/lb
Option Year Two	\$0.36/lb	\$0.40/lb	\$0.42/lb
Option Year Three	\$0.37/lb	\$0.41/lb	\$0.43/lb

Payment and invoicing of E-Waste disposal fees to Contractor shall be substantially the same as those procedures and terms set forth in Article 4 of the Agreement.

**3. E-Waste Collection and Delivery**

Under this Scope of Work, E-Waste may be delivered by the City to Contractor's ECOvanta E-Waste recycling facility, which shall be Contractor's Designated E-Waste Facility. The Designated E-Waste Facility is co-located with Contractor's Designated Transfer Station at 2209 South 58<sup>th</sup> Street, Philadelphia, PA 19143.

E-Waste may also be collected by Contractor from the City's six (6) Sanitation Convenience Centers. Upon the opening of additional Sanitation Convenience Centers, those additional collection locations shall be included by reference in this Scope of Work.

**4. Quantity of E-Waste.**

There is no minimum daily quantity of E-Waste guaranteed under this Agreement. Contractor has an annual volume availability of 2,000,000 lbs of E-Waste at the Designated E-Waste Facility.

**5. E-Waste Collection and Disposal Rights and Obligations.**

(1) At all times during the E-Waste Term of this Agreement, Contractor shall own, or control through contract or otherwise, the Designated E-Waste Facility(ies) and represents, warrants and agrees that:

(a) the Designated E-Waste Facility(ies) shall at all times during the Term of this E-Waste Agreement be properly zoned and permitted to allow the Designated E-Waste Facility (ies) to be used for the purposes contemplated by this Scope of Work and the MSW Agreement and be in compliance with all Applicable Laws; or in the case of a Designated E-Waste Facility(ies) that requires approval of Permits during the E-Waste Term, Contractor shall provide reasonable assurances that the Designated E-Waste Facility(ies) will have necessary Permits for the E-Waste Term;

(b) Contractor has sufficient Electronic Waste transfer and disposal capacity available through reservation, contract or otherwise for the sole benefit of the City in the quantities identified in this Scope of Work throughout the E-Waste Term; or in the case of a Designated E-Waste Facility(ies) that requires Permits approvals to accept Electronic Waste for transfer and/or disposal for the E-Waste Term, Contractor shall provide reasonable assurances that the Designated E-Waste Facility(ies) will have capacity for the Term;

(c) all access roadways and structures subject to vehicular traffic are designed for AASHTO H-20 loading; all roadways are a minimum of twenty-four (24) feet in width; and sufficient queuing space is available within the confines of the Designated Facility for all vehicles awaiting tipping;

(d) an accurate and functioning scale is present at each location where responsibility for the E-Waste transfers from the City to the Contractor;

(e) the scales must incorporate a fully automated, computerized weighing system,

(f) at the Designated E-Waste Facility Contractor shall provide an adequate number of clean restrooms for both its employees and City personnel; and

(g) the Designated Facility(ies) shall be equipped with adequate bumper logs to prevent vehicles from backing into disposal pits. Bumper logs shall be designed and placed to prevent damage to unloading vehicles and to facilitate efficient unloading.

(2) On an annual basis, thirty (30) Days prior to the commencement of each Agreement Year, Contractor shall certify to the City that adequate capacity remains at the Designated E-Waste Facility(ies) to meet Contractor's obligations hereunder.

**6. Excess E-Waste; Unacceptable E-Waste.**

(1) Contractor may not reject any delivery of Electronic Waste by or on behalf of the City, unless the delivery occurs outside of the normal operating hours.

(2) If the City, or any person on behalf of the City, delivers Unacceptable E-Waste to the Designated E-Waste Facility(ies), the City shall be promptly notified of such delivery. The City may reload and remove the Unacceptable E-Waste or the City may request Contractor to dispose of such Unacceptable E-Waste. The City shall pay the actual, reasonable and necessary costs incurred by Contractor with respect to the proper disposal of such Unacceptable E-Waste. In no event shall the City be responsible for the handling and disposal costs of any Unacceptable E-Waste Waste delivered to the Designated Facility(ies) unless it can be clearly demonstrated that such waste was delivered by the City or caused to be delivered by the City.

(3) Nothing in this Scope of Work shall be construed to mean that the City guarantees the composition or quantity of any Electronic Waste as it pertains to the proportion of any material contained therein. The obligations of Contractor hereunder shall not be diminished due to any variation in the composition of any Electronic Waste which is picked up by the Contractor or delivered to the Designated Transfer Point(s) and/or Designated E-Waste Facility(ies).

(4) Any E-Waste that is delivered to the Designated Facility(ies) and/or Processing Facility(ies) by or on behalf of the City that is rejected without a permitted rejection right under this Agreement shall constitute "Wrongfully Rejected E-Waste". Such Wrongfully Rejected Waste shall be transported to and disposed of at an alternate location provided by Contractor or, if Contractor fails to provide an alternate location, to a site determined by the City. The City shall use reasonable efforts to transport and dispose of any Wrongfully Rejected E-Waste in the most economical manner practicable, consistent with Applicable Laws and then current market conditions so as to mitigate the amount of damages payable by Contractor hereunder.

(5) Contractor shall pay the City as damages the actual cost incurred by the City for the transfer, waste processing, and marketing of Wrongfully Rejected E-Waste. The City shall deliver an invoice to Contractor promptly following determination of amounts due for Wrongfully Rejected E-Waste, and payment shall be due within thirty (30) Days of receipt of such invoice.

**7. Receipt of and Title to Electronic Waste.**

(1) Responsibility for and title to all E-Waste delivered or caused to be delivered by the City or picked up by the Contractor shall vest in Contractor at such time as the E-Waste is either (a) discharged from the City's delivering vehicle into the receiving spaces of the Designated E-Waste Facility(ies) or picked up by the Contractor at the City's Sanitation Convenience Centers. Contractor shall have the right to designate the point of discharge within the Designated E-Waste Facility(ies) of each load of Electronic Waste, provided that such designation does not detain the delivery vehicles.

(2) At all times during the E-Waste Term of this Agreement, Contractor shall operate and maintain the Designated E-Waste Facility(ies) in a manner that will permit weighing, delivery and exiting of vehicles delivering E-Waste pursuant to this Agreement in not more than sixty (60) minutes.

(3) Title to Unacceptable E-Waste shall not vest with Contractor.

**8. Hauling of Electronic Waste by or for Contractor.**

(1) Any hauling of Electronic Waste by the Contractor shall be done with fully enclosed equipment so that the possibility of spilling or scattering is kept to a minimum. Should any of these occur, Contractor shall be responsible, at its sole cost and expense, for prompt and timely cleanup of any such materials.

(2) The Contractor is required to comply with all State licensing requirements for transfer vehicles.

(3) In the event of a spill or loss of payload at the City's Sanitation Convenience Centers and/or during transit to the Designated E-Waste Facility(ies), Contractor shall immediately arrange for the clean-up and transportation of the payload to the Designated E-Waste Facility(ies) at Contractor's sole cost and expense, shall pay any resulting fines, assessments, penalties and damages resulting therefrom, and shall indemnify and hold harmless the City from any liability in connection with the foregoing.

**9. Weighing Devices.**

(1) The number of pounds of E-Waste delivered to the Designated E-Waste Facility(ies) by or on behalf of the City shall be determined by either (1) obtaining an incoming and an outgoing weight for each delivery truck, roll-off container, or transfer vehicle on certified scales located at the Designated E-Waste Facility(ies) and, if necessary based on the proposed cost proposal, (2)

obtaining a net weight for each type of material delivered on each delivery truck, roll-off container, or transfer vehicle on certified scales located at the Designated E-Waste Facility(ies) and/or the Processing Facility(ies) after each delivery is sorted by material. The Contractor shall be required to have the weight scales certified at any time but no more often than once a quarter, or upon request of the City. The Contractor shall furnish evidence of a maintenance agreement for the scales providing quarterly inspection and service maintenance. All costs and expenses associated with the installation, inspection, certification, and maintenance of the weight scales shall be borne exclusively by the Contractor.

**10. E-Waste Disposal Reporting.**

(1) **Monthly Delivery Reports.** By the 10th Day of the month following a month where the Contractor is required to accept E-Waste, Contractor shall provide the City with a report of each of the previous Month's scale transactions at each scale at the Designated E-Waste Facility(ies) or for each vehicle load picked up in accordance with this Agreement. This report will include a monthly computer file in a DBF format or other format designated by the City containing the following information in a file structure acceptable to the City: (a) names of Designated E-Waste Facility(ies) and/or Sanitation Convenience Centers; (b) date; (c) time of arrival and departure in military time; (d) sequential ticket number; (e) commodity code; and (f) net weight of materials. With reasonable notice, the City may require that additional information be provided.

(2) **Monthly Compliance Reports.** In addition to any other reports required by any other provision of this Agreement, Contractor shall furnish to the City monthly written reports, together with such statements, documentary data or other information as the City may require, relative to any matter pertaining to Contractor's compliance with any provision of this Agreement. The data included in the detailed report shall be sufficiently detailed to facilitate analysis and shall be acceptable to the City. The monthly report shall include, without limitation, (a) any changes in the Designated Facility(ies) and/or the Processing Facility(ies) operating plans including anticipated outages scheduled for the next month, (b) quantity of Electronic Waste transported from the Designated Transfer Point(s) to the Designated Processing Facility(ies), and (c) quantity of Electronic Waste received at the Designated Facility(ies) and/or the Processing Facility(ies). The monthly report shall be submitted on the 20th Day of the month following the month for which the report is submitted.

(3) **Annual Reports.** Contractor shall submit to the City an annual report within sixty (60) Days following the end of each Agreement Year that incorporates a summary of monthly operations reports for the preceding Agreement Year.

(4) **Late or Inadequate Reports.** In the event that Contractor files a report required under this Agreement after the date that it is due or files an inadequate report (the adequacy or inadequacy of such report being in the sole discretion of the City), payment of all amounts due to Contractor for the period covered by the late or inadequate report may be deferred until all late or inadequate reports are submitted or corrected to the satisfaction of the City. The City shall retain the last payment due under this Agreement until Contractor has provided all reports required in this Section.

**11. Rules and Regulations.**

The rules and regulations applicable to this E-Waste Scope of Work will be substantially the same as those set forth in Section 3.12 of the Agreement.

**12. Event of Default.**

An Event of Default under this E-Waste Scope of Work shall mean a material breach of the Contractor's obligations or warranties hereunder. If said Event of Default continues for more than thirty (30) days after the City gives Contractor written notice thereof, the City may terminate the E-Waste Agreement. An Event of Default under this E-Waste Scope of Work shall only be an Event of Default as to the E-Waste portion of the Contract and shall not be an Event of Default under the Municipal Solid Waste Contract. Should the E-Waste portion of the Contract be terminated by the City following an Event of Default, said termination shall apply only to the E-Waste Scope of Work and not to the Municipal Solid Waste Contract.



**EXHIBIT J**

**ILLEGAL DUMPING & KEEP PHILLY BEAUTIFUL COP PROGRAMS**

To help the City of Philadelphia combat illegal dumping and to bolster educational programs and other initiatives the City deems appropriate, Covanta will offer to the City \$0.25 per ton for every ton that City delivers to the Covanta 58<sup>th</sup> Street Transfer Station or disposed directly by the City using trailers at Covanta Plymouth and/or Covanta Delaware Valley. Covanta will make Funds available on a quarterly basis for programs associated with this initiative, and the City will use the funds at their discretion into programs established and chosen by City.



Contract No. \_\_\_\_\_

**CITY OF PHILADELPHIA  
CONTRACT FOR MUNICIPAL WASTE PROCESSING AND DISPOSAL**

This Contract for Municipal Waste Processing and Disposal (the “Agreement” or the “Contract”) is made and entered into on the \_\_\_\_day of \_\_\_\_\_, 2019, by and between **THE CITY OF PHILADELPHIA**, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, acting through its **DEPARTMENT OF STREETS** (the “City”), and **WASTE MANAGEMENT OF PENNSYLVANIA, INC.** (the “Contractor”), a Delaware State corporation authorized to do business in the Commonwealth of Pennsylvania (together, the “Parties”).

**BACKGROUND**

A. The City desires to ensure the provision of services for the processing and disposal of municipal solid waste in a reliable, cost-effective and environmentally sound manner.

B. On January 24, 2019, the City, acting through its Procurement Department and the Department of Streets, issued a Request For Proposals (the “RFP”) for purchasing services for the processing and disposal of Municipal Solid Waste.

C. On February 22, 2019, Contractor submitted to the City a proposal in response to the RFP. Contractor is a successful proposer to the RFP.

D. Contractor has duly authorized its respective officials and officers to enter into and execute this Agreement.

E. The RFP is hereby incorporated by reference as if fully set forth herein. The City and Contractor hereby agree to be bound by all of the terms and conditions contained in the RFP.

**NOW, THEREFORE**, the parties, in consideration of the mutual covenants, considerations, and promises contained herein, incorporating the above Background, and agreeing to be legally bound by this Agreement, agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

**1.01 Definitions.**

Words, phrases, or other expressions used in this Agreement shall have the meanings as described below:

- 1) Act 101 Plan - The plan prepared by the City, and approved by the Commonwealth, in accordance with the provisions of the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. § 4000.101 et seq. The Act 101 Plan may be amended in accordance with established City procedure and Applicable Laws.
- 2) Affiliates - Any Person that controls, is controlled by, or is under common control with Contractor.
- 3) Agreement - This Agreement between the City and Contractor, and all Exhibits attached hereto.
- 4) Agreement Date - The date first set forth above.
- 5) Agreement Year - A twelve (12) month period commencing on July 1 and ending on June 30 during the Term of this Agreement.
- 6) Alternate Facility - A Transfer Station(s) and/or Disposal Facility(ies) utilized by the City during a period of time that Contractor is unable to fulfill its obligations for receipt and/or disposal of Municipal Solid Waste in accordance with this Agreement.
- 7) Applicable Laws and Government Approvals – The Permits and any statute, law, constitution, charter, ordinance, judgment, order, decree, rule, regulation, directive, standard, policy or similarly binding authority, which shall be enacted, adopted, promulgated, issued or enforced by a Governmental Body relating to the Contractor, the City, the Transfer Station(s) and/or Disposal Facility(ies), and this Agreement, including without limitation, the Act 101 Plan.
- 8) Change in Law – As defined in Section 4.03.
- 9) Change in Law Adjustment shall mean for any period after the Disposal Fee Date and for any Change in Law the amount of any and all adjusted costs related to or based upon, directly or indirectly, the delivery and disposal of Municipal Solid Waste at the Designated Transfer Station(s) and/or Disposal Facility(ies), including capital costs, operating, design, construction, equipment maintenance, closure and/or post-closure care, start up, costs of the Designated Transfer Station(s) and/or Disposal Facility(ies) and any tax created after the Disposal Fee Date and any increase in governmental fees, federal, state and City imposed host community fees or surcharges (but excluding any locally imposed host community fees or surcharge and any adjustment in the tax rate to a tax existing prior to the Disposal Fee Date

including, but not limited to, the United States corporate income tax, the state income tax and real property taxes) resulting from the Change in Law.

10) Change in Law Costs shall mean costs actually incurred by a Contractor pursuant to a Change in Law and as set forth in Change in Law Adjustment.

11) Commencement Date – The start date of this Agreement, \_\_\_\_\_, 2019.

12) Commissioner – The Commissioner of the Department of Streets of the City (including an individual serving in an acting capacity) or his/her designee(s).

13) Commonwealth shall mean the Commonwealth of Pennsylvania.

14) Construction and Demolition Debris shall mean concrete, bricks and other construction and demolition waste.

15) Contract – This Agreement.

16) Contract Term – The Initial Term of the Contract plus City-option terms, if any.

17) Contractor – The entity named and designated in the first paragraph of this Agreement.

18) Day – A calendar day during the Term of this Agreement.

19) Designated Disposal Facility - The Disposal Facility(ies), including the sites, buildings, equipment and supplies which Contractor shall utilize to perform the Work set forth herein, and designated by Contractor in Exhibit “C” (as Exhibit “C” may be subsequently amended to reflect additional Disposal Facility(ies) offered by Contractor and accepted by the City) and approved by the City’s Act 101 Plan for the final disposal of Municipal Solid Waste under this Agreement.

20) Designated Transfer Station - The Transfer Station(s), including the sites, buildings, equipment, and supplies which Contractor shall utilize to perform the Work set forth herein, as designated by Contractor in Exhibit “C” (as Exhibit “C” may be subsequently amended to reflect additional Transfer Station(s) offered by Contractor and accepted by the City) and approved by the City’s Act 101 Plan for the final disposal of Municipal Solid Waste under this Agreement.

21) Disposal Facility - A property or properties used for the final disposal of Municipal Solid Waste in accordance with all Applicable Laws.

22) Disposal Fee(s) – The per Ton price paid by the City for the disposal of Municipal Solid Waste, Construction and Demolition Debris and/or Residual Waste at the Designated Transfer Station(s) and the Designated Disposal Facility(ies) as provided in Exhibit E.

## Exhibit A

23) Disposal Fee Date - The last day on which the Contractor submitted proposed Disposal Fees for the consideration of the City in response to the City's RFP.

24) Disposal Permit - The permit issued by the Pennsylvania Department of Environmental Protection for a solid waste disposal and/or processing facility permit applicable to a Transfer Station.

25) Event of Default – A default as set forth in Article 6 of this Agreement.

26) Exhibit(s) – The exhibits attached to this Agreement or as subsequently modified at the mutual agreement of the City and Contractor, and incorporated by reference in this Agreement.

27) Finance Director - The Director of the Department of Finance of the City (including an individual serving in an acting capacity), or his/her designee.

28) Force Majeure Event shall have the meaning set forth in Section 6.04 of this Agreement.

29) Fiscal Year or FY – The City's budget year, comprised of the twelve (12) month period between July 1 and June 30.

30) Governmental Body shall mean, as appropriate, any one or several of: the United States of America, the Commonwealth, the City, any state, county or local unit of government or any agency, authority, regulatory body or subdivision of any of the foregoing as may have jurisdiction over or power and authority to regulate the City, Contractor, the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies), the Work, or this Agreement.

31) Guaranteed Annual Quantity – The minimum annual quantity of Municipal Solid Waste to be delivered to the Designated Transfer Station(s) by the City or accepted by Contractor from the City as set forth in Section 3.01 of this Agreement in any Agreement Year.

32) Holiday - All holidays designated on an official City calendar to be provided annually by the City to Contractor as it becomes available.

33) Initial Term shall have the meaning set forth in Section 2.01 of this Agreement.

34) Maximum Daily Quantity – The maximum quantity of Municipal Solid Waste that the City may by right deliver to the Designated Transfer Station(s) and/or may by right have the Contractor accept at the Designated Disposal Facility(ies) from the Northwest Transfer Station on a given Day during the Term. The Maximum Daily Quantity shall not include Residual Waste, Construction and Demolition Debris or Christmas trees delivered by the City pursuant to Section 3.02 of this Agreement.

## Exhibit A

35) Municipal Solid Waste - Waste that is categorized as Municipal Waste under Section 103 of the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.103 and collected by or on behalf of the City in accordance with its Regulations Governing Municipal Refuse Collection. Municipal Solid Waste may also include (a) limited quantities of oversized bulky wastes collected as part of normal refuse collection such as appliances, furniture, mattresses, tires, and other such large objects, and (b) materials cleaned from City storm sewer street inlets and non-residential municipal waste collected from various City facilities. Municipal Solid Waste shall not include Construction and Demolition Debris which is sufficiently segregated so it may be recycled or disposed of as such.

36) Northwest Transfer Station - The Transfer Station owned and operated by the City and located at Domino Lane and Umbria Street, Philadelphia, Pennsylvania.

37) Performance Bond – A bond provided to ensure performance of this Agreement, as further defined at Section 5.01 of this Agreement.

38) Person shall mean any individual, general partnership, limited partnership, corporation, joint venture or association or other entity.

39) Residual Waste shall mean that waste which is categorized as Residual Waste under Section 103 of the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.103.

40) RFP shall have the meaning set forth in Section B. of the Background of this Agreement.

41) Term shall mean the Initial Term and any and all Additional Term(s).

42) Ton – A short ton of two thousand (2,000) pounds.

43) Transfer Station shall mean a property or properties permitted for the receipt of Municipal Solid Waste and for the transfer of such materials into vehicles for hauling to a Disposal Facility or for reuse in accordance with all Applicable Laws.

44) Unacceptable Waste shall mean:

- a) any material that by reason of its quantity is ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies);
- b) any material that by reason of its composition or characteristics is ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) pursuant to the provisions of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., and the regulations thereunder, except for those small quantities normally found in household or commercial solid waste which the City and Contractor are authorized to handle as Municipal Solid Waste;

- c) any material that by reason of its composition or characteristics is ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) pursuant to any other Applicable Law(s), including without limitation: (i) Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (ii) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.; (iii) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; (iv) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; (v) the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq.; or (vi) the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.101 et seq.; or
  - d) any materials which any Governmental Body having appropriate jurisdiction shall determine from time to time to be harmful, toxic, hazardous, dangerous, or otherwise ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies).
- 45) Work shall mean the performance of all of Contractor's activities expressly required by this Agreement and all activities necessary or desirable for meeting the requirements of this Agreement.
- 46) Wrongfully Rejected Waste shall have the meaning set forth in Section 3.02 of this Agreement.

**ARTICLE 2**  
**TERM**

**2.01 Initial Term.**

The initial term (the "Initial Term") of this Agreement shall commence on July 1, 2019 (the "Commencement Date"), and terminate four (4) year(s) thereafter or upon earlier termination under the terms of this Agreement.

**2.02 Additional Term(s).**

The City may, at its sole option, amend this Contract to add on an annual basis up to three (3) successive one (1) year terms ("Additional Terms"). Unless otherwise amended, the same terms and conditions applicable in the Initial Term shall be applicable in the Additional Term(s). The City shall give Contractor thirty (30) days written notice of its intent to amend this Contract to add an Additional Term prior to each annual Additional Term. Each Additional Term shall be subject to appropriation of funds by City Council for such Additional Term. There shall be no liability or penalty to the City for electing not to amend the term of this Contract to add Additional Terms. Each Additional Term of this Contract shall be deemed to constitute a separate contract, whose term shall not exceed one (1) year.

**ARTICLE 3**  
**FACILITIES AND OPERATIONS**

**3.01 Disposal Rights and Obligations.**

(1) At all times during the Term of this Agreement, Contractor shall own, or control through contract or otherwise, the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) and represents, warrants and agrees that:

(a) the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) shall at all times during the Term of this Agreement be properly zoned and permitted to allow the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) to be used for the purposes contemplated by this Agreement and the RFP and be in compliance with all Applicable Laws; or in the case of a Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) that requires approval of Disposal Permits during the Term, Contractor shall provide reasonable assurances that the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) will have necessary Disposal Permits for the Term, such reasonable assurances describing the Contractor's efforts to obtain or maintain Disposal Permits and the termination dates of the existing Disposal Permits shall be incorporated in the Agreement as Exhibit "F";

(b) Contractor has sufficient Municipal Solid Waste transfer and disposal capacity available through reservation, contract or otherwise for the sole benefit of the City in an amount equal to the Maximum Daily Quantity of Municipal Solid Waste throughout the Term of this Agreement; or in the case of a Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) that requires Disposal Permits approvals to accept Municipal Solid Waste for transfer and/or disposal for the Term, Contractor shall provide reasonable assurances in Exhibit "F" that the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) will have disposal capacity for the Term;

(c) all access roadways and structures subject to vehicular traffic are designed for AASHTO H-20 loading; all roadways are a minimum of twenty-four (24) feet in width; and sufficient queuing space is available within the confines of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) for all vehicles awaiting tipping;

(d) a minimum of two scales are present at each Designated Transfer Station(s) and/or Designated Disposal Facility(ies) which are at least ten (10) feet wide, seventy (70) feet long, and capable of weighing a sixty (60) Ton load;

(e) the scales must incorporate a fully automated, computerized weighing, identification and accounting system fully compatible with the City's system, as may be updated from time to time.

(f) the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall meet all of the minimum design specifications set forth in the RFP;



## Exhibit A

(g) Contractor shall provide an adequate number of clean restrooms for both its employees and City personnel. Contractor shall provide access to the Contractor's telephone for City employees on official business and a public telephone for other use by City employees. The City shall require that City employees who use the restrooms and telephones comply with the Contractor's rules and regulations for restroom and telephone use set forth in Exhibit "H"; and

(h) the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall be equipped with adequate bumper logs to prevent vehicles from backing into disposal pits. Bumper logs shall be designed and placed to prevent damage to unloading vehicles and to facilitate efficient unloading.

(2) Under no circumstances shall Municipal Solid Waste delivered to Contractor by or on behalf of the City pursuant to this Agreement be disposed of at any Transfer Station(s) and/or Disposal Facility(ies) that has/have not been included in the City's approved Act 101 Plan.

(3) Contractor shall also use reasonable efforts to accommodate the City by providing additional capacity as requested by the City at rates contained in this Agreement.

(4) On an annual basis, thirty (30) Days prior to the commencement of each Agreement Year, Contractor shall certify to the City that adequate capacity remains at the Designated Transfer Station(s) and/or the Designated Disposal Facility to meet Contractor's obligations hereunder.

(5) Contractor shall guarantee acceptance of the Maximum Daily Quantity during the times set forth in Exhibit "H" for the Term.

(a) However, if the Contractor has failed to obtain or maintain a Disposal Permit for a Designated Transfer Station(s) and/or a Designated Disposal Facility(ies) that requires a Disposal Permit during the Term in accordance with Section 3.01(1)(a) and is therefore unable to accept the Maximum Daily Quantity, and the Contractor has provided notice to the City at least 270 days in advance of the last permitted disposal date, the guarantee shall extend only to the termination date of the Disposal Permit as provided in Exhibit "F".

(b) In the event that the Contractor cannot accept the Maximum Daily Quantity due to a failure to obtain or maintain Disposal Permits required under Section 3.01(1)(a), the City at its sole discretion may offer additional Work to one or more contractors under agreement with the City for the remainder of the Term.

(6) During each Agreement Year, the City shall deliver a Guaranteed Annual Quantity of Municipal Solid Waste to Contractor, except where Contractor has failed to obtain or maintain Disposal Permits for a Designated Transfer Station(s) and/or a Designated Disposal Facility(ies) or as provided under Article 6 of this Agreement.

(7) The Guaranteed Annual Quantity shall equal Seventy Five Percent (75%) of the Maximum Daily Quantity set forth in Exhibit “D” multiplied by 260. The Guaranteed Annual Quantity shall be adjusted by subtracting from the multiplier of 260, the number of Days that City deliveries to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) were restricted by any failure of Contractor to receive Municipal Solid Waste or any Force Majeure Event, calculated as follows:

$$\text{Guaranteed Annual Quantity} = .75 \times \text{Maximum Daily Quantity} \times (260 - (\text{Days Contractor unable to accept Municipal Solid Waste} + \text{Force Majeure Event Days}))$$

(8) For each Additional Term hereunder, if any, the City may adjust the Maximum Daily Quantity for each Agreement Year to reflect changes in the total quantity of Municipal Solid Waste collected by or for the City’s Department of Streets. That is, should the total annual quantity of Municipal Solid Waste collected by or on behalf of the City increase or decrease, as for example, by population or demographic changes, source reduction, recycling, changed collection practices, deletion of Municipal Solid Waste collected by other City agencies and legal or regulatory changes, the City may adjust the Maximum Daily Quantity by the percentage change in total Municipal Solid Waste collected. At least ninety (90) Days prior to the beginning of each Additional Term, if any, the City shall inform Contractor in writing of changes in the total annual quantity of Municipal Solid Waste collected, estimating the annual quantity to be collected for the next Agreement Year and at the City’s sole option establishing a new Maximum Daily Quantity. Such new Maximum Daily Quantity shall remain in effect throughout the applicable Agreement Year and shall continue through the remainder of the Term unless subsequently modified by the City in accordance with this subsection.

**3.02 Amounts in Excess of Maximum Daily Quantity; Unacceptable Waste.**

(1) Contractor may not reject any delivery of Municipal Solid Waste by or on behalf of the City, unless the Maximum Daily Quantity is exceeded or delivery occurs outside of the required operating hours as set forth in Exhibit “H”. The provisions of this subsection shall apply only to Contractor's right to reject Municipal Solid Waste and shall not abrogate any of Contractor's other obligations (including the payment of damages) under the terms of this Agreement.

(2) If the City, or any person on behalf of the City, delivers Unacceptable Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), the City shall be promptly notified of such delivery. The City may reload and remove the Unacceptable Waste or the City may request Contractor to dispose of such Unacceptable Waste. The City shall pay the actual, reasonable and necessary costs incurred by Contractor with respect to the proper disposal of such Unacceptable Waste. The Guaranteed Annual Quantity shall not include any Unacceptable Waste. In no event shall the City be responsible for the handling and disposal costs of any Unacceptable Waste delivered to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) unless it can be clearly demonstrated that such waste was delivered by the City or caused to be delivered by the City.

(3) Nothing in this Agreement shall be construed to mean that the City guarantees the composition or quantity of any Municipal Solid Waste as it pertains to the proportion of any material contained therein. The obligations of Contractor hereunder shall not be diminished due to any variation in the composition of any Municipal Solid Waste which is delivered to the Designated Transfer Station and/or Designated Disposal Facility(ies).

(4) Any Municipal Solid Waste that is delivered to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) by or on behalf of the City that is rejected without a permitted rejection right shall constitute “Wrongfully Rejected Waste”. Such Wrongfully Rejected Waste shall be transported to and disposed of at an alternate location provided by Contractor or, if Contractor fails to provide an alternate location, to a site determined by the City. The City shall use reasonable efforts to transport and dispose of any Wrongfully Rejected Waste in the most economical manner practicable, consistent with Applicable Laws and then current market conditions so as to mitigate the amount of damages payable by Contractor hereunder.

(5) Contractor shall pay the City as damages the actual cost incurred by the City for the transfer, transportation and disposal of Wrongfully Rejected Waste. The City shall deliver an invoice to Contractor promptly following determination of amounts due for Wrongfully Rejected Waste, and payment shall be due within thirty (30) Days of receipt of such invoice.

**3.03 Methods of Operation.**

The Contractor shall inform the City in advance concerning plans for performing each part of the Work. If at any time the Designated Transfer Station(s), Designated Disposal Facility(ies), or Contractor's methods of executing the Work appear to the City to be inadequate to ensure the required reliability, safety, quality, or rate of progress of the Work, the City may request the Contractor to increase or improve its Designated Transfer Station(s) and/or Disposal Facility(ies) and/or methods; but neither compliance with such requests nor failure of the City to issue such requests shall relieve Contractor from its obligation to secure the degree of reliability, safety, quality of the Work, and the rate of progress required by this Agreement. The Contractor shall be solely responsible for the reliability, safety, adequacy, and efficiency of its operations, Designated Transfer Station(s), and/or the Designated Disposal Facility(ies) and/or methods.

**3.04 City's Use of an Alternate Facility.**

(1) If for any reason (except for a Force Majeure Event as defined in Section 6.04 of this Agreement) the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) cannot accept delivery of the Maximum Daily Quantity as required under this Agreement at any time during the Term of this Agreement, the City shall have the right (in addition to any other rights or remedies available to the City under this Agreement, at law or in equity) to dispose of the Maximum Daily Quantity at an Alternate Facility and to hold the Contractor liable for all excess costs (including, but not limited to, increased tipping fees and additional City transportation costs) incurred by the City until such time as the City can deliver the Municipal Solid Waste to the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) or the Contractor can deliver Municipal Solid Waste to the Designated Transfer Station(s) and/or

Designated Disposal Facility(ies). Contractor shall have no claim or right to any benefit accruing to the City through its use of an Alternate Facility.

(2) Nothing contained in this Section 3.04 shall be construed to limit the City's right to proceed at any time under the provisions of Article 6 of this Agreement (Defaults and Remedies). Should the City elect to proceed under Article 6 of this Agreement by issuing a notice to cure, the Contractor shall remain liable under the provisions of this Section 3.04 for the City's excess costs in utilizing the Alternate Facility until the date the Contractor cures the breach to the satisfaction of the City or the City declares the Contractor in default hereunder and exercises the rights and remedies available to the City under Article 6 of this Agreement.

**3.05 Inspection.**

(1) At any time, the Commissioner or authorized representative may inspect the Designated Transfer Station(s), and/or the Designated Disposal Facility(ies) and the Work performed to determine compliance with this Agreement. Contractor shall furnish all reasonable assistance required for its inspection. Such inspection shall not relieve the Contractor from any obligation to perform the Work strictly in accordance with this Agreement.

(2) The City may have such representatives on site at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) during any or all operating hours. Contractor shall cooperate in all respects with the City's representatives, who shall have full access to all parts of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) and may at any time inspect the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), equipment, operating procedures, materials and records, including without limitation, scale and maintenance records.

(3) In exercising their rights under this Section 3.05, the Commissioner and other authorized representatives of the City shall not be obstructed and shall be free at all times to perform their inspection of the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) but shall not interfere unreasonably with Contractor's operations during such inspections.

(4) Contractor shall provide for reasonable access to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) by the President of the City Council of Philadelphia and representatives of Councilmanic Districts (as requested by City Council) to monitor and record information pursuant to Applicable Laws on the environmental performance of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Councilmanic District representatives shall be granted reasonable visitation rights to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) located within their Councilmanic District. Contractor shall provide written notice to the City Council members in Councilmanic Districts (as requested by City Council) of any written violation notices issued by any Governmental Body.

**3.06 Receipt of and Title to Municipal Solid Waste.**

(1) Responsibility for and title to all Municipal Solid Waste delivered or caused to be delivered by the City to the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) shall vest in Contractor at such time as the Municipal Solid Waste is discharged from the delivering vehicle into the receiving spaces of the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies). Contractor shall have the right to designate the point of discharge within the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) of each load of Municipal Solid Waste, provided that such designation does not detain the delivery vehicles.

(2) At all times during the Term of this Agreement, Contractor shall operate and maintain the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in a manner that will permit weighing, delivery and exiting of vehicles delivering Municipal Solid Waste pursuant to this Agreement in not more than 20 minutes.

(3) Title to Unacceptable Waste shall not vest with Contractor.

(4) The Designated Transfer Station(s) and its transfer operation and/or the Designated Disposal Facility(ies) shall be designed and operated to accommodate all Municipal Solid Waste to be delivered in accordance with the Maximum Daily Quantity.

**3.07 Facility Maintenance.**

(1) Contractor shall have the sole responsibility for the operation and maintenance of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) utilized by the Contractor under this Agreement and shall maintain the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in a proper state of repair with due allowance made for reasonable wear and tear. The City may hold payment of invoices if it is determined that the Contractor is not in compliance with the provisions provided below.

(2) The Contractor shall maintain all of the Contractor's vehicles and containers used in the performance of the Work in a clean and repaired condition.

(3) The Contractor shall be responsible for maintaining complete accessibility and clear passage through all necessary roadways at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) during all hours of operation, and shall plow all roads as necessary to maintain this condition.

(4) During the Term of this Agreement, Contractor shall be responsible for all major capital replacement(s), improvements, redesign, or other changes to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). The Contractor shall notify the City of any proposed material changes to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Changes shall be scheduled by the Contractor to avoid interruption in the operation of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Any redesign or

installation of equipment shall not interfere with the ability of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) to meet all requirements of this Agreement.

(5) At all times during the Term of this Agreement, Contractor shall operate and maintain the Designated Transfer Station(s) and/or Designated Disposal Facility(ies): (i) in a safe and sound manner; (ii) in a manner that permits weighing and delivery of Municipal Solid Waste at all times during the hours of operation required under this Agreement; and (iii) as otherwise required by Applicable Laws and Government Approvals. Contractor shall be responsible for maintaining and renewing all licenses and permits and other Government Approvals required for operation of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in effect at all times and operating the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in accordance with Applicable Laws and Government Approvals.

(6) The Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall be maintained in a manner that will prevent odors from escaping the building. No detectable odors shall be present outside the boundaries of the Designated Transfer Station(ies) and/or the Designated Disposal Facility(ies). The Designated Transfer Station(s) and /or the Designated Disposal Facility(ies) shall be kept free and clear of all litter and debris at all times.

(7) The facility maintenance obligations described in this Section 3.07 shall not apply to the Designated Transfer Station(ies) and/or the Designated Disposal Facility(ies) that are owned, operated and maintained by third parties. Contractor shall use reasonable best efforts to ensure that such facilities owned by third parties are properly maintained and available to the City throughout the Term.

**3.08 Hauling of Municipal Solid Waste by or for Contractor.**

(1) Any hauling of Municipal Solid Waste by the Contractor shall be done with fully enclosed equipment so that the possibility of dripping, spilling, or scattering is kept to a minimum. Should any of these occur, Contractor shall be responsible, at its sole cost and expense, for prompt and timely cleanup of any such materials.

(2) The Contractor is required to comply with all State licensing requirements for transfer vehicles and any City waste management licensing requirements.

(3) In the event of a spill, leak or loss of payload at the Designated Transfer Station(s) and/or during transit to the Designated Disposal Facility(ies), Contractor shall immediately arrange for the clean-up and transportation of the payload to the Designated Disposal Facility(ies) at Contractor's sole cost and expense, shall pay any resulting fines, assessments, penalties and damages resulting therefrom, and shall indemnify and hold harmless the City from any liability in connection with the foregoing.

**3.09 Hours of Operation.**

(1) Designated Transfer Station(s). The Designated Transfer Station(s) shall be open to accept delivery of Municipal Solid Waste during the days and hours set forth in Exhibit "H".

Contractor may, at its option and at no additional cost to the City, open the Designated Transfer Station(s) at additional times to receive Municipal Solid Waste delivered by or on behalf of the City subject to applicable permit and regulatory limitations.

(2) Residual Waste. Contractor shall accept Residual Waste delivered by the City to the Designated Disposal Facility(ies) in accordance with Exhibit "C".

**3.10 Weighing Devices.**

(1) The number of Tons of Municipal Solid Waste delivered to the Designated Transfer Station(s) and/or Designated Disposal Facility(s) by or on behalf of the City and the number of Tons of Municipal Solid Waste from the Northwest Transfer Station shall be determined by obtaining an incoming and an outgoing weight for each delivery truck, roll-off container, or transfer vehicle on certified scales located at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies). Both the City and Contractor shall have the right at any time to require the weighing or reweighing of any vehicle.

(2) The Contractor shall be required to have the weight scales certified at any time but no more often than once a month. The Contractor shall furnish evidence of a maintenance agreement for the scales providing thirty (30) day inspection and service maintenance. All costs and expenses associated with the installation, inspection, certification, and maintenance of the weight scales shall be borne exclusively by the Contractor.

**3.11 Disposal Information.**

(1) Daily Reports. By 12:00 noon each Day that Contractor is required to accept Municipal Solid Waste, Contractor shall provide the City with a report of each and every one of the previous Day's scale transactions at each scale at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) related to this Agreement. If the City has delivered Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) on a Saturday, Contractor shall provide the Friday and Saturday reports on the following Monday. This report will include a daily computer file in a DBF format or other format designated by the City containing the following information in a file structure acceptable to the City: (a) names of Designated Transfer Station(s) and/or Designated Disposal Facility(ies); (b) date; (c) time of arrival and departure in military time; (d) sequential ticket number; (e) commodity code; (f) vehicle number; (g) gross vehicle weight at ingress; (h) gross vehicle weight at egress; (i) net weight of load; and (j) source code of City Department delivering the Municipal Solid Waste. With reasonable notice, the City may require that additional information be provided.

(2) Monthly Reports. In addition to any other reports required by any other provision of this Agreement, Contractor shall furnish to the City monthly written reports, together with such statements, documentary data or other information as the City may require, relative to any matter pertaining to Contractor's compliance with any provision of this Agreement. The data included in the detailed report shall be sufficiently detailed to facilitate analysis and shall be acceptable to the City. The monthly report shall include, without limitation, (a) any changes in the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) operating plans including anticipated

outages scheduled for the next month, (b) quantity of Municipal Solid Waste transported from the Designated Transfer Station(ies) to the Designated Disposal Facility(ies), and (c) quantity of Municipal Solid Waste received at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). The monthly report shall be submitted on the 20th Day of the month following the month for which the report is submitted.

(3) Annual Reports. Contractor shall submit to the City an annual report within sixty (60) days following the end of each Agreement Year that incorporates a summary of monthly operations reports for the preceding Agreement Year.

(4) Late or Inadequate Reports. In the event that Contractor files a report required under this Agreement after the date that it is due or files an inadequate report (the adequacy or inadequacy of such report being in the sole discretion of the City), payment of all amounts due to Contractor for the period covered by the late or inadequate report may be deferred until all late or inadequate reports are submitted or corrected to the satisfaction of the City. The City shall retain the last payment due under this Agreement until Contractor has provided all reports required in this Section.

### **3.12 Rules and Regulations.**

(1) The City shall require its employees, agents, contractors and representatives to comply with Contractor's rules and regulations in performance of its duties under this Agreement attached hereto and marked as Exhibit "H", provided however, that all such rules and regulations shall be consistent with this Agreement, lawful, reasonable and uniformly applied to all haulers delivering waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies).

(2) Contractor may implement additional rules and regulations that are not inconsistent with this Agreement and Applicable Laws and which apply equally to all haulers delivering Municipal Solid Waste to the Designated Transfer Station(s) and Designated Disposal Facility(ies), upon thirty (30) Days prior written notice thereof to the City; provided however, that such additional rules and regulations may be implemented earlier than upon thirty (30) Days prior written notice if such implementation is required in order to avoid an emergency or to protect the health, safety and welfare of Contractor, its employees or Persons delivering Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies).

(3) Contractor may refuse to receive Municipal Solid Waste from any vehicle operated by a hauler who repeatedly or intentionally violates the rules and regulations set forth in Exhibit "H".

(4) The terms of payment and the rights and obligations of the parties shall be governed by the terms of this Agreement and not by any such rules and regulations set forth in Exhibit "H".



**3.13 Alternative Disposal Methods**

The City and the Contractor may cooperate in a pilot study to determine the commercial feasibility of separating organic waste from comingled organic and non-organic Municipal Solid Waste. During the pilot study, the Contractor proposes to separate the organic waste and process it into a liquid form suitable for introduction into a digester at a wastewater treatment facility. The Parties agree and understand that the safe, compliant and efficient operation of the wastewater treatment plants is the highest priority for the City, and the City may at any time discontinue its participation in the pilot study. No material shall be delivered to a City wastewater treatment facility without documentation of the waste quality that is acceptable to the Water Department and written approval of the Water Commissioner. After development, implementation and review of the pilot study, the City may, at its sole option, elect to receive liquid organic waste at one or more wastewater treatment facilities at a greater than pilot scale. The total quantity of waste disposed of through this alternative method may not exceed 400 Tons per day on an annual average. The maximum premium for the alternative disposal method that the City may pay is forty percent (40%) more than the then-current per Ton price in this Agreement.

**ARTICLE 4**  
**CONSIDERATION**

**4.01 Invoices.**

(1) The City shall pay to Contractor for the performance of the Work and the discharge by Contractor of all of its obligations as set forth in this Agreement, and the Contractor shall accept the per Ton price set forth in this Agreement as full and complete compensation and payment. Payment of such compensation shall be in the manner and at the time provided for in this Agreement.

(2) Contractor shall tender itemized invoices to the City in form and content acceptable to the City on a not more frequently than weekly basis on the Tuesday following a Work week for the Municipal Solid Waste delivered by the City during the applicable billing period. At a minimum, the invoice shall include the following: (a) Designated Transfer Station(s) location and/or the Designated Disposal Facility(ies) for Municipal Solid Waste from the Northwest Transfer Station; (b) date; (c) ticket numbers; (d) vehicle identification; (e) gross vehicle weight; (f) vehicle tare weight; (g) net payload; (h) Disposal Fee; and (i) summary daily report.

(3) The City shall pay (or cause to be paid) the invoice amount to Contractor in accordance with this Section 4.01 for the performance by the Contractor of its obligations hereunder. The City will pay said invoices in accordance with its standard payment procedures, normally within forty-five (45) Days from the date of receipt of a proper invoice.

(4) The City may offset against the invoice amount any amounts payable by Contractor to the City as damages.

- (5) Invoices shall be mailed to:

City of Philadelphia Streets Department  
Municipal Services Building, Room 730  
1401 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19102

**4.02 Disposal Fees.**

The City shall pay to Contractor the disposal fees described in Exhibit “E” (each a “Disposal Fee”; collectively, the “Disposal Fees”) in consideration of Contractor performing the Work under this Agreement:

(1) The City shall pay a per Ton price for Municipal Solid Waste delivered to the Designated Transfer Station(s) (or for the Guaranteed Annual Quantity in the event that the Guaranteed Annual Quantity has not been provided, as calculated pursuant to Section 4.01 of this Agreement) during the Initial Term of this Agreement and thereafter in accordance with the price schedule for any and all Additional Terms set forth in Exhibit “E”.

(2) The City shall pay a per Ton price for Residual Waste delivered directly to Contractor’s Designated Disposal Facility(ies) during the Initial Term of this Agreement and thereafter in accordance with the price schedule for any and all Additional Term(s) in Exhibit “E”. The City shall have no obligation whatsoever to provide any minimum quantity of Residual Waste to Contractor under this Agreement.

(3) The City may at any time agree to an offer by a Contractor to reduce the Disposal Fees in Exhibit “E”.

**4.03 Change in Law.**

- (1) Change in Law shall mean:

(a) the adoption, promulgation, initial application, issuance, modification or official change in interpretation, after the Agreement Date of any Applicable Law; and/or

(b) the imposition after the Agreement Date, of any condition on the issuance, reissuance or continued effectiveness of any existing Permit(s) or in any pending applications for Permit(s); and/or

(c) the order and/or judgment of any Governmental Body after the Agreement Date that would affect the obligations of the parties under this Agreement

(2) For each Change in Law that causes the Contractor to sustain Change in Law Costs, the City shall be assessed a share of such Change in Law Costs.

(a) All increases and decreases in surcharge fees assessed by the Commonwealth of Pennsylvania for the disposal of Municipal Solid Waste at a landfill or resource recovery facility pursuant to, or in addition to Act 101 of 1988 and Act 90 of 2002, shall be added in full to or subtracted in full from the per ton disposal rate as a pass through cost increase or decrease to the City during the Term of the Agreement. The Contractor shall make its best efforts to direct the waste to the facilities with the lowest surcharge fees.

(b) For all other Change in Law Costs, Contractor shall within one hundred eighty (180) days of the effective date of any Change in Law, calculate the related per Ton Change in Law Adjustment that it has sustained as a result of such Change in Law, and shall give to the City written notice of the resulting per Ton assessment. The notice shall include, without limitation, information setting forth the assumptions, data, formula and calculations used in making the assessment and shall specify all applicable Changes in Law and the effective dates thereof. The City reserves the right to request from Contractor, and Contractor agrees to promptly provide to City, information in addition to that submitted with Contractor's notice under this Section 4.03(2)(b). In the event Contractor fails to notify the City in strict accordance with the terms of this Section 4.03(2)(b), Contractor shall have waived its right to assess the City for the Change in Law.

(c) Within sixty (60) Days of receiving written notice from Contractor under Section 4.03(2)(b), the City may challenge Contractor's assessment of the Change in Law by notifying Contractor in writing. If challenged, the City, at its sole cost and expense, may engage an independent consulting and/or accounting firm(s), reasonably acceptable to Contractor, to review and prepare an audit of Contractor's assessment. The City and Contractor hereby agree to be bound by the conclusion of the independent consulting and/or accounting firm(s) that may be engaged pursuant to this Section. In the event the City challenges Contractor's assessment of the Change in Law under this Section, and does not engage an independent consulting and/or accounting firm(s), the City and Contractor shall make good faith efforts to resolve the challenge in a reasonably prompt manner.

(d) Unless challenged under Section 4.03(2)(c) above, the City shall begin paying City's Change in Law Costs, subject to Section 4.03(3) below, on the later of the first day Contractor sustains increased costs as a result of a Change in Law or the date sixty (60) Days prior to the date that the City receives written notice of the Change in Law from Contractor. The per Ton assessment to the City under Section 4.03 shall be substantially equal to the increase charged to all users of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), as the case may be. If such Change in Law is subsequently eliminated or reduced, the City's Change in Law Costs shall be correspondingly eliminated or reduced.

(2) The City shall not be responsible for any Change in Law Adjustment related to a change in state law other than Pennsylvania law for any Designated Disposal Facility(ies) located outside of the Commonwealth.

(3) For Change in Law Costs in Section 4.03(2)(b) incurred on or after the Disposal Fee Date, the price per Ton increase from the Change in Law Adjustment shall be no more than

five percent (5%) per year, and in no event shall the price per Ton increase from the Change in Law Adjustment be more than the following percentages over the corresponding periods:

<u>Years</u>	<u>Percent</u>
4	10
5	11.66
6	13.33
7	15.00

(4) For Change in Law Costs incurred after the Disposal Fee Date but prior to the Agreement Date, such Changes in Law and proposed Change in Law Adjustments shall be disclosed to the City on or before the Agreement Date. The City, at its sole discretion, may elect not to execute the Agreement due to Change in Law Adjustments.

**4.04 Patents.**

Royalties and fees for patents covering processes, materials, articles, apparatus, devices, or equipment used in connection with the Work shall be included in the Disposal Fee(s) amount and no additional payments therefor shall be due or payable by the City. Contractor shall satisfy, at its sole cost and expense, all demands that may be made at any time for such royalties or fees, and Contractor shall be liable for any damages or claims for patent infringements. Contractor shall, at his own cost and expense, defend all suits or proceedings that may be instituted against the City for infringement or alleged infringement of any patents involved in the Work; and in case of an award of damages Contractor shall pay such award.

**ARTICLE 5**  
**GENERAL CONDITIONS**

**5.01 Performance Bond.**

(1) Upon execution of this Agreement, Contractor shall provide security for the faithful performance of the Work and for compliance with the terms of this Agreement in the form of a performance bond (the “Performance Bond”), with an approved surety company as surety thereon, in a sum equal to one-half the anticipated value (as determined by the City) of the Revenue Payment to be paid during the first year of this Agreement. The Performance Bond shall be in the form set forth in Exhibit A and issued by a surety company duly authorized and licensed to do business in the Commonwealth and approved by the City.

(2) During each subsequent Agreement Year, Contractor shall provide the City with a Performance Bond certificate thirty (30) Days prior to the commencement of each subsequent Agreement Year. The value of the Performance Bond shall be adjusted to an amount equal to one-half the anticipated value (as determined by the City) of the anticipated Revenue Payments for the upcoming Agreement Year.

(3) The Performance Bond must be issued by a surety listed on the then-current annual “Surety List” promulgated by the Commonwealth Insurance Department. The

Performance Bond amount must be in an amount permitted by the Surety List. If the surety issuing the Performance Bond fails to meet the requirements of this Section 5.01, Contractor shall have thirty-five (35) Days from the date the inadequate Performance Bond was rejected by City to obtain a Performance Bond issued by a surety that meets the requirements of the Surety List.

**5.02 Letter of Credit**

(1) In lieu of the Performance Bond, Contractor shall have the right to substitute a Letter of Credit for the performance bond required hereunder at the beginning of any fiscal year of the City (July 1) and maintain in effect such Letter of Credit in lieu of such performance bond for each City fiscal year (July 1 to June 30) for all of the remaining Term and any Additional Term if the Contractor fulfills all of the provisions as set forth in this Section 5.02.

(a) The Letter of Credit shall comply with all applicable requirements of the Agreement.

(b) The Letter of Credit and/or each Letter of Credit thereafter shall be available to draw against up to and including the maximum amount thereof for any and all claims that may arise during the Term and the Additional Term for ninety (90) days after the expiration of the then-current Letter of Credit, if no acceptable renewal Letter of Credit or performance bond is timely provided or required.

(c) The Letter of Credit shall be issued by a bank that has a long-term credit rating of at least AA by Standard and Poors, Inc. and Aa by Moodys Investors Service, Inc. (“Acceptable Credit Rating”) and shall be approved by the City, which approval shall not be unreasonably withheld. If the bank issuing the Letter of Credit is incorporated/chartered outside the United States of America and does not have a domestic branch, the Letter of Credit must be confirmed by a domestic bank with an Acceptable Credit Rating. If the credit rating of the bank issuing the Letter of Credit or the confirming bank drops below an Acceptable Credit Rating, the Contractor must supply a substitute Letter of Credit with an Acceptable Credit Rating within thirty-five (35) days of notice to or knowledge of the Contractor of such event.

(d) The Contractor shall furnish or shall cause to be furnished a legal opinion acceptable to the City from independent counsel or the bank's counsel stating that the Letter of Credit is legally enforceable in the United States as to the issuing bank, and, if applicable, the confirming bank.

(e) The duly authorized representatives of the City for the Letter of Credit are the Finance Director and/or the Streets Commissioner as well as those serving in an acting capacity for said positions.

(f) The Letter of Credit shall be in a form acceptable to the City.

(g) The issuing bank must furnish an acceptable form of draw certificate and sight draft with the Letter of Credit.

(2) The Letter of Credit shall be for a sum equal to one-half the value (as determined by the City) of the anticipated Revenue Payments for the upcoming Agreement Year. The Letter of Credit shall provide for annual renewal, after successful completion of the first (12) months of operation following the Operations Commencement Date. During each subsequent twelve (12) month period, the stated amount of the Letter of Credit amount shall be adjusted to an amount equal to one-half the anticipated value of the Disposal Fees for that period.

(3) Any Letter of Credit issued during the Term shall contain a clause providing for the automatic annual renewal of the Letter of Credit on the beginning day of the City's fiscal year (July 1) at which time it shall renew for ninety (90) days in satisfaction of the requirements outlined in this Section. Any Letter of Credit issued for an Additional Term shall run from July 1 up to June 30 of the following year at which time it shall renew for ninety (90) days after the expiration of the then-current Letter of Credit if no acceptable renewal Letter of Credit or performance bond is timely provided or required in satisfaction of the requirements of this Section.

(4) In the event the Letter of Credit is not automatically renewed as contemplated in Section 5.03 (3), a substitute Letter of Credit or performance bond shall be delivered to the City for each annual renewal period at least sixty (60) days before the expiration of the Letter of Credit. Substitution of a performance bond for a Letter of Credit during the Term or the Additional Term is contingent on provision of a Letter of Credit for a period of ninety (90) days after the expiration of the then-current Letter of Credit in satisfaction of the requirements of this Section.

**5.03 Economic Opportunity Plan.**

(1) In accordance with the Philadelphia Code Section 17-1600 et seq., as it exists on the Commencement Date, the City has established a requirement for Economic Opportunity Plan(s) (“EOP”) for this Agreement. The EOP attached hereto as Exhibit B constitutes the entire EOP approved by the Office of Economic Opportunity for this Agreement. Contractor agrees to comply with and abide by the EOP attached to this Agreement as Exhibit B.

(2) In accordance with Section 17-1402(f) of the Philadelphia Code, Contractor shall during the Term of the Contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Contractor, any officer, director or management employee of the Contractor, or any person representing the Contractor that a particular Person could be used by the Contractor to satisfy any goals established in the Contract for participation of minority, women, disabled or disadvantaged business enterprises. The Contractor shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by the Department, and the form shall be signed and filed with the Department within five Business Days after the Contractor as so advised. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

**5.04 Notices.**

Contractor shall maintain an office within the City during the Term of this Agreement. Notices provided for herein shall be sufficient if hand delivered or mailed by certified mail (postage prepaid) to the City at the following address:

City of Philadelphia Streets Department  
Municipal Services Building, Room 730  
1401 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19102  
Attn.: Commissioner

with a copy to:

City of Philadelphia Law Department  
1515 Arch Street, 16<sup>th</sup> Floor  
Philadelphia, Pennsylvania 19103-2081  
Attention: Chief Deputy City Solicitor, Regulatory Affairs Unit

for Contractor:

Waste Management of Pennsylvania, Inc.  
c/o Charles Raudenbush, Jr.  
107 Silvia Street  
Ewing, NJ 08628

with a copy to:

Waste Management Legal Department  
Attn: General Counsel for Eastern United States  
100 Brandywine Boulevard  
Newtown, PA 18940

or to such other respective addresses as the parties may, from time to time, designate to each other in writing.

**5.05 Applicable Laws and Permits.**

(1) This Agreement shall be entered into under the laws of the Commonwealth and interpretation and construction shall be governed by such laws. Contractor shall observe and comply, at its sole cost and expense, with all Applicable Laws in connection with this Agreement. Contractor certifies that the Facility is in compliance with Applicable Laws and applicable Permits, and the Facility shall remain in compliance with Applicable Laws and applicable Permits during the Term of this Agreement. Throughout the Term of this Agreement, the City may from time to time request reasonable assurances from Contractor that Contractor's operations, the Facility is in compliance with Applicable Laws and applicable Permits.

Contractor shall respond to the City's request for such assurances within ten (10) days of such request.

(2) Contractor shall obtain and maintain, at its sole cost and expense, all Permits, certificates of authority, approvals and inspections required by federal, state, and local supervisory agencies for the performance of the Work.

(3) Failure of the Contractor's Facility to comply with Applicable Laws or Contractor's failure to provide reasonable assurances of compliance may result in the suspension or termination of the delivery of Recyclable Materials to the Facility by the City under this Agreement.

**5.06 Independent Contractor.**

At all times during the Term of this Agreement, the relationship of Contractor to the City shall be that of an independent contractor.

**5.07 Subcontracting and Assignment.**

(1) Contractor shall be responsible during the Term of this Agreement for complete supervision and control of its subcontractors as though they were its own forces. Notice to Contractor shall be considered notice to all of Contractor's subcontractors.

(2) Contractor shall be liable for the failure of its subcontractors in any phase of the Work. Contractor shall be as fully liable, responsible, and accountable to the City for the acts and omissions of its subcontractors and of persons employed by them as it is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relationship or liability between any of Contractor's subcontractors and the City unless so elected by the City in writing.

(3) Contractor shall neither assign nor subcontract the Work, or any part thereof without the prior written consent of the City, nor shall Contractor assign, by power of attorney or otherwise, any of the money payable under this Agreement unless the prior written consent of the City has been obtained. The granting or denial of the City's consent under this Section shall be in the City's sole discretion.

(4) The City reserves the right to assign this Agreement to any other party. This Agreement shall be binding upon the parties hereto, their heirs, administrators, successors and assigns.

**5.08 Payment for Labor and Supplies.**

Contractor agrees to promptly pay all Persons, which have furnished labor or supplies in connection with the Work required under this Agreement and shall provide, upon request of the City, evidence that the same have been fully paid or satisfactorily secured. In addition to any other indemnification obligations under this Agreement, Contractor shall indemnify, defend and



hold the City harmless from all claims, suits or actions for labor and supplies furnished in connection with this Agreement.

**ARTICLE 6**  
**DEFAULTS AND REMEDIES**

**6.01 Default of the Contractor.**

The occurrence of one (1) or more of the following events shall constitute an event of default under this Agreement (each an “Event of Default”):

(1) Except for Force Majeure Events as defined in Section 6.04 of this Agreement or a failure to obtain or maintain Disposal Permits as described in Section 3.01(5) an Event of Default shall occur immediately if Contractor is unable to accept Municipal Solid Waste from City for more than one (1) consecutive day that Contractor is obliged to receive such Municipal Solid Waste pursuant to the terms of this Agreement.

(2) Except for Force Majeure Events as defined in Section 6.04 of this Agreement or a failure to obtain or maintain Disposal Permits as described in Section 3.01(5), an Event of Default by Contractor shall occur if one (1) or more of the following occurs and Contractor fails to cure the same within ten (10) Days after receiving written notice thereof from City, unless Contractor has promptly commenced and is continuing diligently and in good faith to cure such default and does cure such default within thirty (30) Days of such notice (except for a default under Section 6.01(2)(c) or (d) below):

(a) Contractor cannot accept delivery of Municipal Solid Waste in the Maximum Daily Quantity agreed to under this Agreement at any time during the Term of this Agreement;

(b) Contractor fails to perform any Work to be performed by it under this Agreement;

(c) the filing of a petition by or against Contractor for relief as a bankruptcy or insolvency or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of Contractor property; or, an assignment by Contractor for the benefit of creditors; or, the taking possession of the property of Contractor by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or liquidation of Contractor or for the operating, either temporary or permanent, of Contractor's business, provided, however, that if any such action is commenced against Contractor, the same shall not constitute an Event of Default if Contractor causes the same to be dismissed or discharged within sixty (60) Days after the filing of same;

(d) the filing of a petition by or against Guarantor for relief as a bankruptcy or insolvency or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of Guarantor property; or, an assignment by Guarantor for the benefit of creditors; or, the taking possession of the property of

Guarantor by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or liquidation of Guarantor or for the operating, either temporary or permanent, of Guarantor 's business, provided, however, that if any such action is commenced against Guarantor, the same shall not constitute an Event of Default if Guarantor causes the same to be dismissed or discharged within sixty (60) Days after the filing of same; and/or

(e) Contractor fails to fulfill any other terms, conditions, obligations or covenants contained in this Agreement, including Section 5.03 (Economic Opportunity Plan) provided such failure to comply with Section 5.03 was not the direct result of a default of the M/W/DSBE subcontractor(s) in the performance of contractual obligations to the Contractor.

**6.02 Remedies of the City Following the Contractor's Default.**

(1) The rights and remedies afforded to the City under the terms of this Agreement shall not be deemed to be exclusive but shall be cumulative, and the City shall have and reserves any and all other rights and remedies provided at law or in equity, and the City may elect the manner in which it shall proceed.

(2) Upon an Event of Default by Contractor, the City may elect to terminate this Agreement and award a new contract to a substitute contractor. In lieu of termination, the City may temporarily suspend delivery of Municipal Solid Waste to Contractor and dispose in an Alternate Facility in accordance with Section 3.04 of this Agreement. Regardless of how the City elects to proceed upon an Event of Default by Contractor, Contractor, its surety under Section 5.01 above, and Guarantor shall be liable to the City for all damages (including but not limited to excess costs) sustained by the City by reason of an Event Default by Contractor under this Agreement.

(3) The Work to be performed hereunder by the Contractor involves the health and safety of the residents of the City. In the event of an anticipatory breach or an Event of Default under this Agreement by the Contractor, the City shall be and Contractor consents that the City is entitled to injunctive relief enjoining and restraining Contractor from doing any act in violation of this Agreement, or mandating that such act or acts be done by Contractor to carry out the terms of this Agreement. The application by the City for an injunction or mandate to any court shall not be, and shall not be construed to be, a waiver by the City of any other right or remedy available to the City under this Agreement, at law or in equity, and shall not be deemed a waiver of any other or further breaches of condition or failure to perform hereunder. The exercise of such right or rights by the City shall not prejudice in any manner whatsoever the rights of the City to enforce or secure any other rights or remedies, including but not limited to, the right to seek damages (including excess costs) for breach of this Agreement.

(4) It is also agreed by the parties hereto that upon an Event of Default under Section 6.01(2)(c) above, this Agreement shall not be an asset of the Contractor in any proceeding set forth in Section 6.01(2)(c).

**6.03 Nonwaiver.**

Neither party hereunder shall be deemed to have waived any part, provision, language, covenant, condition or requirement of this Agreement unless such waiver is in writing and signed by such party. Any partial waiver shall not be deemed to be in any manner the waiver of any other part, provision, language, covenant, condition or requirement, and where any waiver is made, either partially or otherwise, of any provision, condition, or requirement, it shall be strictly construed and deemed to be a waiver of no more than that which is clearly expressed in writing. Any ambiguity shall be resolved in favor of the City.

**6.04 Force Majeure.**

(1) Contractor or City shall not be excused nor relieved from any act or responsibility of performance under the terms of this Agreement except for the following events of Force Majeure (each a **“Force Majeure Event”**) which prevent the Contractor or City from performing under this Agreement:

(a) an Act of God;

(b) state of declared war, insurrection, labor strike, but as to the Contractor, only those labor strikes against a third party (excluding Contractor’s Affiliates) occurring off the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) which substantially interrupts the supply of materials and equipment needed to construct or operate the Designated Transfer Station(s) and/or Designated Disposal Facility(ies);

(c) any conditions (excluding costs) which are clearly beyond the control of the party claiming the Force Majeure Event and, as to the Contractor, without the fault or negligence of Contractor or Contractor's agents, employees, subcontractors or suppliers provided, however, that the party claiming the Force Majeure Event shall exhaust every available remedy to correct the condition and promptly report to the other party in writing the circumstances which justify non-performance;

(d) however, a Force Majeure Event shall not include any event which is covered or coverable by insurance.

(2) Upon the occurrence of a Force Majeure Event which prevents the Contractor or the City from performing any of its obligations under this Agreement, the non-performing party shall notify the other party as soon as is reasonably practicable regarding the Force Majeure Event and shall diligently endeavor to eliminate the cause of the Force Majeure Event.

(3) In the event a Force Majeure Event prevents the Contractor from performing responsibilities or obligations hereunder with respect to the receipt of Municipal Solid Waste at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), Contractor shall use reasonable best efforts to provide alternative arrangements which are acceptable to the City for the receipt of the Municipal Solid Waste during the Force Majeure Event, and Contractor shall continue to perform and comply with all portions of this Agreement with which it is possible for the

Contractor to perform and comply. Any proposed alternative arrangement submitted to the City for its approval shall be at no greater cost to the City than the City would have incurred under this Agreement (transportation costs and Disposal Fees included) and any savings accruing to Contractor as a result of such arrangement shall be credited to the City.

(4) Notwithstanding any other terms in this Article 6, it shall be an Event of Default if Contractor fails to perform its obligations under this Agreement resulting from a Force Majeure Event for sixty (60) consecutive Days.

(5) If the Force Majeure Event prevents the City from performing responsibilities or obligations hereunder with respect to the delivery of Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) and such Force Majeure Event continues for a period of sixty (60) consecutive Days, Contractor shall have the right to terminate this Agreement under the provisions of this subsection.

**ARTICLE 7**  
**TERMINATION AND SUSPENSION**

**7.01 Termination and Suspension.**

(1) Termination. Upon an Event of Default by Contractor, the City may elect to terminate this Agreement and award a new contract to a substitute contractor pursuant to Section 6.02(2). The City shall provide written notice to the Contractor. Except in circumstances where continuing the Agreement may endanger the health or safety of the City or its residents, the City shall provide a minimum of thirty (30) Days notice of termination.

(2) Suspension. If the City elects to suspend the Contractor's Work following an Event of Default, suspension shall not constitute a waiver or release of any liability of Contractor for such Event of Default or any of the City's damages or other remedies arising out of such Event of Default; nor shall such suspension be deemed an election of remedies in derogation of any other remedy. Contractor acknowledges that the City shall have the right, at its sole discretion, to suspend Contractor's performance in the event City Council does not appropriate funds for the performance of this Contract. In the event that the City issues a suspension notice to Contractor, such suspension shall continue from the effective date specified in the notice until a date specified in the notice which shall be not more than one hundred and eighty (180) days after the effective date (the "Suspension Period"). On or prior to the expiration of the Suspension Period, the City shall either terminate this Contract by giving a termination notice pursuant to Section 6.02(2), or by notice to Contractor, instruct Contractor to resume the Work pursuant to this Contract upon the expiration of the Suspension Period. After issuing a Suspension Notice, the City shall pay any invoices submitted by Contractor for Work rendered prior to the commencement of the Suspension Period or otherwise payable by the City to Contractor under this Contract, subject to all of the City's rights and remedies against Contractor, including but not limited to its rights of set off and its right to review and accept Work prior to payment therefor.

**7.02 Contractor Responsibilities Upon Termination or Suspension.**

(1) Upon the City’s transmission of a Termination Notice or a Suspension Notice under any provision of this Contract, Contractor and its agents, employees and Subcontractors, shall:

(a) take immediate action in an orderly manner to discontinue Work and demobilize work forces to minimize the incurrence of costs; and

(b) The City’s termination or suspension of this Contract shall not affect any obligations or liabilities of either Party accruing prior to the effective date of such termination or suspension.

(c) There shall be no liability, cost or penalty to the City for termination or suspension of this Contract.

**7.03 Payments to Contractor and City upon Termination or Suspension.**

(1) Upon termination or suspension of this Contract by the City for an Event of Default or a Force Majeure Event, Contractor and the City may each be entitled to payments to be determined by the parties and subject to audit, as shall compensate them for such amounts as may be due and owing as of the termination date or suspension date; provided, however, that:

(a) no allowance shall be included for termination or suspension expenses or for anticipated profits, unabsorbed or underabsorbed overhead, or unperformed Work; and

(b) the City shall deduct from any amount due and payable to Contractor prior to the termination date, but withheld or not paid, the total amount of fees, costs or additional expenses incurred by the City in order to satisfactorily complete the Work required to be performed by Contractor under this Contract, including the expense of engaging another party for this purpose, and such other damages, costs, losses and expenses of the City as may be incurred or result from such termination for an Event of Default.

**ARTICLE 8**  
**INSURANCE AND LIABILITY**

**8.01 Maintenance of Insurance.**

(1) Unless otherwise approved by the City’s Risk Manager in writing, Contractor shall throughout the Term of this Agreement, at its sole cost and expense, and Contractor shall cause its subcontractors, at their sole cost and expense, to procure and to maintain in full force and effect, the types and minimum limits of insurance specified below. All insurance shall be procured from reputable insurers admitted to do business on a direct basis in the Commonwealth or otherwise acceptable to the City. All insurance herein, except Environmental Impairment Liability and Workers’ Compensation, shall be written on an “occurrence” basis and not a “claims-made” basis. In no event shall Work be performed under this Agreement until the required evidence of insurance has been furnished. The insurance shall provide for at least thirty

(30) Days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or non-renewed. The City, its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance Policy. An endorsement is required stating that the City, its officers, employees, and agents, shall be named as additional insureds on the General, Environmental/Pollution & Umbrella Liability Insurance Policies.

- (a) Workers' Compensation and Employers' Liability
  - (i) Workers' Compensation: Statutory Limits
  - (ii) Employers' Liability:  
\$500,000 Each Accident – Bodily Injury by Accident;  
\$500,000 Each Employee – Bodily Injury by Disease;  
\$500,000 Policy Limit – Bodily Injury by Disease.
  - (iii) Other States' Endorsement
- (b) General Liability Insurance
  - (i) Limit of Liability: \$2,000,000 per occurrence for bodily injury (including death) and property damage liability.
  - (ii) Coverage: Premises operations; collapse, explosion and underground hazards, blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).
- (c) Automobile Liability Insurance
  - (i) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
  - (ii) Coverage: Owned, non-owned, and hired vehicles.
- (d) Environmental Impairment or Pollution Liability Insurance
  - (i) Limit of Liability: \$5,000,000 each incident/\$5,000,000 aggregate for bodily injury (including death) and property damage.
  - (ii) Coverage: Shall include sudden, accidental and gradual occurrences and may be written on a claims-made basis provided that coverage for occurrences happening during the term of this contract be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) year following the Term of this Agreement.

- (e) Umbrella Liability Insurance: at limits totaling \$10,000,000 per occurrence when combined with insurance required under (b), (c), and (d) above.

**8.02 Evidence of Insurance Coverage.**

(1) The original certificate of insurance must be submitted to the City’s Risk Manager at the following address:

City of Philadelphia  
Division of Risk Management  
1515 Arch Street, 14<sup>th</sup> Floor  
Philadelphia, PA 19102

(2) The original Certificates of Insurance shall be submitted to the Risk Manager at the above address, at least ten (10) Days prior to the commencement of any rights exercisable by Contractor hereunder and no more than three (3) business days following the expiration of any policy required hereunder. The actual endorsement adding the City as an additional insured must be submitted to the City Risk Manager at the above address. The City reserves the right to require Contractor to make policies of all insurance required under this Agreement available for inspection at any time upon ten (10) Days written notice to Contractor and/or to provide written responses to written questions from City Risk Manager with regard to the required coverages within ten (10) Days of receipt of such questions. Questions must be mailed to

Waste Management of Pennsylvania, Inc.  
c/o Charles Raudenbush, Jr.  
107 Silvia Street  
Ewing, NJ 08628

The City also reserves the right, in any event, not more frequently than once every year, to reasonably adjust the amounts, types and deductibles of the insurance coverage required hereunder, upon thirty (30) Days’ notice to Contractor.

- (3) A copy of the certificate of insurance shall be submitted to:

City of Philadelphia Streets Department/Sanitation Division  
Municipal Services Building, Room 730  
1401 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19102  
Attn.: Commissioner

**8.03 No Limit of Liability.**

The insurance requirements set forth in this Article 8 shall in no way be intended to limit, modify or reduce the indemnification, made in this Agreement or to limit Contractor's liability to the limits of the policies of insurance required hereunder.

**8.04 Indemnification.**

Contractor shall indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liability and expenses including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, hazardous substances, contamination or adverse effects on the environment, failure to pay such subcontractors and suppliers, any breach of this Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret) resulting from Contractor's negligent acts or omissions or the negligent acts or omissions of Contractor's agents, subcontractors, officers, employees or servants under or in connection with this Agreement. This obligation to indemnify, defend and hold harmless City, its officers, employees and agents, shall survive the termination of this Agreement.

**ARTICLE 9**  
**ADDITIONAL REPRESENTATIONS AND COVENANTS OF CONTRACTOR**  
**RELATING TO CERTAIN APPLICABLE LAWS**

In addition to the representations, warranties and covenants made by Contractor in Article 8, Contractor further represents, warrants and covenants that, to the extent of their applicability to Contractor, Contractor is in compliance with the laws, ordinances, regulations and executive orders described below. By executing this Contract, Contractor thereby certifies to such compliance. Contractor further certifies that the representations, warranties and covenants provided pursuant to this Article shall continue to remain true throughout the Term of this Contract or any other period of time required by such laws. In the event said representations, warranties and covenants are or become untrue or inaccurate, Contractor shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty or covenant is untrue or inaccurate. The provisions of this Article are not intended to limit the applicability of the other provisions of this Contract, including, without limitation, Contractor's agreement to comply with all Applicable Law.

**9.01 Non-Discrimination; Fair Practices.**

This Contract is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Contract, Contractor shall not discriminate or permit discrimination against any individual because of race, color, religion, ancestry or national origin, sex, gender identity, sexual orientation, age or disability. Nor shall Contractor discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any



other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 9.01 (Non-Discrimination; Fair Practices), the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

**9.02 Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations.**

(1) In accordance with Chapter 17-400 of the Code, Contractor agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting the applicability of Article 6 (Defaults and Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(2) Contractor agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Code. Contractor's failure to so cooperate shall constitute, without limiting the applicability of Article 6 (Defaults and Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

**9.03 Federal Laws.**

Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. Section 794), the Age Discrimination Act of 1975, (42 U.S.C. Sections 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

**9.04 Americans With Disabilities Act.**

Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from providing services or materials under this Contract. By executing and delivering this Contract, Contractor covenants to comply with all provisions of the Americans With Disabilities Act (the "ADA"), 42 U.S.C. §§12101 - 12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Contractor; (b) to the benefits, services, materials, activities, facilities and programs provided in connection with this Contract; (c) to the City, or the Commonwealth of Pennsylvania; (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth; and (e) if any funds under this Contract are provided by the federal government, which are applicable to the federal government

and its funds, benefits, services, activities, facilities and programs applicable to this Contract. Without limiting the applicability of the preceding sentence, Contractor shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, facilities, programs and activities provided by the City through contracts with outside contractors.

**9.05 Northern Ireland.**

(1) In accordance with Section 17-104 of the Code, Contractor (including any parent company, subsidiary, exclusive distributor or company affiliated with Contractor) (1) confirms that it does not have, and agrees that it will not have at any time during the Term of this Contract (including any extensions of the Term), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) agrees that no product to be provided to the City under this Contract will originate in Northern Ireland, unless Contractor has implemented the fair employment principles embodied in the MacBride Principles.

(2) In the performance of this Contract, Contractor agrees that it will not use any suppliers, Subcontractors or subconsultants at any tier (1) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (2) who will provide products originating in Northern Ireland unless said supplier, subconsultant or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles.

(3) Contractor agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Code. Contractor expressly understands and agrees that any false certification or representation in connection with this Section 9.05 (Section 17-104 of the Code) and any failure to comply with the provisions of this Section 9.05 (the Section 17-104 of the Code) shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law (including, but not limited to, Section 17-104 of the Code) or in equity. In addition, Contractor understands that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

**9.06 Limited English Proficiency.**

Contractor understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, Contractor shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order No. 12250 of the President of the United States, publication of the Mayor of the City of Philadelphia entitled, "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Contractor, (b) to the benefits, services, activities and programs provided in connection with this

Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Contractor shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

**9.07 Business, Corporate and Slavery Era Insurance Disclosure.**

(1) In accordance with Section 17-104 of the Code, the Contractor, after execution of this Contract, will complete an affidavit certifying and representing that the Contractor (including any parent company, subsidiary, exclusive distributor or company affiliated with Contractor) has searched any and all records of the Contractor or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

(2) The Contractor expressly understands and agrees that any false certification or representation in connection with this Section and/or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law (including, but not limited to, Section 17-104 of the Code) or equity and the Contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

**9.08 Protected Health Information.**

(1) The City of Philadelphia is a “Covered Entity” as defined in the regulations issued pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The City’s business activities include both (1) functions which make the City a Covered Entity, and, therefore, subject to HIPAA, and (2) functions that are not subject to HIPAA. In accordance with 45 CFR §164.105(a)(2)(iii)(D), the City has designated certain departments and units of the City as health care components that must comply with HIPAA (“Covered Components”). The Covered Components of the City as of August 1, 2013 include: Ambulatory Health Services, a unit of the Philadelphia Department of Public Health (“PDPH”); the Office of Behavioral Health and Intellectual Disability Services; the Philadelphia Nursing Home (a unit of PDPH); the Benefits Administration Unit of the Office of Human Resources; Emergency Medical Services (a unit of the Philadelphia Fire Department); and the Philadelphia Public Health Laboratory (a unit of PDPH). This list is subject to change, and any department or unit of the City that the City in the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Section 9.08.

(2) To the extent (1) this Contract is entered into by the City for or on behalf of a Covered Component and/or requires the performance of services that will be delivered to or used

by a Covered Component (whether or not the City department or unit through which the City entered the Contract is a Covered Component), and/or (2) Contractor is a “Business Associate” of the City, as defined in 45 CFR §160.103, Contractor shall comply with the City’s Terms and Conditions Relating to Protected Health Information (“City PHI Terms”) posted on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link). The City PHI Terms are hereby incorporated in this Section 9,08 as if fully set forth herein. (A printed version of the City PHI Terms, in the City’s sole discretion, also may be attached to this Contract.)

**9.09 Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century Minimum Wage and Benefits Standard and Mayoral Executive Order 03-14.**

(1) Contractor is a “Service Contractor” in that by virtue of entering into this Contract, Contractor has entered into a “Service Contract,” as those terms are defined in Section 17-1302 of the Code and Mayoral Executive Order 03-14, entitled, “Policy Regarding Minimum Wage and Benefits to be Provided by City Contractors and Subcontractors,” which supplements Chapter 17-1300 of the Code, entitled “Philadelphia 21<sup>st</sup> Century Minimum Wage and Benefits Standard.” Additionally, any Subcontract between Contractor and a Subcontractor to perform work related to this Contract is a “Service Contract” and such Subcontractors are also “Service Contractors” for purposes of Chapter 17-1300 and the Executive Order. (Chapter 17-1300 is accessible at <http://www.amlegal.com/library/pa/philadelphia.shtml> and Executive Order 03-14 is accessible at <http://www.phila.gov/ExecutiveOrders/Executive%20Orders/EO%203-14.pdf>.) If Contractor or any Subcontractor is also an “Employer,” as that term is defined in Section 17-1302 (more than 5 employees), and as the term “Employer” is further described in Section 17-1303 of the Code, absent a waiver, Contractor shall provide, and cause any such Subcontractors to provide their covered Employees (persons who perform work for a covered Employer that arises directly out of a Service Contract with the City), with the minimum wage standard and minimum benefits standard stated in Chapter 17-1300 of the Code and Executive Order 03-14. A summary of the current requirements is as follows:

**Minimum Wage**

- (a) Between January 1, 2019 and June 30, 2019, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$12.40/hour;
- (b) Between July 1, 2019, and June 30, 2020, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$13.25/hour;
- (c) Between July 1, 2020, and June 30, 2021, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$13.75/hour;
- (d) Between July 1, 2021, and June 30, 2022, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$14.25/hour;
- (e) Between July 1, 2022 and June 30, 2023, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$15.00; and

(f) Starting July 1, 2023, and each year thereafter, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$15.00 multiplied by the then current CPI Multiplier as annually adjusted, as described in Section 9.09(1)(g).

(g) For purposes of determining the minimum hourly wage required under 9.09(1)(f) above, the CPI Multiplier shall be calculated annually by the Director of Finance, for wages to be provided on and after July 1 of each year, by dividing the most recently published Consumer Price Index for all Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, by the most recently published CPI-U as of July 1, 2022.

**Minimum Benefits**

(a) to the extent Contractor (or its Subcontractor under Subcontract) provides health benefits to any of its employees, provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Contractor (or its Subcontractor); and

(b) provide to each full-time, non-temporary, non-seasonal covered Employee at least the minimum number of earned sick leave days required by Code Section 17-1305(2).

(2) If covered, absent a waiver, Contractor shall promptly provide to the City all documents and information as the City may require verifying its (and its Subcontractors' compliance with the requirements of Chapter 17-1300 and Executive Order 03-14. Contractor and its Subcontractors shall notify each affected employee what wages are required to be paid pursuant to Chapter 17-1300 and Executive Order 03-14.

(3) Absent a waiver, a Contractor subject to Chapter 17-1300 and Executive Order 03-14 shall comply with all their requirements as they exist on the date when the Contractor entered into this Contract with the City or when this Contract is amended. Absent a waiver, Contractor shall also be responsible for the compliance of its Subcontractors with the requirements of Chapter 17-1300 and Executive Order 03-14. Contractor shall take such steps as are necessary to notify its Subcontractors of these requirements, including, without limitation, incorporating this Section 9.09, with appropriate adjustments for the identity of the parties, in its Subcontracts with such Subcontractors. A Contractor or any of Contractor's Subcontractors subject to Chapter 17-1300 and the Executive Order that fail to comply with their provisions may, after notice and hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. Furthermore, the Council may, by resolution adopted after a public hearing, determine that there are reasonable grounds to believe that an employer subject to Chapter 17-1300 has failed to comply with its provisions, and that if such failure is established, then debarment would be an appropriate remedy for such failure. A copy of any such adopted resolution shall be forwarded to the Director of Finance, or such other officer or agency designated by the Mayor, who shall without undue delay provide appropriate notice and opportunity for hearing, and after such hearing, make a final determination as to whether there

has been a violation of Chapter 17-1300, and whether debarment, as provided by Chapter 17-1300, should be imposed. Such debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract. The debarment procedure by Council resolution shall be in addition to any other procedure for debarment or suspension from City contracts established under Chapter 17-1300.

(4) Without limiting the applicability of Article 6 (Defaults and Remedies) above, Contractor's failure to comply, or the failure of Contractor's Subcontractors to comply with the requirements of Chapter 17-1300 or Executive Order 03-14 shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(5) Contractor's covered employees shall be deemed third-party beneficiaries of Contractor's representation, warranty, and covenant to the City under this Section 9.09 only, and the covered employees of a Subcontractor of Contractor performing under a Subcontract shall be deemed third-party beneficiaries of their employer's representation, warranty and covenant to Contractor under this Section.

(6) The Office of Labor Standards may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code. An overview offering guidance on the applicability of, and requirements placed on City contractors and their first tier Subcontractors by Chapter 17-1300 of the Code and Executive Order 03-14 is available on the City's website (at <https://secure.phila.gov/eContract/> under the "About" link) (see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors").

**9.10 Chapter 17-1400 of the Philadelphia Code: Contributions and Other Mandatory Disclosures.**

(1) Contractor confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made, and agrees that none shall be made during the Term of this Contract, and any Additional Term, by Contractor, any Subcontractor, or any party from which a contribution can be attributed to the Contractor or Subcontractor, that would render the Contractor or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of Sections 17-1404(1) and 17-1405 of the Code; and that disclosures made as part of its application to receive a Non-Competitively Bid Contract contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Contract voidable at the City's option, and, as to contributions made by or attributable to Contractor, shall make the Contractor liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Contractor allowed under the Contract, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this Section 9.10 (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Contractor shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Section 9.10, and as described elsewhere in this

Contract, shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

(2) Contractor shall, during the term of the Contract, any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance the Contractor, or any Subcontractor or Consultant utilized by Contractor in connection with this Contract, has made, or any individual or entity has made if such contributions can be attributed to Contractor, or such Subcontractor or Consultant pursuant to the attribution rules of Section 17-1405, during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.

(a) Such disclosure shall be made on a form provided by the Department awarding the Contract, and the form shall be signed and filed with such Department within five (5) business days of the contribution. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Contractor or of a Consultant.

(b) It shall not be a violation of Section 9.10 if Contractor fails to disclose a contribution made by a Consultant because the Contractor was unable to obtain such information from the Consultant, provided the Contractor demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(i) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the Contract, and before the Consultant communicated with a City department or office, official or employee on behalf of the Contractor;

(ii) Including in such agreement a provision requiring the Consultant to provide the Contractor in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by the Contractor if the Consultant fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of the Contractor as of the date of such termination;

(iii) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit the Contractor to comply with the provisions of Chapter 17-1400; and

(iv) Invoking the termination provisions of the written agreement in a full and timely manner.

(3) The Contractor shall, during the Term of the Contract, any Additional Term, and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401 of the Code) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in Section 17-1401 of the Code) given to any Person in response to any such request. The Contractor shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.

(a) Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five (5) business days after a request was made or a payment in response to a request was made, as the case may be.

(b) The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Director of Finance, Procurement Department, and the Department of Records.

(c) The Contractor shall, during the Term, and any Additional Term, of the Contract disclose the name and title of each City officer or employee who directly or indirectly advised the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor that a particular Person could be used by the Contractor to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Contractor shall also disclose the date the advice was provided, and the name of such particular Person.

(i) Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five business days after the Contractor was so advised.

(ii) The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

**9.11 Executive Order 03-11: Gifts.**

(1) Pursuant to Executive Order 03-11, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment, invitation, food, drink or loan, unless consideration of equal or greater value is conveyed in return, from any of the following sources:

(a) A person seeking to obtain business from, or who has financial relations with the City;

(b) A person whose operations or activities are regulated or inspected by any City agency;



(c) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;

(d) A person seeking legislative or administrative action by the City; or

(e) A person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.

(2) Contractor understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, Contractor shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

**ARTICLE 10**  
**MISCELLANEOUS**

**10.01 Governing Law.**

This Contract shall be deemed to have been made in Philadelphia, Pennsylvania. This Contract and all disputes arising under this Contract shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to principles of Pennsylvania law concerning conflicts of laws.

**10.02 Amendments; Waiver.**

This Contract may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written Amendment signed by the Parties. Except to the extent that the Parties may have otherwise agreed in writing in an Amendment, no waiver, whether express or implied, by either Party of any provision of this Contract shall be deemed: (a) to be a waiver by that Party of any other provision in this Contract; or (b) to be a waiver by that Party of any breach by the other Party of its obligations under this Contract. Any forbearance by a Party in seeking a remedy for any noncompliance or breach by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

**10.03 Integration.**

The Contract Documents forming this Contract, including the Contractor Agreement and the General Provisions and the exhibits incorporated by reference therein, contain all the terms and conditions agreed upon by the Parties, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties (except to the extent specifically set forth herein). No other prior or contemporaneous agreements, covenants, representations or warranties, oral or otherwise, regarding the subject matter of this Contract

shall be deemed to exist or to bind any Party or to vary any of the terms contained in this Contract.

**10.04 No Joint Venture.**

The Parties do not intend to create, and nothing contained in this Contract shall be construed as creating, a joint venture arrangement or partnership between the City and Contractor with respect to the Work.

**10.05 No Third-Party Beneficiaries.**

With the exception of the remedy provided to third party beneficiaries by Article 9, nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights, remedies, or other benefits, including but not limited to third-party beneficiary rights, under or by reason of this Contract. This Contract shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of this Contract.

**10.06 Counterparts.**

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

**10.07 Severability and Partial Invalidity.**

The provisions of this Contract shall be severable. If any provision of this Contract or the application thereof for any reason or in any circumstance shall to any extent be held to be invalid or unenforceable, the remaining provisions of this Contract and the application of such provision to Persons, or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

**10.08 Survival.**

Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Contract shall survive the expiration or earlier termination of this Contract, along with the following: Contractor's representations, warranties and covenants set forth in Article 9 (Additional Representations and Covenants of Contractor Relating to Certain Applicable Laws) above; and Contractor's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section 8.04 (Indemnification) above.

**10.09 Dispute Resolution.**

(1) In the event a dispute arises between the Parties regarding the application or interpretation of any provision of this Contract, the aggrieved Party shall promptly give notice in writing to the other Party invoking the provisions of this Section and the Parties shall negotiate in good faith and attempt to resolve such dispute. If the Parties fail to resolve the dispute within thirty (30) days after delivery of such notice, each Party shall have the right to require, by written notice to the other Party containing a brief description of the dispute, that each Party nominate and have a senior officer of its management meet with the other Party's nominated senior officers at a City office or at any other mutually agreed location, within fifteen (15) business days of such request, in order to attempt to resolve the dispute.

(2) Should the Parties be unable to resolve the dispute to their mutual satisfaction within fifteen (15) days after such meeting, then, if the Parties in their respective discretion so agree, the Parties may submit to non-binding mediation on terms to be mutually agreed, in which event any applicable statute of limitations shall be tolled. The mediation shall be conducted in the City of Philadelphia. Each Party shall pay its own expenses of mediation. The fees of, and authorized expenses incurred by, the Mediator shall be equally divided between the Parties. The Mediator shall be an attorney or other professional mutually acceptable to the Parties who has no prior, current, or on-going relationship to either Party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the Parties reach agreement with respect to the disputed matter or one Party determines in its sole discretion that its interests are not being served by the mediation.

(3) In the event that the Parties do not agree to proceed to such mediation or in the event and to the extent such dispute remains unresolved following any such mediation, each Party shall have the right to pursue any and all remedies available to it.

(4) During the process described in this Section neither Party may suspend or terminate the performance of its obligations under the Contract.

**10.10 Interpretation of Certain Words.**

Whenever in this Agreement, the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words or phrases of like import are used, it shall be understood that the order, direction, requirements, permission, or allowance of the City is intended only to the extent of judging compliance with the terms of this Agreement. None of these terms shall imply the City has any authority or responsibility for supervision of Contractor's forces or operations, such supervision and the sole responsibility therefore being strictly reserved solely to Contractor. Similarly, the words "approved," "reasonable," "suitable," "acceptable," "proper," "satisfactory," or words of like effect and import, unless otherwise provided, shall mean approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of the City, subject to limitation as provided in the preceding sentence.

**10.11 Headings.**

The titles, captions or headings of Articles, Sections and Exhibits or schedules in this Contract are inserted for convenience of reference only; do not in any way define, limit, describe or amplify the provisions of this Contract or the scope or intent of the provisions, and are not a part of this Contract.

**10.12 Oral Statements Not Binding; Amendments**

The written terms and provisions of this Agreement shall supersede all oral statements of any representatives of the parties. Oral statements shall not be effective or be construed as being a part of this Agreement. This Agreement shall not be changed or modified except as specifically provided herein or by a duly executed written amendment between the City and Contractor.

**10.13 Statutes and Other Citations.**

All statutory or other citations of law referenced in the Contract shall refer to the statute or citation referenced, as it may be amended or superseded from time to time.

**10.14 Days.**

Any references to a number of days in this Contract shall mean calendar days unless this Contract specifies business days.

**10.15 Forum Selection Clause; Consent to Jurisdiction.**

The Parties irrevocably consent and agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two (2) forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums on grounds of venue or *forum non conveniens*, and the Parties expressly consent to the jurisdiction and venue of these two (2) forums. The Parties further agree that service of original process in any such lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Section 5.04 of this Agreement.

**10.16 Waiver of Jury Trial.**

Contractor hereby waives trial by jury in any legal proceeding in which the City is a party and which involves, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to this Contract or the relationship created or

evidenced hereby. This provision is a material consideration upon which the City relied in entering into this Contract.

**10.17 Notices.**

All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under this Contract shall be in writing and shall be deemed to have been duly made (a) when received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (*e.g.*, Federal Express or United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile; and (d) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested. In each case notices shall be sent to the addresses set forth in Section 5.04 of this Agreement.

*[Remainder of page is intentionally blank, signatures to follow]*

**IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first above written.**

**THE CITY OF PHILADELPHIA,**  
acting by and through its  
Department of Streets

**THE CITY OF PHILADELPHIA,**  
acting by and through its  
Procurement Department

BY: \_\_\_\_\_  
Carlton Williams  
Streets Commissioner

BY: \_\_\_\_\_  
Trevor Day  
Procurement Commissioner

APPROVED AS TO FORM:  
Marcel S. Pratt  
City Solicitor

BY: \_\_\_\_\_  
J. Barry Davis  
Chief Deputy City Solicitor

**CONTRACTOR**

BY: \_\_\_\_\_  
PRESIDENT/VICE PRESIDENT

BY: \_\_\_\_\_  
SECRETARY/TREASURER

SEAL

**EXHIBIT A**  
**PERFORMANCE BOND**

**EXHIBIT B**  
**ECONOMIC OPPORTUNITY PLAN**



City of Philadelphia  
Economic Opportunity Plan

**[Municipal Waste Processing and Disposal for the City of Philadelphia]**

Introduction, Definitions and Diversity Practices

A. Chapter 17-1600 of The Philadelphia Code requires the development and implementation of "Economic Opportunity Plan(s)" for certain classes of contracts and covered projects as defined in Section 17-1601. This Economic Opportunity Plan ("Plan") memorializes the Contractor's "Best and Good Faith Efforts" to provide meaningful and representative opportunities for Minority Business Enterprises ("MBEs"), Woman Business Enterprises ("WBEs") and Disabled Business Enterprises ("DSBEs") (collectively, "M/W/DSBEs" which also includes firms designated as Disadvantaged Business Enterprises or "DBEs") and employ an appropriately diverse workforce in ~~Waste Processing and Disposal~~ ("Project"). The term "Best and Good Faith Efforts," the sufficiency of which shall be in the sole determination of the City, means: a Contractor's efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives of Chapter 17-1600 within this project. Best and Good Faith Efforts are rebuttably presumed met, when a Contractor makes commitments and causes its professional services providers and contractors retained by Contractor (collectively, the "Participants" and each a "Participant") to make commitments within the M/W/DSBE Participation Ranges established for this Project and employ a diverse workforce as enumerated herein.

Any contract resulting from this RFP is subject to the Plan requirements as described in Section 17-1603 (1). Accordingly, by submission of this Plan, a responsive and responsible Contractor makes a legally binding commitment to abide by the provisions of this Plan which include its commitment to exercise its Best and Good Faith Efforts throughout the Project and its commitment to cause its Participants to use their Best and Good Faith Efforts to provide subcontracting opportunities for M/W/DSBEs in all phases of the Project and to employ a diverse workforce. This Plan expressly applies to all contracts awarded in connection with the Project. The objectives set forth in this Plan shall be incorporated in all Contractor requests for proposals, bids and solicitations and communicated to all Participant levels.

B. For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by the City of Philadelphia through its Office of Economic Opportunity ("OEO"). Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency<sup>2</sup> or identified in the OEO Registry will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at [www.phila.gov/oEO/directory](http://www.phila.gov/oEO/directory). If Contractor is certified by an approved certifying agency, a copy of that certification should be furnished with the proposal.

C. Contractor is required to submit a statement summarizing current and past practices relating to its diversity practices ("Diversity Practices Statement"). This statement shall identify and describe examples

<sup>1</sup> "DBE" or "Disadvantaged Business Enterprise" means a socially and economically disadvantaged minority or woman owned business that is certified under 49 C.F.R. Part 26. If applicant makes solicitation(s) and commitment(s) with a DBE, applicant shall indicate which category, MBE or WBE, is submitted for counting.

<sup>2</sup>A list of "OEO approved certifying agencies" can be found at [www.phila.gov/oEO](http://www.phila.gov/oEO)

of processes used to develop diversity at all levels of Contractor's organization including, but not limited to, board and managerial positions. This Diversity Practices Statement should also summarize Contractor's strategic business plans specific to its current or past practices of M/W/DSBE utilization on its government and non-government projects and procurement activities. The Statement shall specifically identify, for the last three years preceding the execution of this EOP (or such greater period of time as may have been set forth in the record retention requirement of an applicable EOP), all City contracts and financial assistance containing an EOP obligating Contractor and any of Contractor's "related corporate entities." "Related corporate entities" shall mean any business entity controlled by a person or business with a majority interest in the Contractor's business. For these identified contracts containing an EOP, Contractor shall enumerate the levels of M/W/DSBE participation and diverse workforce attainment achieved, comparing Contractor's achievement to the participation ranges and workforce goals contained in each identified EOP. Attachment "A" to this Plan is provided for this purpose and should be submitted with Contractor's proposal although the City reserves the right to request it at any time prior to contract award.

D. Contractor also agrees to identify in this Plan, any "Equity Ownership" which shall mean the percentage of beneficial ownership in the Contractor's firm or development team that is held by minority persons, women and disabled persons. In the event Equity Ownership is identified, Contractor agrees to abide by the reporting requirements enumerated in Section 17-1603 (1)(g)(.3).

E. Contractor and its Participant(s) hereby verify that all information submitted to the City including without limitation, the Plan and all forms and attachments thereto, are true and correct and are notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities. Contractor and its Participants also acknowledge that if awarded a contract/subcontract resulting from this RFP, it is a felony in the third degree under 18 Pa.C.S. Section 4107.2 (a)(4) if, in the course of the contract/subcontract, Contractor and/or its Participant(s) fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

Goals

A. M/W/DSBE Participation Ranges

As a benchmark for the expression of Best and Good Faith Efforts to provide meaningful and representative opportunities for M/W/DSBEs in the contract, the following participation ranges have been developed. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable on this Project through the exercise of Best and Good Faith Efforts. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the size and scope of the project and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract:

	MBE Ranges	And	WBE Ranges
[Waste Processing and Disposal]	15%-17%		10%-15%

EOP [Waste Processing and Disposal]  
 City of Philadelphia/OEO/City Council  
 2018

**B. Workforce Diversity Goals and Requirements**

Contractor and its Participants agree to exhaust their Best and Good Faith Efforts to employ minority persons, by race and ethnicity, and females in its workforce of apprentices and journeypersons at the following levels<sup>3</sup>:

- African American Journeypersons – 22% of all journey hours worked across all trades
- Asian Journeypersons – 3% of all journey hours worked across all trades
- Hispanic Journeypersons – 15% of all journey hours worked across all trades
- Female Journeypersons – 5% of all journey hours worked across all trades

- Minority Apprentices – 50% of all hours worked by all apprentices
- Female Apprentices – 5% of all hours worked by all apprentices

**III. Contractor Responsiveness and Responsibility**

A. Contractor shall identify all its M/W/DSBE commitments on the form entitled, "M/W/DSBE Solicitation For Participation and Commitment Form." The Contractor's identified commitment to use an M/W/DSBE on this form constitutes a representation by Contractor, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Contractor has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by Contractor further represents that if Contractor is awarded the contract, Contractor will subcontract with the listed firm(s) for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, Contractor shall apply the standard mathematical rules in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern. Contractor is to maintain the M/W/DSBE percentage commitments throughout the term of the contract which shall apply to the total amount of the contract and any additional increases. In the event the Contractor's contract is increased by change order and/or modification, or amendment, it shall be the responsibility of the Contractor to apply its Best and Good Faith Efforts to the amended amount in order to maintain any participation ranges committed to on the total dollar amount of the contract at the time of contract completion.

**I. Commercially Acceptable Function**

A contractor that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort in that regard only if its M/W/DSBE subcontractor performs a commercially acceptable function ("CAF"). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing

<sup>3</sup> These goals have been informed by the City of Philadelphia Fiscal Year 2017 Economic Opportunity Plan Employment Composition Analysis. Contractor and its Participants are responsible for maintaining records that demonstrate an appropriately diverse workforce for this Project which may include customary hourly wage records.

and supervising the work involved; M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees. The City may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF and in determining the amount of credit the Contractor receives towards the participation ranges. For example, a contractor using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

B. Upon award, letters of intent, quotations, and any other accompanying documents regarding commitments with M/W/DSBEs, including the M/W/DSBE Participation and Commitment Form, become part of the contract. M/W/DSBE commitments are to be memorialized in a written subcontract agreement and are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). **Any change in commitment, including but not limited to termination of the subcontract, reduction in the scope of committed work, substitutions for the listed firms, changes or reductions in the listed dollar/percentage amounts, must be pre-approved in writing by OEO.** Throughout the term of the contract, Contractor is required to continue its Best and Good Faith Efforts.

C. In the event Contractor does not identify on the M/W/DSBE Participation and Commitment Form that it has made M/W/DSBE commitments within the participation ranges established for this Contract, Contractor must complete and submit a *Documentation of Best and Good Faith Efforts Form* ("BGFE Form"), documenting its solicitations and any commitments with M/W/DSBEs, and detailing any efforts made to include M/W/DSBEs in the contract. The submission of the BGFE Form is an element of proposal responsiveness and failure to include this form may result in the rejection of the Proposal. The BGFE Form must include at a minimum, certification and documentary evidence that the following actions were taken:

1. Solicitation directed to M/W/DSBEs registered with OEO and qualified M/W/DSBEs certified by agencies approved by OEO. Contractor must provide a list of all certification directories used for soliciting participation for this Contract. Contractor must determine with reasonable certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without follow up, is not acceptable; and

2. Contractor provided interested M/W/DSBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation; and

3. Contractor negotiated in good faith with interested M/W/DSBEs. A Contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and would take a firm's price and capabilities as well as the objectives of the Plan into consideration; and

4. Documentation of the following:

- i. Any commitments to use M/W/DSBEs in its bid for subcontracted services and materials supply even when Bidder would otherwise prefer to self-perform/supply these items; and
- ii. Correspondence between the Bidder and any M/W/DSBE(s) related to this Bid; and
- iii. Attendance logs and/or records of any scheduled pre-bid meeting; and

5. Certification and evidence that the following actions were taken or documentation of the following, or an explanation why these actions were not taken or why documentation does not exist:

- i. Any arms length business assistance provided to interested M/W/DSBEs which may include access/introduction to major manufacturer/suppliers, lines of credit and union halls; and
- ii. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that are owned by M/W/DSBEs and/or focus on M/W/DSBEs; and
- iii. Telephone logs of communications related to this Bid; and
- iv. Notification of and access to bid documents at the Bidder's office or other office locations for open and timely review; and
- v. Bidder sought assistance from jobs training and employment referral agencies such as the Urban Affairs Coalition, PA CareerLink Philadelphia, Philadelphia OIC and Philadelphia Works to identify candidates for employment and to perform employment outreach; and
- vi. Bidder published its policy of nondiscrimination in the hiring, retention and promotion of employees; and
- vii. Any agreement with an apprenticeship or training program that targets the employment of minority persons, disabled persons and women.

IV. Evaluation of Responsiveness and Responsibility

A. Evaluation and Determination

1. The City, acting through its OEO, will evaluate the responsiveness of the Plan to these requirements. OEO reserves the right to request further documentation and/or clarifying information at any time prior to the award of the contract which may result in Contractor's amendment of its M/W/DSBE Participation and Commitment Form or BGFE Form.

B. Administrative Reconsideration

- 1. If the OEO determines that the Contractor has not made sufficient Best and

Good Faith Efforts, the Contractor will be notified that its proposal is nonresponsive and may file a written appeal with OEO within forty-eight (48) hours of the date of notification. The decision of OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Chief Operating Officer of the Commerce Department or his designee whose decision shall be final. If it is determined that the Contractor did not make sufficient Best and Good Faith Efforts, its Proposal will be rejected.

2. Notwithstanding compliance with the requirements set forth herein, the City reserves the right to reject any or all proposals as deemed in the best interest of the City.

V. Compliance and Monitoring of Best and Good Faith Efforts

A. The Contractor shall file a hard copy of this Plan, as certified below by OEO, with the Chief Clerk of City Council within fifteen (15) days of receiving a Notice of Award. The Plan shall be filed with:

Michael Decker, Chief Clerk of City Council  
Room 402 City Hall  
Philadelphia, Pennsylvania 19107

The Contractor also agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, within the time limits prescribed by OEO, all documentation which may be requested by OEO relative to the awarded contract, including the items described below. The Contractor must provide as required and maintain the following contract documentation for a period of three (3) years following acceptance of final payment under the contract:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation;
- Telephone logs and correspondence relating to M/W/DSBE commitments; and
- Records relating to Workforce Diversity.

B. Prompt Payment of M/W/DSBEs

The Contractor shall within five (5) business days after receipt of a payment from the City for work performed under the contract, deliver to its M/W/DSBE subcontractors their proportionate share of such payment for work performed (including the supply of materials). In connection with payment of its M/W/DSBE subcontractors, the Contractor agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

Each month of the contract term and at the conclusion of the contract, the Contractor shall provide to the OEO documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the Plan.

C. Oversight Committee

1. For this project, the City, in its sole discretion, may establish a Project Oversight Committee consisting of representatives from the Contractor's company and the City ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.
2. If a Project Oversight Committee is established, the City will convene meetings of the Committee no later than one (1) month after issuance of the Notice To Proceed.

VI. Remedies and Penalties for Non-Compliance

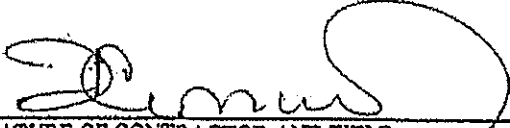
A. The Contractor agrees that its compliance with the requirements of the Plan is material to the contract. Any failure to comply with these requirements may constitute a substantial breach of the contract. It is further agreed and understood that in the event the City determines that the Contractor hereunder has failed to comply with these requirements the City may, in addition to remedies reserved under Section 17-1605 of The Philadelphia Code, any other rights and remedies the City may have under the contract, or any bond filed in connection therewith or at law or in equity, exercise one or more of the remedies below, which shall be deemed cumulative and concurrent:

- Withhold payment(s) or any part thereof until corrective action is taken.
- Terminate the contract, in whole or in part.
- Suspend/Debar the Contractor from proposing on and/or participating in any future City contracts for a period of up to three (3) years.
- Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: The "total dollar amount of the contract" shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the City.)

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with the Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors. No privity of contract exists between the City and the M/W/DSBE subcontractor identified in the contract. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with subcontracted services under any law or Executive Order or by any reason of the Contract except such rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

Rafael Carrasco, President  
PRINT NAME OF CONTRACTOR AND TITLE

2/22/19  
DATE



SIGNATURE OF CONTRACTOR AND TITLE President

2/22/19  
DATE

\_\_\_\_\_  
IOLA HARPER, EXECUTIVE DIRECTOR, OFFICE OF ECONOMIC OPPORTUNITY<sup>4</sup> DATE

*[See Forms on following pages; these Forms, must be submitted by Contractor]*

<sup>4</sup> Pursuant to Section 17-1603 (2) of The Philadelphia Code, the representative of the City of Philadelphia's Office of Economic Opportunity, the "certifying agency", certifies that the contents of this Plan are in compliance with Chapter 17-1600.



**BASED ON WMPA'S BEST AND FINAL OFFER (MAY 3, 2019)**

**WASTE MANAGEMENT OF PENNSYLVANIA, INC. ("WMPA")  
SUPPLEMENT TO  
ANTIDISCRIMINATION POLICY SOLICITATION FOR PARTICIPATION  
AND COMMITMENT FORM**

As described in WMPA's Economic Opportunity Plan submitted as part of its proposal, the RFP for Municipal Waste Processing and Disposal (the "RFP") contains no meaningful opportunity to subcontract portions of the work to certified MBEs and/or WBEs, with the exception of transportation services (hauling).<sup>1</sup>

With respect to transportation services, **WMPA can commit to paying certified MBE and WBE haulers at rates well in excess of the MBE and WBE targets established in the RFP**, because WMPA has committed to utilizing WBE and MBE certified haulers for 100% of the necessary transportation work to transport solid waste delivered to WMPA's two (2) city transfer stations to ultimate disposal destinations. WMPA has an existing relationship with a WBE certified hauler, WB Services, and WMPA also recently identified an MBE certified hauler, Caribbean Transport. WMPA intends to split the transportation work between these two haulers.

The exact dollar amount, and percentage of the total bid, that will be paid to these WBE/MBE haulers is dependent upon several factors that have yet to be determined, including: (1) the total amount of solid waste materials that the City may award to WMPA under the RFP; (2) the volume of solid waste delivered to WMPA's PTS Transfer Station versus the Forge Transfer Station; and (3) the total 'per ton' fee paid by the City to WMPA for each ton of waste delivered to one or both of WMPA's transfer stations.

However, because WMPA's bid prices contain two main components (transportation and disposal) for every ton of waste received from the City, and WMPA already has solicited transportation pricing from Caribbean Transport and WB Services to haul each ton of waste, WMPA can estimate both the total percentage of the revenue that will be paid to each hauler, and the potential total dollar value that will be paid to each hauler, based upon the WMPA pricing currently offered to the City (WMPA's Best and Final Offer presented to the City on May 3, 2019), for every ton of waste that the City delivers to WMPA. The following examples demonstrate the potential (i) percentage of the total bid allocated to MBE and WBE transportation, and (ii) total potential dollars actually paid to the MBE and WBE haulers each calendar year, based upon the following assumptions:

- City delivers a total of approximately 1,500 tons of solid waste per day (approximately 410,000 per year);
- Waste deliveries are divided evenly between Philadelphia Transfer Station (750 tons per day) and the Forge Transfer Station (750 tons per day);
- WMPA's MBE-certified hauler, Caribbean Operators, does all hauling from PTS, while WMPA's WBE-certified hauler, WB Services, does all hauling from the Forge;
- Caribbean's average per ton rate is \$16.05, and WB's average per ton rate is \$14.10;
- WMPA's Best and Final pricing to the City is \$65.25 per ton for all waste delivered to either the Philadelphia Transfer Station or the Forge Transfer Station; and
- Waste hauling services occur on 270 days per year.

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<sup>1</sup> WMPA also procures fuel in the Philadelphia area from an MBE-certified fuel and lubricants vendor, Naughton Energy Corp.

I. Percentage of Per-Ton Revenue to be Paid to Each Hauler

Caribbean Transport (a certified MBE hauler) will be paid \$16.05 per ton for each ton of waste delivered by the City to Philadelphia Transfer Station and subsequently hauled by Caribbean to a disposal destination. **This transportation rate totals 24.6% of the Best and Final per ton rate quoted by WMPA to the City (\$16.05 = 24.6% of \$65.25) for every ton of waste that the City delivers to PTS. This percentage is well in excess of the 15-17% MBE target included within the RFP.**

WB Services (a certified WBE hauler) will be paid \$14.10 per ton for each ton of waste delivered by the City to the Forge Transfer Station and subsequently hauled by WB Services to a disposal destination. **This transportation rate totals 21.6% of the Best and Final per ton rate quoted by WMPA to the City (\$14.10 = 21.6% of \$65.25) for every ton of waste the City delivers to the Forge. This percentage is well in excess of the 10-15% WBE target included within the RFP.**

II. Total Hypothetical Payments to Each Hauler Per Year

Transfer Station	750 Tons Per Day x 270 Days Per Year	Transportation to Disposal Locations	Total Spend PerYear
PTS	202,500	\$16.05/ton	\$3,250,125
Forge	202,500	\$14.10/ton	\$2,855,250
Totals	405,000		\$6,105,375/year

III. Diverse Work Force and Recruiting Practices

WMPA also prides itself on the diversity of its work force, particularly within the City of Philadelphia. WMPA's President, Rafael Carrasco, its Director of Operations, Carmen Perez, and its Senior District Manager for disposal at the Forge complex, Enrique Angelini, are Hispanic Americans that are directly responsible for the management of the WMPA's Philadelphia waste transfer operations. In addition, the Forge District Manager, Greg Jones, is African American and is directly responsible for day-to-day operations of that facility. Moreover, the vast majority of WMPA's Philadelphia-area workforce is composed of African American and Latino employees, most of whom reside in Philadelphia. Depending upon the volume of solid waste awarded to WMPA by the City, the Philadelphia transfer stations may be required to increase staff to accommodate the increased volume, and WMPA expects that new hires will be composed of approximately the same demographic percentages.

Finally, in addition to its routine hiring practices in and around the Philadelphia area, please note that WMPA participates in multiple job fairs and employment outreach events within the City of Philadelphia each year, including the nine events listed below in the past 2 years. WMPA intends to continue participating in similar events:

Date	Sponsor	Location
3/30/2017	Recruit Military	Lincoln Financial Field, Philadelphia, PA
4/4/2017	Professional & Technology Diversity Career Fair	Pennsylvania Convention Center, 1101 Arch Street, Philadelphia, PA
5/19/2017	Office City Councilman Kenyatta Johnson	Vare Recreation Center, 2600 Morris Street, Philadelphia, PA

**Exhibit B**

8/10/2017	Recruit Military	Lincoln Financial Field, Philadelphia, PA
9/25/2017	Hiring Our Heroes	Union League of Philadelphia, 140 S Broad Street, Philadelphia, PA
11/17/2017	Office City Councilman Kenyatta Johnson	Myers Recreation Center located at 5801 Kingsessing Avenue , Philadelphia, PA
5/16/2018	Office of City Councilman Bobby Henon	Fountain of Life Christian Church 7811 Frankford Ave, Philadelphia, PA
8/9/2018	Recruit Military	Wells Fargo Center, 3601 South Broad Street, Philadelphia, PA
10/16/2018	Philadelphia Hiring Expo with The Philadelphia Flyers	Wells Fargo Center, 3601 South Broad Street, Philadelphia, PA

### 3.0. TRANSPORTATION BID RESPONSE

Origin Location	Destination Location	Using Carrier Owned Trailer	
		Hauling Rate (\$/Ton)	Hauling Rate (\$/Load)
Philadelphia Transfer Station	Fairless Landfill	16.05	353.10
Philadelphia Transfer Station	Wheelabrator - Falls WTE Plant	16.05	353.10
The Forge Transfer Station	Fairless Landfill	15.15	333.30
The Forge Transfer Station	Wheelabrator - Falls WTE Plant	15.15	333.30

#### CARRIER INFORMATION

**CARRIER** Carribean Operators Inc. Phone Number 215.821.3316  
 Address 2900 Orthodox St Suite 10A Fax 215.821.3317  
 E-mail gomes\_travel91@msn.com

#### PRIMARY CONTACT

Name Marvin Gomes Phone Number 215.416.3135  
 Title President Fax 215.821.3317  
 Address 2900 Orthodox St. Suite 10A  
 E-mail: gomes\_travel91@msn.com

US DOT or MC# 2487200

OEO Registry # 111801

Certifying Agency City of Philadelphia



WJY

Best and Final Offer

ANTIDISCRIMINATION POLICY SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM  
 Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (DBE) Business Enterprises

DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)		Name of Bidder/Proposer: Waste Management of Pennsylvania, Inc.		Bid/RFP Opening Date: 3/22/19	
<b>Bid Number or Proposal Title:</b> MUNICIPAL WASTE PROCESSING & DISPOSAL		<b>Work or Supply Effort to be Performed</b> Transport		<b>Commitment Made</b> Yes (If Yes, give date) <input checked="" type="checkbox"/> NO	
<b>List below ALL MBE/WBE/DBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.</b>		<b>Date Solicited</b> 1/28/19		<b>Give Reason(s) If No Commitment</b>	
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DBE <input checked="" type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE N/A	<b>Company Name</b> Carribean Opr. Inc.		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<b>Amount Committed To</b> Dollar Amount \$ Percent of Total Bid/RFP %	
<b>Address</b> 2900 Orthodox St., Phila., PA		<b>Quote Received</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Commitment Made</b> Yes (If Yes, give date) <input checked="" type="checkbox"/> NO	
<b>Contact Person</b> Marvin Gomes		<b>Date Solicited</b> 1/28/19		<b>Give Reason(s) If No Commitment</b>	
<b>Telephone Number</b> 215-821-3316		<b>By Phone</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Amount Committed To</b> Dollar Amount \$ Percent of Total Bid/RFP %	
<b>Fax Number</b> [Blank]		<b>By Mail</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Commitment Made</b> Yes (If Yes, give date) <input checked="" type="checkbox"/> NO	
<b>Email Address</b> [Blank]		<b>Quote Received</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Give Reason(s) If No Commitment</b>	
<b>OEO REGISTRY #</b> 13694		<b>Date Solicited</b> 1/28/19		<b>Amount Committed To</b> Dollar Amount \$ Percent of Total Bid/RFP %	
<b>CERTIFYING AGENCY</b> PAUCP		<b>By Phone</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Commitment Made</b> Yes (If Yes, give date) <input checked="" type="checkbox"/> NO	
<b>Company Name</b> WB Services		<b>Quote Received</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Give Reason(s) If No Commitment</b>	
<b>Address</b> 5109 Bleigh Ave., Phila., PA		<b>Date Solicited</b> 1/28/19		<b>Amount Committed To</b> Dollar Amount \$ Percent of Total Bid/RFP %	
<b>Contact Person</b> Wesli Bulawa		<b>By Phone</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Commitment Made</b> Yes (If Yes, give date) <input checked="" type="checkbox"/> NO	
<b>Telephone Number</b> 215.624.3197		<b>Quote Received</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Give Reason(s) If No Commitment</b>	
<b>Fax Number</b> [Blank]		<b>Date Solicited</b> 1/28/19		<b>Amount Committed To</b> Dollar Amount \$ Percent of Total Bid/RFP %	
<b>Email Address</b> [Blank]		<b>By Phone</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Commitment Made</b> Yes (If Yes, give date) <input checked="" type="checkbox"/> NO	
<b>OEO REGISTRY #</b> 7247090GC		<b>Quote Received</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Give Reason(s) If No Commitment</b>	
<b>CERTIFYING AGENCY</b> City of Philadelphia		<b>Date Solicited</b> 1/28/19		<b>Amount Committed To</b> Dollar Amount \$ Percent of Total Bid/RFP %	
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DBE <input checked="" type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE		<b>By Phone</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Commitment Made</b> Yes (If Yes, give date) <input checked="" type="checkbox"/> NO	
<b>Company Name</b> JM Transportation, Inc.		<b>Quote Received</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Give Reason(s) If No Commitment</b>	
<b>Address</b> 415 City Ave., Merion, PA		<b>Date Solicited</b> 1/28/19		<b>Amount Committed To</b> Dollar Amount \$ Percent of Total Bid/RFP %	
<b>Contact Person</b> Jerusa DeCarvalho		<b>By Phone</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Commitment Made</b> Yes (If Yes, give date) <input checked="" type="checkbox"/> NO	
<b>Telephone Number</b> 267.228.0840		<b>Quote Received</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Give Reason(s) If No Commitment</b>	
<b>Fax Number</b> [Blank]		<b>Date Solicited</b> 1/28/19		<b>Amount Committed To</b> Dollar Amount \$ Percent of Total Bid/RFP %	
<b>Email Address</b> [Blank]		<b>By Phone</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Commitment Made</b> Yes (If Yes, give date) <input checked="" type="checkbox"/> NO	
<b>OEO REGISTRY #</b> 112055		<b>Quote Received</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>Give Reason(s) If No Commitment</b>	
<b>CERTIFYING AGENCY</b> City of Philadelphia		<b>Date Solicited</b> 1/28/19		<b>Amount Committed To</b> Dollar Amount \$ Percent of Total Bid/RFP %	

1. If Bidder/Proposer makes solicitation(s) and commitment(s) with a DBE, Bidder/Proposer shall indicate which class type, M-DBE or W-DBE, is submitted for credit.  
 2. Attach all quotations to this form.

\*Based upon variables described in the calculation attached hereto.

09/2010

**EXHIBIT C**

**DESIGNATED TRANSFER STATIONS AND DISPOSAL FACILITIES**

**I. Designated Transfer Station(s)**

- (1) Forge Transfer Station  
5245 Bleigh Avenue  
Philadelphia, PA 19136
  
- (2) Philadelphia Transfer Station  
3605 Grays Ferry Avenue  
Philadelphia, PA 19146

**II. Designated Disposal Facility(ies)**

Contractor has designated the following Disposal Facility(ies) for the disposal of Municipal Solid Waste under this Agreement. Upon incorporation of a Disposal Facility listed below into the City's Act 101 Plan, such Disposal Facility shall become a Designated Disposal Facility.

- (1) Wheelabrator Falls  
1201 New Ford Mill Road  
Morrisville, PA 19067
  
- (2) The Forge Core Organics Recycling  
5245 Bleigh Avenue  
Philadelphia, PA 19136
  
- (3) Fairless Landfill  
1000 New Ford Mill Road  
Morrisville, PA 19067
  
- (4) SpecFuel Facility  
5245 Bleigh Avenue  
Philadelphia, PA 19136

**EXHIBIT D**

**MAXIMUM DAILY QUANTITY**

**Maximum Daily Quantity in Tons Per Day (TPD):**

<u>Name</u>	<u>Maximum Daily Quantity</u>
1. Philadelphia Transfer Station	625 tons per day
2. The Forge Recycling and Resource Recovery Center and/or WM SpecFuel Facility	950 tons per day



**EXHIBIT E**

**DISPOSAL FEES**

**Disposal Fees for Municipal Solid Waste**

Fiscal Year 2019 Disposal Fee shall be \$65.25 per ton for Municipal Solid Waste accepted at the Philadelphia Transfer Facility and Recycling Center and the Forge Transfer Facility or SpecFuel Facility.

Disposal Fee for Municipal Solid Waste accepted at the Forge Core Organics Recycling shall be no more than 40% more than Disposal Fee for Municipal Solid Waste accepted at the Philadelphia Transfer Facility and Recycling Center and the Forge Transfer Facility

Fiscal Year 2019 Disposal Fee shall be \$65.25 per ton for direct delivery of Municipal Solid Waste to the Fairless Landfill and Wheelabrator Falls waste-to-energy facility.

**Disposal Fees for Residual Waste**

Fiscal Year 2019 Disposal Fee shall be \$65.25 per ton for direct delivery of Residual Waste to the Fairless Landfill. If Residual Waste is accepted for transportation by Waste Management at a location within the City but not at a Designated Transfer Station, the Disposal Fee will be \$65.25 per ton.

**Escalation Rates**

Fiscal Year 2019-2025 Disposal Fees shall be escalated for each year at 3.5%

Acceptance of Municipal Solid Waste will be either at the Fairless Landfill, Wheelabrator Falls waste-to-energy facility, SpecFuel Facility or Forge Core Organics Recycling

For Residual Waste delivered to Fairless Landfill, or accepted for transport by Waste Management, the material must meet the residual waste requirements of both the PADEP and the respective Site Permits.

Note:

*The entire Disposal Fee for each Ton of City Municipal Solid Waste delivered to the Contractor's Transfer Station(s) or Disposal Facility(ies) shall be the amount stated above which includes the applicable Act 101 of 1988 Recycling Fee and Act 90 of 2002 Growing Greener Fee. If these fees are changed or eliminated the Disposal Fee shall be amended.*

**EXHIBIT F**

**PERMITS FOR TRANSFER STATIONS AND DISPOSAL FACILITIES**

**EXHIBIT G**  
**GUARANTY**

**EXHIBIT H**

**RULES AND REGULATIONS FOR DESIGNATED TRANSFER STATIONS AND DISPOSAL FACILITIES**

The Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall be open to accept delivery of Municipal Solid Waste as follows:

- (1) For general disposal:
  - a. Monday through Friday and on Saturdays following a Holiday from 6:30 a.m. to 7:30 p.m.
  - b. Clean Block Program deliveries on Spring and Summer Saturdays from 10:00 a.m. to 6:00 p.m.
  
- (2) For limited disposal provided notice is given before 4:00 p.m. on the previous day:
  - a. From 10:00 p.m. to 6:00 a.m. during weekdays
  - b. Saturdays from 6:30 a.m. to 7:30 p.m.
  - c. Sundays from 10:00 a.m. to 6:00 p.m. during emergency situations or when needed (e.g. major snowstorm, natural disaster, labor disruption).

MEMORANDUM

To: Scott McGrath

From: India McGhee

Date: July 11, 2019

Re: Executed Original of Recycling Contract with Waste Management

---

Scott,

Enclosed please find an original, fully executed and conformed contract for Recycling Processing between the City and Waste Management of Pennsylvania, Inc., as well as the Intergovernmental Agreement between the Philadelphia Municipal Authority and the City. Please keep this original with your file for the contract.

Best,  
India

#20-6002

**INTERGOVERNMENTAL RECYCLING PROCESSING AND  
MARKETING AGREEMENT**

**THIS INTERGOVERNMENTAL RECYCLING PROCESSING AND  
MARKETING AGREEMENT** (“Intergovernmental Agreement”) is dated as of July 8, 2019 (the “Agreement Effective Date”) by and between The City of Philadelphia (“City”) acting through its Streets Department and The Philadelphia Municipal Authority, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania (“Authority” or “PMA”).

**CONFORMED**

**JUL 11 2019**

**RECITALS**

WHEREAS, the Authority is a body corporate and politic organized under the provisions of the Pennsylvania Municipality Authorities Act of 1945 (the Act of May 2, 1945, P.L. 382, as amended) pursuant to ordinances of the Council of the City of Philadelphia; and

WHEREAS, the Streets Department has requested that the Authority enter into a Recycling Processing and Marketing Agreement (the “Recycling Agreement”) with Waste Management of Pennsylvania, Inc. (the “VENDOR”) as further described herein; and

WHEREAS, the Council of the City of Philadelphia enacted an ordinance, Bill No. 190413, approved by the Mayor on June 19, 2019, duly empowering the City and the Authority to enter this Intergovernmental Agreement and Exhibits thereto; and

WHEREAS, by resolution dated July 8, 2019, the Authority Board of Directors has authorized its Chairman, Vice-Chairman or its Executive Director to execute this Intergovernmental Agreement; and

WHEREAS, the VENDOR and the Authority have entered into the Recycling Agreement contemporaneously with this Intergovernmental Agreement; and

WHEREAS, the Recycling Agreement is attached hereto as Exhibit A to this Intergovernmental Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein, the City and the Authority (collectively, the “Parties”) hereby agree as follows:

1. Definitions.

Capitalized terms used and not defined in this Intergovernmental Agreement shall have the meanings ascribed to them in the Recycling Agreement.

2. Term.

The term of this Intergovernmental Agreement shall commence on the Effective Date and shall terminate one day after the expiration or termination of the Recycling Agreement; provided that to the extent that any obligations of the Authority under the Recycling Agreement survive expiration or termination of the Recycling Agreement, the City's corresponding obligations under this Intergovernmental Agreement shall remain in effect and be enforceable following such expiration or termination.

3. Obligations of the Authority.

- (a) Administrative Obligations. Authority shall provide all required administrative services necessary to fulfill its obligations to the VENDOR and the City for the prompt and timely submission of any required representations and documents required under the Recycling Agreement.
- (b) The Authority shall provide the City with copies of any notices received by the Authority from the VENDOR, unless the Authority shall have determined by reasonable means that the City received a copy of such notice directly from such party.
- (c) The Authority shall provide the City with a copy of any notices received from any governmental authority with respect to the Recycling Agreement or transactions contemplated by this Intergovernmental Agreement or the Recycling Agreement.
- (d) The Authority shall not amend, modify, alter or otherwise change the Recycling Agreement, once fully executed, without the prior written consent of the City.
- (e) The Authority shall not assign the Recycling Agreement once fully executed, without the prior written consent of the City.
- (f) The Authority shall make payments to the VENDOR as directed by the City following the receipt of invoices, the City's confirmation of the invoices and payment by the City to the Authority.
- (g) The Authority shall pay over to the City any payments due from the VENDOR with respect to the Recycling Agreement.

4. Obligations of the City

- (a) With the exception of administrative obligations of the Authority set forth herein, the City hereby assumes and shall perform such obligations directly or indirectly, including all financial and operational obligations specifically required of the Authority to the VENDOR under the Recycling Agreement.

(b) Wherever the Recycling Agreement states that PMA or the Authority shall provide, respond, inspect, review, approve, provide data or undertake similar obligations, the City shall undertake those obligations.

(c) The City shall timely review, approve or reject all or part of invoices submitted by the VENDOR and shall make timely payments to the Authority for all such approved or approved portions of invoices.

(d) The City shall timely and promptly review all required representations and documents required under the Recycling Agreement.

5. City's Indemnification of the Authority.

Subject to the provisions and limitations of this Section, the City hereby indemnifies and holds harmless the Authority and each member, officer, and employee of the Authority against any and all claims, losses, damages or liabilities, joint and several, to which the Authority or any member, officer or employee of the Authority or any member, officer or employee of the Authority may become subject, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of this Intergovernmental Agreement or the Recycling Agreement, unless the losses, damages or liabilities arise from an adjudication of bad faith, fraud or deceit of the member, officer or employee or the Authority. In the event any claim is made or action brought against the Authority, or any member, officer, or employee of the Authority, the Authority may request that the City assume the defense of the claim and any action brought thereon and pay all reasonable expenses incurred therein; or the Authority may assume the defense of any such claim or action, provided, however, that counsel selected by the Authority shall be approved by the City, and further provided that the City may engage its own counsel to participate in the defense of any such action. The defense of any such claim shall include the taking of all actions necessary or appropriate thereto.

6. Successor Authority.

In the event that the Authority ceases to exist or otherwise does not perform its obligations hereunder, the City shall have the right to appoint and substitute a successor authority (the "Successor Authority") to succeed to the rights and assume the obligations of the Authority hereunder. Such Authority shall be substantially similar with respect to its relationship to the City and its powers to contract and to manage contracts. The City's right to appoint a Successor Authority shall be a continuing right and shall not be exhausted by the exercise thereof.

7. Limitation of Liability: Special Obligations of the Authority.

Notwithstanding anything contained in this Intergovernmental Agreement to the contrary, the payment obligations of the Authority arising under this Intergovernmental Agreement are special obligations of the Authority, payable solely from payments received from the City. The Authority will do all things lawfully within its power to obtain, maintain and properly request from the City and pursue funds from which the payments may be made.



8. Tort Claims Act.

Nothing in this Intergovernmental Agreement or the Recycling Agreement shall waive or be construed to waive or amend, or be deemed to waive or amend, any immunity which the City or the Authority, or their officials, members, officers, agents, employees or representatives, may have under Title 42, Chapter 85 of the Pennsylvania Consolidated Statutes Annotated, as applicable, or other Applicable Law.

9. Effect of City Approval

The review, approval or acceptance by the City Streets Department of any documents submitted to the City by the Authority, the VENDOR or any other party under or in connection with this Intergovernmental Agreement or the Recycling Agreement shall not constitute approval otherwise required under Applicable Law by any other City of Philadelphia departments, boards or commissions, or by any other federal, state or local governmental authority having jurisdiction.

10. No Merger.

The rights and obligations of the Parties under this Intergovernmental Agreement shall remain in effect and shall not merge, even if the same Party holds rights of both Parties hereunder, unless such Party terminates this Intergovernmental Agreement in writing.

11. Severability.

In the event that any of the provisions, or portions or applications thereof of this Intergovernmental Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment in the provisions of this Intergovernmental Agreement with a view toward effecting the purpose of this Intergovernmental Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

12. Notice.

(a) Any notice required to be given by City to the Authority hereunder shall be in writing and shall be addressed to:

The Philadelphia Municipal Authority  
1515 Arch Street, 9th Floor  
Philadelphia, PA 19102  
Attention: Lorna Gallman, Executive Director

(b) Any notice required to be given by the Authority to the City hereunder shall be in writing and shall be addressed to:

City of Philadelphia Streets Department  
Municipal Services Building, Room 730  
1401 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19102  
Attn.: Commissioner

All notices under this Section shall be delivered in person, sent via certified mail with a return receipt requested or sent via facsimile and shall be effective when received at the address specified above. The Parties hereto, by like notice in writing, may designate, from time to time, another address or facsimile number to which notices may be given pursuant to this Intergovernmental Agreement.

13. Entire Agreement.

This Intergovernmental Agreement contains the entire agreement between the Parties hereto and supersedes any and all prior written and oral agreements, proposals, negotiations, understandings and representations pertaining to the subject matter hereof.

14. Amendments.


The parties acknowledge that from time to time the Intergovernmental Agreement may require amendments to support the Parties interests and obligations under the Recycling Agreement. Such requests for amendment from either Party shall not be unreasonably denied or delayed. However, no amendments or modifications of this Intergovernmental Agreement shall be valid unless evidenced in writing and signed by a duly authorized representative of the Party against which enforcement is sought.

15. Third Party Rights.

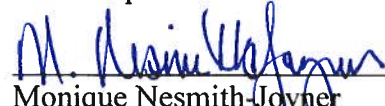
The Parties hereby acknowledge the **VENDOR** is a third-party beneficiary to this Intergovernmental Agreement. Except with respect to the **VENDOR** as third-party beneficiary, this Intergovernmental Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other Person.

**IN WITNESS WHEREOF**, the Parties have executed this Intergovernmental Agreement as of the date first above written.


APPROVED AS TO FORM:  
Marcel S. Pratt, City Solicitor

BY:   
India J. McGhee  
Assistant City Solicitor

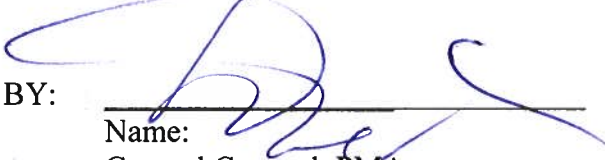
**THE CITY OF PHILADELPHIA**,  
acting by and through its  
Procurement Department

BY:   
Monique Nesmith-Joyner  
Acting Procurement Commissioner

and its Streets Department

BY:   
Carlton Williams  
Streets Commissioner

APPROVED AS TO FORM:

BY:   
Name:  
General Counsel, PMA

**THE PHILADELPHIA MUNICIPAL  
AUTHORITY**

BY:   
Lorna Gallman  
Executive Director

**EXHIBIT A**  
**RECYCLING AGREEMENT**

# **PHILADELPHIA MUNICIPAL AUTHORITY**

## **AGREEMENT FOR THE SALE, PROCESSING AND MARKETING OF CITY-COLLECTED RECYCLABLE MATERIALS**

This Recycling Sale, Processing and Marketing Agreement (the “Agreement” or “Contract”) is made and shall be effective on the 8<sup>th</sup> day of July, 2019, by and between **THE PHILADELPHIA MUNICIPAL AUTHORITY** (“PMA”), a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, and **WASTE MANAGEMENT OF PENNSYLVANIA, INC.** (the “Contractor”), a Delaware State corporation authorized to do business in the Commonwealth of Pennsylvania (together, “Parties”).

### **BACKGROUND**

A. Philadelphia Municipal Authority (“PMA”) is a body corporate and politic organized under the Provisions of the Pennsylvania Municipality Authorities Act of 1945 (Act of May 2, 1945, P.L. 382, as amended) pursuant to ordinances of the Council of the City of Philadelphia (“City Council”).

B. The City of Philadelphia (“City”), acting through its Streets Department and with the assistance of PMA, desires to ensure the provision of services for the sale, processing, and marketing of City-collected recyclable materials in a reliable, cost-effective and environmentally sound manner.

C. On August 24, 2018, the City, acting through its Procurement Department and the Department of Streets, issued a Request For Proposals for the sale, processing and marketing of Recyclable Materials.

D. On October 26, 2018, Contractor submitted to the City a proposal in response to the RFP. Contractor is a successful proposer to the Request For Proposals.

E. On June 13, 2019, the City Council approved an ordinance, Bill No. 190413, signed by the Mayor of the City of Philadelphia (“Mayor”) on June 19, 2019 (“Ordinance”), attached as Exhibit A, pursuant to which the City Council and the Mayor have authorized the execution of the Agreement between the City and PMA (“City-PMA Agreement”), and have duly empowered PMA to undertake this Agreement.

F. By resolution dated July 8, 2019, the Board of Directors of PMA has authorized its Chairman to execute this Agreement and the City-PMA Agreement.

G. The City and PMA have entered into the City-PMA Agreement on this same date, a copy of which is attached as Exhibit B, pursuant to which the City shall perform certain obligations required of PMA under this Contract and receive certain performance from PMA.

H. The Parties acknowledge the importance of the timely performance of the mutual obligations set forth in this Contract and the cost savings to the City associated with such timely performance.

I. Contractor has duly authorized its respective officials and officers to enter into and execute this Agreement.

**NOW, THEREFORE,** the parties, in consideration of the mutual covenants, considerations, and promises contained herein, incorporating the above Background, and agreeing to be legally bound by this Agreement, agree as follows:

## **ARTICLE 1** **DEFINITIONS**

### **1.01 Definitions.**

Words, phrases, or other expressions used in this Agreement shall have the meanings as described below:

- 1) **Affiliates** – Any Person that controls, is controlled by, or is under common control with Contractor.
- 2) **Agreement** – This Agreement between PMA and Contractor, and all Exhibits attached hereto, also referred to as the Contract.
- 3) **All Paper** – shall mean all paper products including mixed residential paper and office paper but excluding OCC.
- 4) **Agreement Date** – The date first set forth above.
- 5) **Agreement Year** – A twelve (12) month period commencing on the Commencement Date and ending one year thereafter, during the Term of this Agreement.
- 6) **Alternate Facility** – A processing or transfer facility to which PMA will cause the City to elect to direct Recyclable Materials in response to an Event of Default.
- 7) **Aluminum Beverage Cans and Containers (“Al C”)** – Consists of household beverage cans made of aluminum; clean aluminum food trays.
- 8) **Applicable Laws and Government Approvals** – The Permits and any statute, law, constitution, charter, ordinance, judgment, order, decree, rule, regulation, directive, standard, policy or similarly binding authority, which shall be enacted, adopted, promulgated, issued or enforced by a Governmental Body relating to the Contractor, PMA, the Facility, and this Agreement, including without limitation, the Act 101 Plan.
- 9) **Change in Law** – As defined in Section 4.04.

- 10) Commencement Date – The start date of this Agreement, July 8, 2019.
- 11) Commissioner – The Commissioner of the Department of Streets of the City (including an individual serving in an acting capacity) or his/her designee(s).
- 12) Commodity Share Percentage (“CSP”) – Any Recyclable Material’s percentage of the City’s Recyclable Material stream, as determined in the most recent Recyclable Materials composition analysis conducted under this Agreement.
- 13) Contract – This Agreement.
- 14) Contamination – shall be as defined in Exhibit F.
- 15) Contract Term – The Initial Term of the Contract plus PMA-option terms, if any.
- 16) Contractor – The entity named and designated in the first paragraph of this Agreement.
- 17) Current Value – An index comprised of the sum of the market values for various Recyclable Materials (as listed in the Reference Source Indices). Current Value will be adjusted monthly to track changes in the recyclable materials commodity markets. An initial Current Value shall be calculated on the Commencement Date.
- 18) Diversion Facility – A processing facility temporarily utilized by the Contractor as further described in Section 3.03(2).
- 19) Event of Default – A default as set forth in Article 6 of this Agreement.
- 20) Excluded Materials – Shall be as defined in Exhibit E.
- 21) Exhibit(s) – The exhibits attached to this Agreement or as subsequently modified at the mutual agreement of PMA and Contractor, and incorporated by reference in this Agreement.
- 22) Facility or Facilities – The Contractor’s designated Processing Facility(ies) or designated Transfer Facility(ies) as approved by the City at the direction of PMA in this Agreement or subsequently in writing. The term may be used interchangeably throughout this Agreement and may be used to refer to one or more processing facilities or transfer locations.
- 23) Finance Director shall mean the Director of the Department of Finance of the City (including an individual serving in an acting capacity), or his/her designee.
- 24) Fiscal Year or FY – The City and PMA’s budget year, comprised of the twelve (12) month period between July 1 and June 30.
- 25) Force Majeure Event shall have the meaning set forth in Section 6.06 of this Agreement.

- 26) HDPE Plastics - colored ("HDPE CP") – Includes colored plastic bottles and other products made of high-density polyethylene plastic, and identified by the SPI resin identification code # "2."
- 27) HDPE Plastics - natural ("HDPE NP") – Includes translucent plastic bottles and other products made of high-density polyethylene plastic, and identified by the SPI resin identification code # "2."
- 28) Mixed Glass ("MG") – Includes household glass containers, bottles and jars, including amber, flint, green, mixed and/or crushed glass.
- 29) Mixed Metal: Tin, Steel, and Bi-Metal Containers ("MM") – Includes food, beverage, nonfood, empty paint cans, and aerosol cans made of mixed metal, such as tin and steel.
- 30) Mixed Paper for Confidential Destruction – Intentionally Omitted.
- 31) Mixed Plastics – Mixed #1-#7 plastics and Rigid Plastics.
- 32) Net Revenue Per Ton – The value of a Ton of Recyclable Materials delivered to a Facility, as calculated according to the formula attached at Exhibit C.
- 33) Non-Recyclables – Shall be as described in Exhibit E.
- 34) Old Corrugated Cardboard ("OCC") – Includes boxes with unbleached and unwaxed paper with ruffled liners. In addition to OCC included in the Recyclable Materials, OCC shall be collected and delivered separately as a consolidated load, and Contractor may propose separate pricing for this material.
- 35) Other Materials – Such other materials as shall be mutually agreed to between City and selected Contractor.
- 36) Performance Bond – A bond provided to ensure performance of this Agreement, as further defined at Section 5.01 of this Agreement.
- 37) PET Plastics – Includes plastic bottles and other products made of polyethylene terephthalate, and identified by the SPI resin identification code # "1."
- 38) Recyclable Materials – Materials collected or caused to be collected by the City from residential, institutional, public, and small commercial properties through its recycling program, including Targeted Materials.
- 39) Reference Source Indices – Those market price indices listed in Exhibit D, or if any listed index become unavailable, or provide inadequate data for drawing appropriate monthly pricing information, other similar references as PMA will cause to be selected by the City.



40) Residue – Material accepted for processing and sorting that cannot be separated as a marketable recyclable material.

41) Revenue Payment – The payment made by the Contractor to PMA or PMA to the Contractor for Recyclable Materials delivered to the Facility, as determined according to the formula contained at Exhibit C.

42) Rigid Plastics – Includes plastics such as plastic milk and soda crates, laundry baskets, buckets of less than five gallons, coolers, and flower pots.

43) Single Stream (also known as “fully commingled” or “single-sort”) – A system in which all Recyclable Materials are mixed in a collection truck, instead of being sorted by the depositor into separate commodities.

44) Targeted Materials – Means the Recyclables identified in the single stream specifications identified in Exhibit E.

45) Ton(s) – A short ton of two thousand (2,000) pounds.

46) Work – shall mean the performance of all of Contractor’s activities expressly required by this Agreement and all activities necessary or desirable for meeting the requirements of this Agreement.

47) #3-#7 Plastics – All plastic bottles and other products made of plastics identified by the SPI resin identification codes “3” – “7.”

## **ARTICLE 2**

### **TERM & PMA DELEGATION**

#### **2.01. Term.**

(1) Initial Term. The initial term (the “Initial Term”) of this Agreement shall commence on July 8, 2019 (the “Commencement Date”), and terminate five (5) years thereafter or upon earlier termination under the terms of this Agreement

(2) Additional Term(s). PMA may, at its sole option, request the Contractor to amend this Agreement to add up to two additional one (1) year terms (“Additional Terms”). Contractor may for any reason decline to amend either the first one-year Additional Term request from PMA or a subsequent request. Unless otherwise amended, the same terms and conditions applicable in the Initial Term shall be applicable in the Additional Term(s). PMA shall give Contractor written notice of its interest in amending the Term of the Agreement at least 270 days prior to end of any Term. The Agreement will be amended unless Contractor notifies the PMA and the City of its rejection of PMA’s request to amend the Term within 30 days of the PMA request. Each Additional Term shall be subject to appropriation of funds by City Council for such Additional Term. There shall be no liability or penalty to either Party for electing not to amend the Term of this Agreement to add Additional Terms.

## **202. PMA Delegation.**

PMA delegates to the City certain rights, responsibilities and obligations under this Agreement as identified herein, including but not limited to, the delivery of Recyclable Materials, routine communications with the Contractor, inspection of Facilities, receipt of operational information and reports.

### **ARTICLE 3** **FACILITIES AND OPERATIONS**

#### **3.01 Recyclable Materials Marketing.**

Contractor will provide or act as the recycling market outlet for the Recyclable Materials during the term of the Agreement regardless of market fluctuations. Except as provided in this Agreement with respect to downgraded and rejected loads, under no circumstances shall Contractor landfill, burn, or convert for burning the Recyclable Materials provided. Contractor will provide evidence that the Recyclable Materials have been used or marketed for use for legitimate recycling purposes (e.g. reuse, use in manufacture of a new product, beneficial use) upon request of City. To the extent it is commercially reasonable to do so, Contractor is encouraged to employ highest and best use markets and end-users for Recyclable Materials collected through the City's program. Contractor will not store or warehouse materials in violation of health and safety standards and shall conform to all the requirements of the City Department of Licenses and Inspections, the City Department of Health and the Pennsylvania Department of Environmental Protection.

#### **3.02 Composition of Recyclable Materials Stream Analysis.**

On a quarterly basis, occurring as close as practicable to the first day of each quarter, Contractor will conduct a composition analysis, in a manner agreed to by the Parties that is substantially similar to the example protocol attached here as Exhibit J, of incoming loads of Recyclable Materials to determine the Recyclable Materials composition and make adjustments to the Index Formula used to calculate the recycling revenue payment.

#### **3.03 Facilities**

(1) Address. The Facilities located at 3605 Grays Ferry Avenue and 5201 Bleigh Avenue in Philadelphia, PA shall be the Facilities for the delivery and processing of all Recyclable Materials collected by the City, except as otherwise provided for in this Agreement. The City estimates the quantity of Recyclable Materials will be approximately 104,000 tons in Fiscal Year 2020. No quantity of Recyclable Materials is guaranteed.

(2) Diversion Facilities. The Contractor's potential use of Diversion Facilities is provided for in this Agreement. PMA shall cause the City to review, and if satisfactory, approve Diversion Facilities that may be utilized by the Contractor as follows:

- (a) during a temporary shutdown or breakdown;

(b) during a Force Majeure Event as set forth in Section 6.06(3) of this Contract; or

(c) Any proposed Diversion Facility must be a currently permitted facility operating in accordance with, and pursuant to, all Applicable Laws and Government Approvals. If a Diversion Facility is utilized under this Agreement, Section 8.13 of this Agreement shall not apply.

### **3.04 Facility Operation and Maintenance.**

(1) The Facility will maintain safe conditions and follow best practices or industry procedures to ensure that the City's personnel and equipment are protected from damage or injury at all times. The Contractor must ensure compliance with all federal, state and local environmental and health and safety regulations at all times. If the City notifies PMA that the City has identified unsafe conditions at the Facility that put either City vehicles or City personnel at risk of harm, the Contractor will be notified immediately by the City of such conditions and be given twenty-four (24) hours to correct the situation. PMA may hold payment of invoices if it is determined that the Contractor is not in compliance with the requirements of this Section. For other unacceptable conditions at the Facility, the Contractor shall address the unacceptable conditions within 10 days of notification by PMA or the City.

(2) The Contractor shall maintain all of the Contractor's vehicles and containers used in the performance of the Work in a clean and repaired condition.

(3) The Contractor shall be responsible for maintaining complete accessibility and clear passage through all necessary roadways at the Facility during all hours of operation and shall plow all roads as necessary to maintain this condition.

(4) During the Term of this Agreement, Contractor shall be responsible for all major capital replacement(s), improvements, redesign, or other changes to the Facility. The Contractor shall notify the City of any proposed material changes to the Facility. Changes shall be scheduled by the Contractor to avoid interruption in the operation of the Facility. Any redesign or installation of equipment shall not interfere with the ability of the Facility to meet all requirements of this Agreement, except that in the event a temporary shutdown (e.g., maintenance, holiday surge), breakdown or excess volumes prevents the Contractor from performing responsibilities or obligations hereunder with respect to the receipt of Recyclable Materials at the Facility, Contractor shall provide temporary arrangements to transfer Recyclable Materials from the Facility to a Diversion Facility. Contractor shall continue to perform and comply with all portions of this Agreement with which it is possible for the Contractor to perform and comply, except as otherwise set forth herein.

(a) In the event a Force Majeure Event prevents the Contractor from performing responsibilities or obligations hereunder with respect to the receipt of Recyclable Materials at the Facility, Contractor shall use reasonable best efforts to provide temporary alternative arrangements at a Diversion Facility as set forth in Section 6.06(3) of this Agreement.

(5) At all times during the Term of this Agreement, Contractor shall operate and maintain the Facility: (i) in a safe and sound manner; (ii) in a manner that permits weighing and delivery of Recyclable Materials at all times during the hours of operation required under this Agreement; and (iii) as otherwise required by Applicable Laws and Government Approvals. Contractor shall be responsible for maintaining and renewing all licenses and permits and other Government Approvals required for operation of the Facility in effect at all times and operating the Facility in accordance with Applicable Laws and Government Approvals.

(6) The Facility shall be maintained in a manner that will prevent odors from escaping the building. No detectable odors shall be present outside the boundaries of the Facility. The Facility shall perform routine maintenance and cleaning activities to prevent excessive litter and debris.

### **3.05 PMA's Use of an Alternate Facility.**

(1) If for any reason (except for a Force Majeure Event as defined in Section 6.06 of this Agreement) the Facility cannot accept delivery of Recyclable Materials as required under this Agreement at any time during the Term of this Agreement, and no Diversion Facility is utilized as set forth in Sections 3.03(2) or 6.06(3) PMA shall have the right (in addition to any other rights or remedies available to PMA under this Agreement, at law or in equity) to cause the City to dispose of the Recyclable Materials at an Alternate Facility and to hold the Contractor liable for all excess costs (including, but not limited to, increased tipping fees and additional City transportation costs) incurred by PMA until such time as the City can deliver the Recyclable Materials to the Facility or the Contractor can deliver Recyclable Materials to the Facility or a Diversion Facility. Contractor shall have no claim or right to any benefit accruing to PMA through its use of an Alternate Facility.

(2) Nothing contained in this Section 3.05 shall be construed to limit PMA's right to proceed at any time under the provisions of Article 6 of this Agreement (Defaults and Remedies). Should PMA elect to proceed under Article 6 of this Agreement by issuing a notice to cure, the Contractor shall remain liable under the provisions of this Section 3.05 for PMA's excess costs in utilizing the Alternate Facility until the date the Contractor cures the breach to the satisfaction of PMA or PMA declares the Contractor in default hereunder and exercises the rights and remedies available to PMA under Article 6 of this Agreement.

### **3.06 Inspection by City.**

(1) Subject to all safety requirements and programs at the Facility, the Commissioner or other authorized representative of the City may inspect the Facility and the Work performed at any time to determine compliance with this Agreement. Contractor shall furnish all reasonable assistance required for its inspection. Such inspection shall not relieve the Contractor from any obligation to perform the Work strictly in accordance with this Agreement.

(2) Subject to all safety requirements and programs at the Facility, the City may have such representatives on site at the Facility during any or all operating hours. Contractor shall cooperate in all respects with the City's representatives, who shall have full access to all parts of

the Facility and may at any time inspect the Facility, equipment, operating procedures, materials and records, including without limitation, scale and maintenance records.

(3) In exercising their rights under this Section 3.06, the Commissioner and other authorized representatives of the City shall not be obstructed and, subject to all safety requirements and programs at the Facility, shall be free at all times to perform their inspection of the Facility but shall not interfere unreasonably with Contractor's operations during such inspections.

(4) Contractor shall provide for reasonable access to the Facility to the City Recycling Rewards Program Contractor for the purpose of establishing and maintaining a RFID data receiving system to collected program data from incoming trucks.

### **3.07 Receipt of and Title to Recyclable Materials.**

(1) Responsibility for and title to all Recyclable Materials that the City delivers to the Facility shall vest in Contractor at such time as the Recyclable Materials are discharged from the delivering vehicle into the receiving spaces of the Facility. Contractor shall have the right to designate the point of discharge within the Facility of each load of Recyclable Materials, provided that such designation does not detain the delivery vehicles.

(2) At all times during the Term of this Agreement, Contractor shall operate and maintain the Facility in a manner that will permit weighing, delivery and exiting of vehicles delivering Recyclable Materials pursuant to this Agreement in not more than twenty (20) minutes.

(3) Contractor shall manage the disposal or disposition of any Residue which is delivered to the Facility by the City, and may charge PMA for the disposal cost of Residue in accordance with Exhibits C and F.

(4) Contractor shall have the right to inspect the loads of all City vehicles. Subject to the procedures in Exhibits E and F, Contractor shall have the right to reject any load from the City which: (i) contains or appears to contain by volume or weight more than twenty-five percent (25%) Non-Recyclables and/or Contamination, or (ii) which contains or appears to contain any amount of Excluded Material (each such rejected load an "Unacceptable Load"). The cost resulting from City's delivery of any Unacceptable Load shall be the responsibility of PMA, and PMA shall reimburse Contractor for any costs related thereto. Title to Unacceptable Loads shall not pass from City to Contractor. Contractor and PMA agree to comply with the Non-Recyclables and Contaminated Load Protocol and Downgrade Procedure set forth in Exhibits F and G hereto.

### **3.08 Hauling of Recyclable Materials by or for Contractor.**

(1) Any hauling of Recyclable Materials by the Contractor shall be done with fully enclosed equipment so that the possibility of dripping, spilling, or scattering is kept to a minimum. Should any of these occur, Contractor shall be responsible, at its sole cost and expense, for prompt and timely cleanup of any such materials.

(2) The Contractor is required to comply with all State licensing requirements for transfer vehicles utilized by Contractor and any City waste management licensing requirements.

(3) In the event of a spill, leak or loss of payload at the Facility, Contractor shall immediately arrange for the clean-up and transportation of the payload to the Facility at Contractor's sole cost and expense, shall pay any resulting fines, assessments, penalties and damages resulting therefrom, and shall indemnify and hold harmless PMA and the City from any liability in connection with the foregoing.

### **3.09 Hours of Operation.**

(1) The Facility shall be available to receive City collected Recyclable Materials Monday through Friday from 6:00 A.M. until 7:00 P.M.

(2) Recyclable Materials shall be accepted during the same hours on Saturday at the PMA's sole option when:

(a) A City holiday falls on a weekday (Monday through Friday), or

(b) A special event or circumstance (as determined by PMA in consultation with the City) occurs on or before a Saturday, which will require the delivery of Recyclable Materials to the Contractor's Facility on Saturday. In exercising its option to deliver Recyclable Materials on a Saturday, PMA will notify the Contractor before 4:00 PM of the Thursday preceding that Saturday when Recyclable Materials will be delivered.

(3) Contractor may, at its option and at no additional cost to PMA, open the Facility at additional times to receive Recyclable Materials delivered by or on behalf of PMA subject to applicable permit and regulatory limitations.

### **3.10 Weighing Devices.**

(1) The Contractor shall maintain certified weigh scales at the Facility, calibrated in accordance with procedures established by the applicable State and Local authorities, to weigh vehicles delivering Recyclable Materials. Each loaded vehicle shall be weighed upon entering the Facility and weighed after tipping the Recyclable Materials.

(2) The Contractor shall be required to have the weight scales certified at any time but no more often than once a month. The Contractor shall furnish evidence of a maintenance agreement for the scales providing thirty (30) day inspection and service maintenance. All costs and expenses associated with the installation, inspection, certification, and maintenance of the weight scales shall be borne exclusively by the Contractor.

### **3.11 Recyclable Material Information.**

(1) The required information shall be recorded on a weigh slip. A copy of the completed weigh slip shall be presented to the truck driver delivering Recyclable Materials at the

time of departure from the Facility. In addition to the requirements set forth in the preceding sentence, the Contractor shall be required to generate a computer file for the transactions of each day which shall include the following information, in the following order:

- Facility code,
- Sequential ticket number,
- Agency code,
- Vehicle number,
- Commodity code,
- Source code,
- Gross and vehicle weight of Recyclable Materials (in pounds),
- Date in, time in (military),
- Tare / net vehicle weight (in pounds),
- Date out, time out (military), and
- Other codes as may be required by PMA in the future.

(2) This information shall be transmitted to the City by electronic mail on a daily basis in a format designated by the City. With reasonable notice, the City may require that additional information be provided. To ensure accuracy of the data transmission, the computer file must be generated electronically from the weigh scale.

(3) Reports for the prior day shall be transmitted to PMA by 12:00 PM each day that the Contractor is required to accept Recyclable Materials. If the City has delivered Recyclable Materials to a Facility on a Saturday, the Contractor shall provide the Friday and Saturday reports on the following Monday by 12:00 PM. In the event that it is not possible to transmit the data electronically on a given day, the Contractor shall notify the appropriate representative of the Streets Department by telephone or electronic mail prior to 12:00 PM of that day.

(4) Late or Inadequate Reports. In the event that Contractor files a report required under this Agreement after the date that it is due or files an inadequate report (the adequacy or inadequacy of such report being in the sole discretion of the City), payment of all amounts due to Contractor for the period covered by the late or inadequate report may be deferred until all late or inadequate reports are submitted or corrected to the satisfaction of the City. PMA shall retain the last payment due under this Agreement until Contractor has provided all reports required in this Section.

### **3.12 Rules and Regulations.**

(1) PMA shall require all City employees, agents, contractors and representatives to comply with Contractor's rules and regulations in performance of its duties under this Agreement attached hereto and marked as Exhibit H, provided however, that all such rules and regulations shall be consistent with this Agreement, lawful, reasonable and uniformly applied to all haulers delivering recyclables to the Facility.

(2) Contractor may implement additional rules and regulations that are not inconsistent with this Agreement and Applicable Laws and which apply equally to all haulers delivering

Recyclable Materials to the Facility, upon thirty (30) Days prior written notice thereof to PMA and the City; provided however, that such additional rules and regulations may be implemented earlier than upon thirty (30) Days prior written notice if such implementation is required in order to avoid an emergency or to protect the health, safety and welfare of Contractor, its employees or Persons delivering Recyclable Materials to the Facility.

(3) Contractor may refuse to receive Recyclable Materials from any vehicle operated by a hauler who repeatedly or intentionally violates the rules and regulations set forth in Exhibit H.

#### **ARTICLE 4** **CONSIDERATION**

##### **4.01 Revenue Payment.**

(1) PMA shall cause the City to deliver and the Contractor shall receive the Recyclable Materials. Either the PMA or the Contractor shall receive a Revenue Payment as set forth in this Agreement. Payment of the Revenue Payment shall be in the manner and at the time provided for in this Agreement.

(2) Each month, the Revenue Payment, shall be determined according to the Blended Value Calculator described below, and attached in Exhibit C, for the Recyclable Materials delivered to the Facility in the preceding month.

(3) The Current Value in the Blended Value Calculator for each Recyclable Material shall be the average of all published prices in the indices attached as Exhibit D. Commodity values that are quoted in cents per pound in a given Reference Source Index shall be converted to dollars per ton by multiplying by 2,000. If a Reference Source Index provides a range of possible prices for a commodity, rather than a specific price, PMA will use an average of the low and high ends of the range.

(a) Should any Reference Source Index become unavailable or provide inadequate data for drawing appropriate monthly pricing information, other similar references will be agreed upon by the parties.

##### **4.02 Revenue Payment Calculation.**

(1) At the end of each month, PMA will direct the City to determine the monthly Current Value ("CV") according to the Blended Value Calculator. The PMA Rebate shall be deducted from the Contractor's Processing Fee, as described in the Blended Value Calculator attached hereto as Exhibit C.

(2) PMA and the Contractor shall process payments following the end of the monthly reconciliation and determination of the Revenue Payment.



(3) If the PMA Rebate amount exceeds the Contractor's Processing Fee, Revenue Payments to PMA shall be mailed to:

Executive Director  
Philadelphia Municipal Authority  
1515 Arch Street, 9<sup>th</sup> Floor  
Philadelphia, Pennsylvania 19103

Revenue Payment to the Contractor shall be made by wire transfer or mailed to:

Waste Management of Pennsylvania, Inc.  
c/o Charles Raudenbush, Jr.  
107 Silvia Street  
Ewing, NJ 08628

(4) PMA may at any time agree to an offer by the Contractor to increase the Revenue Payment.

**4.03 Education Fund [Section Reserved].**

**4.04 Change in Law.**

(1) Change in Law shall mean:

(a) the adoption, promulgation, initial application, issuance, modification or official change in interpretation, after the Agreement Date of any Applicable Law; and/or

(b) the imposition after the Agreement Date, of any condition on the issuance, reissuance or continued effectiveness of any existing Permit(s) or in any pending applications for Permit(s); and/or

(c) the order and/or judgment of any Governmental Body after the Agreement Date that would affect the obligations of the parties under this Agreement

(2) Notwithstanding the foregoing, if one or more events specified in Subsections (1)(a), (1)(b) or (1)(c) above occurs, then:

(a) it shall not be deemed a Change in Law if such event is the result of willful or negligent action or failure to act in accordance with this Agreement or Applicable Laws by the PMA, the Contractor, its agents, employees, subcontractors, parent companies, subsidiary(ies) or Affiliates; provided, however, the contesting in good faith by such party of any suspension, termination, interruption or failure of issuance or renewal of any Permit(s), license or approval shall not constitute or be construed to constitute such a willful or negligent action or inaction of such party and,

(b) such an event specified in Subsections (1)(a), (1)(b) or (1)(c) shall only be deemed a Change in Law hereunder if it imposes requirements on Contractor more costly than those in existence as of the Agreement Date.

(3) A Change in Law adjustment shall be made to the Revenue Payment in the amount of any and all adjusted costs related to or based upon, directly or indirectly, the receipt, processing and disposition of Recyclable Materials delivered to the Facility, including capital costs, operating, design, construction, equipment maintenance, start up, costs of the Facility and any tax created after the Agreement Date and any increase in governmental fees, federal, state and City fees or surcharges (but excluding the United States corporate income tax, state income taxes and any non-Philadelphia real property taxes) and any City-required wage or benefit increases resulting from the Change in Law.

## **ARTICLE 5**

### **GENERAL CONDITIONS**

#### **5.01 Performance Bond.**

(1) Upon execution of this Agreement, Contractor shall provide security for the faithful performance of the Work and for compliance with the terms of this Agreement in the form of a performance bond (the "Performance Bond"), with an approved surety company as surety thereon, in a sum equal to one-half the anticipated value (as reasonably determined by PMA) of the Revenue Payment to be paid during the first year of this Agreement. The Performance Bond shall be in the form set forth in Exhibit K and issued by a surety company duly authorized and licensed to do business in the Commonwealth and approved by PMA.

(2) During each subsequent Agreement Year, Contractor shall provide PMA with a Performance Bond certificate thirty (30) Days prior to the commencement of each subsequent Agreement Year. The value of the Performance Bond shall be adjusted to an amount equal to one-half the anticipated value (as reasonably determined by PMA) of the anticipated Revenue Payments for the upcoming Agreement Year.

(3) The Performance Bond must be issued by a surety listed on the then-current annual "Surety List" promulgated by the Commonwealth Insurance Department. The Performance Bond amount must be in an amount permitted by the Surety List. If the surety issuing the Performance Bond fails to meet the requirements of this Section 5.01, Contractor shall have thirty-five (35) Days from the date the inadequate Performance Bond was rejected by PMA to obtain a Performance Bond issued by a surety that meets the requirements of the Surety List.

#### **5.02 Letter of Credit**

(1) In lieu of the Performance Bond, Contractor shall have the right to substitute a Letter of Credit for the performance bond required hereunder at the beginning of any fiscal year of the City (July 1) and maintain in effect such Letter of Credit in lieu of such performance bond for each City fiscal year (July 1 to June 30) for all of the remaining Term and any Additional Term if the Contractor fulfills all of the provisions as set forth in this Section 5.02.

(a) The Letter of Credit shall comply with all applicable requirements of the Agreement.

(b) The Letter of Credit and/or each Letter of Credit thereafter shall be available to draw against up to and including the maximum amount thereof for any and all claims that may arise during the Term and the Additional Term for ninety (90) days after the expiration of the then-current Letter of Credit, if no acceptable renewal Letter of Credit or performance bond is timely provided or required.

(c) The Letter of Credit shall be issued by a bank that has a long-term credit rating of at least AA by Standard and Poors, Inc. and Aa by Moodys Investors Service, Inc. ("Acceptable Credit Rating") and shall be approved by PMA, which approval shall not be unreasonably withheld. If the bank issuing the Letter of Credit is incorporated/chartered outside the United States of America and does not have a domestic branch, the Letter of Credit must be confirmed by a domestic bank with an Acceptable Credit Rating. If the credit rating of the bank issuing the Letter of Credit or the confirming bank drops below an Acceptable Credit Rating, the Contractor must supply a substitute Letter of Credit with an Acceptable Credit Rating within thirty-five (35) days of notice to or knowledge of the Contractor of such event.

(d) The Contractor shall furnish or shall cause to be furnished a legal opinion acceptable to PMA from independent counsel or the bank's counsel stating that the Letter of Credit is legally enforceable in the United States as to the issuing bank, and, if applicable, the confirming bank.

(e) The duly authorized representatives of PMA for the Letter of Credit is the Executive Director as well as those serving in an acting capacity for said position.

(f) The Letter of Credit shall be in a form acceptable to PMA.

(g) The issuing bank must furnish an acceptable form of draw certificate and sight draft with the Letter of Credit.

(2) The Letter of Credit shall be for a sum equal to one-half the value (as determined by the City) of the anticipated Revenue Payments for the upcoming Agreement Year. The Letter of Credit shall provide for annual renewal, after successful completion of the first (12) months of operation following the Operations Commencement Date. During each subsequent twelve (12) month period, the stated amount of the Letter of Credit amount shall be adjusted to an amount equal to one-half the anticipated value of the Revenue Payments for that period.

(3) Any Letter of Credit issued during the Term shall contain a clause providing for the automatic annual renewal of the Letter of Credit on the beginning day of the City's fiscal year (July 1) at which time it shall renew for ninety (90) days in satisfaction of the requirements outlined in this Section. Any Letter of Credit issued for an Additional Term shall run from July 1 up to June 30 of the following year at which time it shall renew for ninety (90) days after the expiration of the then-current Letter of Credit if no acceptable renewal Letter of Credit or performance bond is timely provided or required in satisfaction of the requirements of this Section.

(4) In the event the Letter of Credit is not automatically renewed as contemplated in Section 5.04 (3), a substitute Letter of Credit or performance bond shall be delivered to PMA for each annual renewal period at least sixty (60) days before the expiration of the Letter of Credit. Substitution of a performance bond for a Letter of Credit during the Term or the Renewal Term is contingent on provision of a Letter of Credit for a period of ninety (90) days after the expiration of the then-current Letter of Credit in satisfaction of the requirements of this Section.

### **5.03 Economic Opportunity Plan.**

(1) This Contract is subject to and Contractor must comply with the Economic Opportunity Plan ("EOP") requirements as described in the Philadelphia Code Section 17-1603(1). The EOP attached hereto as Exhibit I constitutes the entire EOP approved by the Office of Economic Opportunity for this Agreement. Contractor agrees to comply with and abide by the EOP attached to this Agreement as Exhibit I.

(2) In accordance with Section 17-1402(f) of the Philadelphia Code, Contractor shall during the Term of the Contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Contractor, any officer, director or management employee of the Contractor, or any person representing the Contractor that a particular Person could be used by the Contractor to satisfy any goals established in the Contract for participation of minority, women, disabled or disadvantaged business enterprises. The Contractor shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by the Department, and the form shall be signed and filed with PMA within five Business Days after the Contractor as so advised.

**5.04 Notices.**

Contractor shall maintain an office within the City during the Term of this Agreement. Notices provided for herein shall be sufficient if hand delivered or mailed by certified mail (postage prepaid) to the City at the following addresses:

The Philadelphia Municipal Authority  
1515 Arch Street, 9<sup>th</sup> Floor  
Philadelphia, PA 19103  
Attn.: Executive Director

City of Philadelphia Streets Department  
Municipal Services Building, Room 730  
1401 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19102  
Attn.: Commissioner

with a copy to:

City of Philadelphia Law Department  
1515 Arch Street, 16<sup>th</sup> Floor  
Philadelphia, Pennsylvania 19103-2081  
Attention: Chief Deputy City Solicitor, Regulatory Affairs Unit

for Contractor:

Waste Management of Pennsylvania, Inc.  
c/o Charles Raudenbush, Jr.  
107 Silvia Street  
Ewing, NJ 08628

with a copy to:

Waste Management Legal Department  
Attn: General Counsel for Eastern United States  
100 Brandywine Boulevard  
Newtown, PA 18940

or to such other respective addresses as the parties may, from time to time, designate to each other in writing.

**5.05 Applicable Laws and Permits.**

(1) This Agreement shall be entered into under the laws of the Commonwealth of Pennsylvania and interpretation and construction shall be governed by such laws. Contractor shall observe and comply, at its sole cost and expense, with all Applicable Laws in connection with this

Agreement. Contractor certifies that the Facility is in compliance with Applicable Laws and applicable Permits, and the Facility shall remain in compliance with Applicable Laws and applicable Permits during the Term of this Agreement. Throughout the Term of this Agreement, PMA may from time to time request reasonable assurances from Contractor that Contractor's operations, the Facility is in compliance with Applicable Laws and applicable Permits. Contractor shall respond to PMA's request for such assurances within ten (10) days of such request.

(2) Contractor shall obtain and maintain, at its sole cost and expense, all Permits, certificates of authority, approvals and inspections required by federal, state, and local supervisory agencies for the performance of the Work.

(3) Failure of the Contractor's Facility to comply with Applicable Laws or Contractor's failure to provide reasonable assurances of compliance may result in the suspension or termination of the delivery of Recyclable Materials to the Facility by the City under this Agreement.

**5.06 Independent Contractor.**

At all times during the Term of this Agreement, the relationship of Contractor to PMA shall be that of an independent contractor.

**5.07 Subcontracting and Assignment.**

(1) Contractor shall be responsible during the Term of this Agreement for complete supervision and control of its subcontractors as though they were its own forces. Notice to Contractor shall be considered notice to all of Contractor's subcontractors.

(2) Contractor shall be liable for the failure of its subcontractors in any phase of the Work. Contractor shall be as fully liable, responsible, and accountable to PMA for the acts and omissions of its subcontractors and of persons employed by them as it is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relationship or liability between any of Contractor's subcontractors and PMA unless so elected by PMA in writing.

(3) Contractor shall neither assign nor subcontract the Work, or any part thereof without the prior written consent of PMA, nor shall Contractor assign, by power of attorney or otherwise, any of the money payable under this Agreement unless the prior written consent of PMA has been obtained. The granting or denial of PMA's consent under this Section shall be in PMA's sole discretion. Notwithstanding the foregoing, the City hereby consents to the Contractor subcontracting the transportation work required under this Contract as described in Contractor's EOP as attached at Exhibit I.

(4) PMA reserves the right to assign this Agreement to any other party. This Agreement shall be binding upon the parties hereto, their heirs, administrators, successors and assigns.

**5.08 Payment for Labor and Supplies.**

Contractor agrees to promptly pay all Persons, which have furnished labor or supplies in connection with the Work required under this Agreement and shall provide, upon request of PMA, evidence that the same have been fully paid or satisfactorily secured. In addition to any other indemnification obligations under this Agreement, Contractor shall indemnify, defend and hold PMA and the City harmless from all claims, suits or actions for labor and supplies furnished in connection with this Agreement.

**5.09 Dispute Resolution**

(a) In the event a dispute arises between the Parties regarding the application or interpretation of any provision of this Contract, the aggrieved Party shall promptly give notice in writing to the other Party invoking the provisions of this Section and the Parties shall negotiate in good faith and attempt to resolve such dispute. If the Parties fail to resolve the dispute within thirty (30) days after delivery of such notice, each Party shall have the right to require, by written notice to the other Party containing a brief description of the dispute, that each Party nominate and have a senior officer of its management meet with the other Party's nominated senior officers at a City office or at any other mutually agreed location, within fifteen (15) business days of such request, in order to attempt to resolve the dispute.

(b) Should the Parties be unable to resolve the dispute to their mutual satisfaction within fifteen (15) days after such meeting, then, if the Parties in their respective discretion so agree, the Parties may submit to non-binding mediation on terms to be mutually agreed, in which event any applicable statute of limitations shall be tolled. The mediation shall be conducted in the City of Philadelphia. Each Party shall pay its own expenses of mediation. The fees of, and authorized expenses incurred by, the Mediator shall be equally divided between the Parties. The Mediator shall be an attorney or other professional mutually acceptable to the Parties who has no prior, current, or on-going relationship to either Party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the Parties reach agreement with respect to the disputed matter or one Party determines in its sole discretion that its interests are not being served by the mediation.

(c) In the event that the Parties do not agree to proceed to such mediation or in the event and to the extent such dispute remains unresolved following any such mediation, each Party shall have the right to pursue any and all remedies available to it.

**ARTICLE 6**  
**DEFAULTS AND REMEDIES**

**6.01 Default of the Contractor.**

The occurrence of one (1) or more of the following events shall constitute an event of default under this Agreement (each an "Event of Default"):

(1) Except for the utilization of Diversion Facilities as set forth in Section 3.03(2) of this Agreement or Force Majeure Events as defined in Section 6.06 of this Agreement an Event of

Default shall occur immediately if Contractor is unable to accept Recyclable Materials that PMA caused to be delivered from the City for more than three (3) consecutive days that Contractor is obliged to receive such Recyclable Materials pursuant to the terms of this Agreement.

(2) Except for the utilization of Diversion Facilities as set forth in Section 3.03(2) of this Agreement or Force Majeure Events as defined in Section 6.06(3) of this Agreement, an Event of Default by Contractor shall occur if one (1) or more of the following occurs and Contractor fails to cure the same within ten (10) Days after receiving written notice thereof from PMA, unless Contractor has promptly commenced and is continuing diligently and in good faith to cure such default and does cure such default within thirty (30) Days of such notice (except for a default under Section 6.01(2)(c) or (d) below):

(a) Contractor cannot accept delivery of Recyclable Materials agreed to under this Agreement at any time during the Term of this Agreement;

(b) Contractor fails to perform any Work to be performed by it under this Agreement;

(c) the filing of a petition by or against Contractor for relief as a bankruptcy or insolvency or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of Contractor property; or, an assignment by Contractor for the benefit of creditors; or, the taking possession of the property of Contractor by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or liquidation of Contractor or for the operating, either temporary or permanent, of Contractor's business, provided, however, that if any such action is commenced against Contractor, the same shall not constitute an Event of Default if Contractor causes the same to be dismissed or discharged within sixty (60) Days after the filing of same;

(d) the filing of a petition by or against Guarantor for relief as a bankruptcy or insolvency or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of Guarantor property; or, an assignment by Guarantor for the benefit of creditors; or, the taking possession of the property of Guarantor by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or liquidation of Guarantor or for the operating, either temporary or permanent, of Guarantor 's business, provided, however, that if any such action is commenced against Guarantor, the same shall not constitute an Event of Default if Guarantor causes the same to be dismissed or discharged within sixty (60) Days after the filing of same; and/or

(e) Contractor fails to fulfill any other terms, conditions, obligations or covenants contained in this Agreement, including Section 5.03, provided such failure to comply with Section 5.03 was not the direct result of a default of the M/W/DSBE subcontractor(s) in the performance of contractual obligations to the Contractor.



## **6.02 Remedies of PMA Following the Contractor's Default.**

(1) The rights and remedies afforded to PMA under the terms of this Agreement shall not be deemed to be exclusive but shall be cumulative, and the City shall have and reserves any and all other rights and remedies provided at law or in equity, and PMA may elect the manner in which it shall proceed.

(2) Upon an Event of Default by Contractor, PMA may elect to terminate this Agreement and award a new contract to a substitute contractor. In lieu of termination, PMA may temporarily suspend delivery of Recyclable Materials to Contractor and dispose in an Alternate Facility in accordance with Section 3.05 of this Agreement. Regardless of how PMA elects to proceed upon an Event of Default by Contractor, Contractor, and its surety under Section 2.01 above shall be liable to PMA for all damages (including but not limited to excess costs) sustained by PMA or the City by reason of an Event Default by Contractor under this Agreement.

(3) The Work to be performed hereunder by the Contractor involves the health and safety of the residents of the City. In the event of an anticipatory breach or an Event of Default under this Agreement by the Contractor, PMA shall be and Contractor consents that PMA is entitled to injunctive relief enjoining and restraining Contractor from doing any act in violation of this Agreement, or mandating that such act or acts be done by Contractor to carry out the terms of this Agreement. The application by PMA for an injunction or mandate to any court shall not be, and shall not be construed to be, a waiver by PMA of any other right or remedy available to PMA under this Agreement, at law or in equity, and shall not be deemed a waiver of any other or further breaches of condition or failure to perform hereunder. The exercise of such right or rights by PMA shall not prejudice in any manner whatsoever the rights of PMA to enforce or secure any other rights or remedies, including but not limited to, the right to seek damages (including excess costs) for breach of this Agreement.

(4) It is also agreed by the parties hereto that upon an Event of Default under Section 6.01(2)(c) above, this Agreement shall not be an asset of the Contractor in any proceeding set forth in Section 6.01(2)(c).

## **6.03 Default of PMA**

(1) Any failure by PMA to pay any sum due for a period of more than sixty (60) days after written notification by Contractor to PMA and the City that PMA is delinquent in making payment and provided that Contractor is not in default in its performance under the terms of this Agreement; and/or

(2) Any other material failure by PMA to comply or cause the City to comply with the terms and conditions of this Agreement, including breach of any covenant contained herein, provided that such failure continues for sixty (60) days after notice to PMA and the City demanding that such failures to perform be cured or if such cure cannot be effected in sixty (60) days, PMA shall be deemed to have cured default upon the commencement of a cure within sixty (60) days and diligent subsequent completion thereof; and/or

#### **6.04 Remedies of Contractor Following PMA's Default**

(1) If the PMA has failed or failed to cause the City to cure a default, Contractor may exercise any legal right or remedy in equity or law but may not suspend the receipt of Recyclable Materials unless PMA has failed to make payments for more than 90 days.

#### **6.05 Nonwaiver.**

Neither party hereunder shall be deemed to have waived any part, provision, language, covenant, condition or requirement of this Agreement unless such waiver is in writing and signed by such party. Any partial waiver shall not be deemed to be in any manner the waiver of any other part, provision, language, covenant, condition or requirement, and where any waiver is made, either partially or otherwise, of any provision, condition, or requirement, it shall be strictly construed and deemed to be a waiver of no more than that which is clearly expressed in writing. Any ambiguity shall be resolved in favor of PMA.

#### **6.06 Force Majeure.**

(1) Contractor or PMA shall not be excused nor relieved from any act or responsibility of performance under the terms of this Agreement except for the following events of Force Majeure (each a "Force Majeure Event") which prevent or delay the Contractor or PMA from performing under this Agreement:

(a) an Act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence;

(b) a state of declared war, insurrection, labor strike, but as to the Contractor, only those labor strikes against a third party (excluding Contractor's Affiliates) which substantially interrupts the supply of materials and equipment needed to construct or operate the Facility; or

(c) any conditions (excluding costs), including the loss of a viable commodity market for one of more Recyclable Materials which are clearly beyond the control of the party claiming the Force Majeure Event and, as to the Contractor, without the fault or negligence of Contractor or Contractor's agents, employees, subcontractors or suppliers provided, however, that the party claiming the Force Majeure Event shall exhaust every available remedy to correct the condition and promptly report to the other party in writing the circumstances which justify non-performance.

(2) Upon the occurrence of a Force Majeure Event which prevents the Contractor or PMA from performing any of its obligations under this Agreement, the non-performing party shall notify the other party as soon as is reasonably practicable regarding the Force Majeure Event and shall diligently endeavor to eliminate the cause of the Force Majeure Event.

(3) In the event a Force Majeure Event prevents the Contractor from performing responsibilities or obligations hereunder with respect to the receipt of Recyclable Materials at the Facility, Contractor shall use reasonable best efforts to provide temporary transportation of Recyclable Materials to a Diversion Facility during the Force Majeure Event, and Contractor shall continue to perform and comply with all portions of this Agreement with which it is possible for

the Contractor to perform and comply provided, however, that if a Diversion Facility is utilized hereunder, Section 8.13 of this Agreement shall not apply.

(4) If the Force Majeure Event prevents the Contractor from performing responsibilities or obligations hereunder and such Force Majeure Event continues for a period of sixty (60) consecutive Days, PMA shall have the right to terminate this Agreement under the provisions of this subsection.

(5) If the Force Majeure Event prevents PMA from performing responsibilities or obligations hereunder with respect to the delivery of Recyclable Materials to the Facility and such Force Majeure Event continues for a period of sixty (60) consecutive Days, Contractor shall have the right to terminate this Agreement under the provisions of this subsection.

## **ARTICLE 7**

### **TERMINATION AND SUSPENSION**

#### **7.01 Termination and Suspension.**

(1) Termination. Upon an Event of Default by Contractor, PMA may elect to terminate this Agreement and award a new contract to a substitute contractor pursuant to Section 6.02(2). PMA shall provide written notice to the Contractor. Except in circumstances where continuing the Agreement may endanger the health or safety of the City or its residents, PMA shall provide a minimum of thirty (30) Days' notice of termination.

(2) Suspension. If PMA elects to suspend the Contractor's Work following an Event of Default, suspension shall not constitute a waiver or release of any liability of Contractor for such Event of Default or any of PMA's damages or other remedies arising out of such Event of Default; nor shall such suspension be deemed an election of remedies in derogation of any other remedy. Contractor acknowledges that PMA shall have the right, at its sole discretion, to suspend Contractor's performance in the event City Council does not appropriate funds for the City for the payments required by PMA under this Contract. In the event that PMA issues a suspension notice to Contractor, such suspension shall continue from the effective date specified in the notice until a date specified in the notice which shall be not more than one hundred and eighty (180) days after the effective date (the "Suspension Period"). On or prior to the expiration of the Suspension Period, PMA shall either terminate this Contract by giving a termination notice pursuant to Section 6.02(2), or by notice to Contractor, instruct Contractor to resume the Work pursuant to this Contract upon the expiration of the Suspension Period. After issuing a Suspension Notice, PMA shall pay any invoices submitted by Contractor for Work rendered prior to the commencement of the Suspension Period or otherwise payable by PMA to Contractor under this Contract, subject to all of PMA's rights and remedies against Contractor, including but not limited to its rights of set off and its right to review and accept Work prior to payment therefor.

#### **7.02 Contractor Responsibilities Upon Termination or Suspension.**

(1) Upon PMA's transmission of a Termination Notice or a Suspension Notice under any provision of this Contract, Contractor and its agents, employees and Subcontractors, shall:

(a) take immediate action in an orderly manner to discontinue Work and demobilize work forces to minimize the incurrence of costs; and

(b) PMA's termination or suspension of this Contract shall not affect any obligations or liabilities of either Party accruing prior to the effective date of such termination or suspension.

(c) There shall be no liability, cost or penalty to PMA for termination or suspension of this Contract.

### **7.03 Payments to Contractor and PMA upon Termination or Suspension.**

(1) Upon termination or suspension of this Contract by PMA for an Event of Default or a Force Majeure Event, Contractor and PMA may each be entitled to payments to be determined by the parties and subject to audit, as shall compensate them for such amounts as may due and owing as of the termination date or suspension date; provided, however, that:

(a) no allowance shall be included for termination or suspension expenses or for anticipated profits, unabsorbed or under-absorbed overhead, or unperformed Work; and

(b) PMA shall deduct from any amount due and payable to Contractor prior to the termination date, but withheld or not paid, the total amount of fees, costs or additional expenses incurred by PMA in order to satisfactorily complete the Work required to be performed by Contractor under this Contract, including the expense of engaging another party for this purpose, and such other damages, costs, losses and expenses of PMA as may be incurred or result from such termination for an Event of Default.

## **ARTICLE 8** **STANDARD CITY TERMS**

### **8.01 Maintenance of Insurance.**

(1) Unless otherwise approved by PMA and the City's Risk Manager in writing, Contractor shall throughout the Term of this Agreement, at its sole cost and expense, and Contractor shall cause its subcontractors, at their sole cost and expense, to procure and to maintain in full force and effect, the types and minimum limits of insurance specified below. All insurance shall be procured from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to PMA and the City. All insurance herein, except Environmental Impairment Liability and Workers' Compensation, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Work be performed under this Agreement until the required evidence of insurance has been furnished. The insurance shall provide for at least thirty (30) Days prior written notice to be given to the City in the event coverage is cancelled or non-renewed. PMA, the City, their officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance Policy. An endorsement is required stating that PMA, the City, their officers, employees, and agents, shall be named as

additional insureds on the General, Environmental/Pollution & Umbrella Liability Insurance Policies.

- (a) **Workers' Compensation and Employers' Liability**
  - (i) **Workers' Compensation: Statutory Limits**
  - (ii) **Employers' Liability:**
    - \$500,000 Each Accident – Bodily Injury by Accident;
    - \$500,000 Each Employee – Bodily Injury by Disease;
    - \$500,000 Policy Limit – Bodily Injury by Disease.
  - (iii) **Other States' Endorsement**
- (b) **General Liability Insurance**
  - (i) **Limit of Liability: \$2,000,000 per occurrence for bodily injury including death) and property damage liability.**
  - (ii) **Coverage: Premises operations; collapse, explosion and underground hazards, blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).**

- (c) Automobile Liability Insurance
  - (i) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
  - (ii) Coverage: Owned, non-owned, and hired vehicles.
- (d) Environmental Impairment or Pollution Liability Insurance
  - (i) Limit of Liability: \$5,000,000 each incident/\$5,000,000 aggregate for bodily injury (including death) and property damage.
  - (ii) Coverage: Shall include sudden, accidental and gradual occurrences and may be written on a claims-made basis provided that coverage for occurrences happening during the term of this contract be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) year following the Term of this Agreement.
- (e) Umbrella Liability Insurance: at limits totaling \$10,000,000 per occurrence when combined with insurance required under (b), (c), and (d) above.

**8.02 Evidence of Insurance Coverage.**

(1) The original certificate of insurance must be submitted to the City's Risk Manager at the following address:

City of Philadelphia  
 Division of Risk Management  
 1515 Arch Street, 14<sup>th</sup> Floor  
 Philadelphia, PA 19102

With copies to:

The Philadelphia Municipal Authority  
 1515 Arch Street, 9<sup>th</sup> Floor  
 Philadelphia, PA 19103  
 Attn.: Executive Director

City of Philadelphia Streets Department  
 Municipal Services Building, Room 730  
 1401 John F. Kennedy Boulevard  
 Philadelphia, Pennsylvania 19102  
 Attn.: Commissioner

(2) The original Certificates of Insurance shall be submitted to the Risk Manager at the above address, at least ten (10) Days prior to the commencement of any rights exercisable by Contractor hereunder and no more than three (3) business days following the expiration of any policy required hereunder. The actual endorsement adding PMA and the City as an additional insured must be submitted to the City Risk Manager at the above address. PMA and the City reserve the right to require Contractor to make policies of all insurance required under this Agreement available for inspection at any time upon ten (10) Days written notice to Contractor and/or to provide written responses to written questions from City Risk Manager with regard to the required coverages within ten (10) Days of receipt of such questions. Questions must be mailed to

Waste Management of Pennsylvania, Inc.  
c/o Charles Raudenbush, Jr.  
1000 New Ford Mill Road  
Morrisville, Pennsylvania 19067

PMA also reserves the right, in any event, not more frequently than once every year, to reasonably adjust the amounts, types and deductibles of the insurance coverage required hereunder, upon thirty (30) Days' notice to Contractor.

(3) No Limit of Liability.

The insurance requirements set forth in this Article 8.01 shall in no way be intended to limit, modify or reduce the indemnification, made in this Agreement or to limit Contractor's liability to the limits of the policies of insurance required hereunder.

**8.03 Indemnification.**

Contractor shall indemnify, defend and hold harmless PMA and the City, their officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liability and expenses including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, hazardous substances, contamination or adverse effects on the environment, failure to pay such subcontractors and suppliers, any breach of this Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret) resulting from Contractor's negligent acts or omissions or the negligent acts or omissions of Contractor's agents, subcontractors, officers, employees or servants under or in connection with this Agreement. This obligation to indemnify, defend and hold harmless PMA and the City, its officers, employees and agents, shall survive the termination of this Agreement.

**8.04 Compliance with Laws.**

In addition to the representations, warranties and covenants made by Contractor in this Article 8, Contractor further represents, warrants and covenants that, to the extent of their applicability to Contractor, Contractor is in compliance with the laws, ordinances, regulations and

executive orders described below. By executing this Contract, Contractor thereby certifies to such compliance. Contractor further certifies that the representations, warranties and covenants provided pursuant to this Article shall continue to remain true throughout the Term of this Contract or any other period of time required by such laws. In the event said representations, warranties and covenants are or become untrue or inaccurate, Contractor shall promptly give notice thereof to PMA and the City, specifying the manner in which said representation, warranty or covenant is untrue or inaccurate. The provisions of this Article are not intended to limit the applicability of the other provisions of this Contract, including, without limitation, Contractor's agreement to comply with all Applicable Law.

#### **8.05 Non-Discrimination; Fair Practices.**

This Contract is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Contract, Contractor shall not discriminate or permit discrimination against any individual because of race, color, religion, ancestry or national origin, sex, gender identity, sexual orientation, age or disability. Nor shall Contractor discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 8.05 (Non-Discrimination; Fair Practices), the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

#### **8.06 Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations.**

(1) In accordance with Chapter 17-400 of the Code, Contractor agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting the applicability of Article 6 (Defaults and Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(2) Contractor agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Code. Contractor's failure to so cooperate shall constitute, without limiting the applicability of Article 6 (Defaults and Remedies)



above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

#### **8.07 Federal Laws.**

Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. Section 794), the Age Discrimination Act of 1975, (42 U.S.C. Sections 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

#### **8.08 Americans With Disabilities Act.**

Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from providing services or materials under this Contract. By executing and delivering this Contract, Contractor covenants to comply with all provisions of the Americans With Disabilities Act (the "ADA"), 42 U.S.C. §§12101 - 12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Contractor; (b) to the benefits, services, materials, activities, facilities and programs provided in connection with this Contract; (c) to the City, or the Commonwealth of Pennsylvania; (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth; and (e) if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its funds, benefits, services, activities, facilities and programs applicable to this Contract. Without limiting the applicability of the preceding sentence, Contractor shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, facilities, programs and activities provided by the City through contracts with outside contractors.

#### **8.09 Northern Ireland.**

(1) In accordance with Section 17-104 of the Code, Contractor (including any parent company, subsidiary, exclusive distributor or company affiliated with Contractor) (1) confirms that it does not have, and agrees that it will not have at any time during the Term of this Contract (including any extensions of the Term), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) agrees that no product to be provided to the City under this Contract will originate in Northern Ireland, unless Contractor has implemented the fair employment principles embodied in the MacBride Principles.

(2) In the performance of this Contract, Contractor agrees that it will not use any suppliers, Subcontractors or subconsultants at any tier (1) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (2) who will provide products originating in

Northern Ireland unless said supplier, subconsultant or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles.

(3) Contractor agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Code. Contractor expressly understands and agrees that any false certification or representation in connection with this Section 8.09 (Section 17-104 of the Code) and any failure to comply with the provisions of this Section 8.09 (the Section 17-104 of the Code) shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law (including, but not limited to, Section 17-104 of the Code) or in equity. In addition, Contractor understands that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

#### **8.10 Limited English Proficiency.**

Contractor understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, Contractor shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order No. 12250 of the President of the United States, publication of the Mayor of the City of Philadelphia entitled, "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Contractor, (b) to the benefits, services, activities and programs provided in connection with this Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Contractor shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

#### **8.11 Business, Corporate and Slavery Era Insurance Disclosure.**

(1) In accordance with Section 17-104 of the Code, the Contractor, after execution of this Contract, will complete an affidavit certifying and representing that the Contractor (including any parent company, subsidiary, exclusive distributor or company affiliated with Contractor) has searched any and all records of the Contractor or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

(2) The Contractor expressly understands and agrees that any false certification or representation in connection with this Section and/or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law (including, but not limited to,

Section 17-104 of the Code) or equity and the Contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

#### **8.12 Protected Health Information.**

(1) The City of Philadelphia is a “Covered Entity” as defined in the regulations issued pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The City’s business activities include both (1) functions which make the City a Covered Entity, and, therefore, subject to HIPAA, and (2) functions that are not subject to HIPAA. In accordance with 45 CFR §164.105(a)(2)(iii)(D), the City has designated certain departments and units of the City as health care components that must comply with HIPAA (“Covered Components”). The Covered Components of the City as of August 1, 2013 include: Ambulatory Health Services, a unit of the Philadelphia Department of Public Health (“PDPH”); the Office of Behavioral Health and Intellectual Disability Services; the Philadelphia Nursing Home (a unit of PDPH); the Benefits Administration Unit of the Office of Human Resources; Emergency Medical Services (a unit of the Philadelphia Fire Department); and the Philadelphia Public Health Laboratory (a unit of PDPH). This list is subject to change, and any department or unit of the City that the City in the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Section 8.12.

(2) To the extent (1) this Contract is entered into by the City for or on behalf of a Covered Component and/or requires the performance of services that will be delivered to or used by a Covered Component (whether or not the City department or unit through which the City entered the Contract is a Covered Component), and/or (2) Contractor is a “Business Associate” of the City, as defined in 45 CFR §160.103, Contractor shall comply with the City’s Terms and Conditions Relating to Protected Health Information (“City PHI Terms”) posted on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link). The City PHI Terms are hereby incorporated in this Section 8.12 as if fully set forth herein. (A printed version of the City PHI Terms, in the City’s sole discretion, also may be attached to this Contract.)<sup>1</sup>

#### **8.13 Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century Minimum Wage and Benefits Standard and Mayoral Executive Order 03-14.**

(1) Contractor is a “Service Contractor” in that by virtue of entering into this Contract, Contractor has entered into a “Service Contract,” as those terms are defined in Section 17-1302 of the Code and Mayoral Executive Order 03-14, entitled, “Policy Regarding Minimum Wage and Benefits to be Provided by City Contractors and Subcontractors,” which supplements Chapter 17-1300 of the Code, entitled “Philadelphia 21<sup>st</sup> Century Minimum Wage and Benefits Standard.” Additionally, any Subcontract between Contractor and a Subcontractor to perform work related to this Contract is a “Service Contract” and such Subcontractors are also “Service Contractors” for

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<sup>1</sup> Contractor agrees to be identified as a Business Associate only if Contractor is providing destruction services for confidential documents but not if Contractor is simply providing recycling services.

As Contractor is providing destruction services for confidential documents, this reference has been left in the Contract.

purposes of Chapter 17-1300 and the Executive Order. (Chapter 17-1300 is accessible at <http://www.amlegal.com/library/pa/philadelphia.shtml> and Executive Order 03-14 is accessible at <http://www.phila.gov/ExecutiveOrders/Executive%20Orders/EO%203-14.pdf>.) If Contractor or any Subcontractor is also an “Employer,” as that term is defined in Section 17-1302 (more than 5 employees), and as the term “Employer” is further described in Section 17-1303 of the Code, absent a waiver, Contractor shall provide, and cause any such Subcontractors to provide their covered Employees (persons who perform work for a covered Employer that arises directly out of a Service Contract with the City), with the minimum wage standard and minimum benefits standard stated in Chapter 17-1300 of the Code and Executive Order 03-14. A summary of the current requirements is as follows:

(2) Minimum Wage

(a) Between January 1, 2019 and June 30, 2019, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$12.40/hour;

(b) Between July 1, 2019, and June 30, 2020, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$13.25/hour;

(c) Between July 1, 2020, and June 30, 2021, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$13.75/hour;

(d) Between July 1, 2021, and June 30, 2022, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$14.25/hour;

(e) Between July 1, 2022 and June 30, 2023, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$15.00; and

(f) Starting July 1, 2023, and each year thereafter, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$15.00 multiplied by the then current CPI Multiplier as annually adjusted, as described in Section 8.13(2)(g).

(g) For purposes of determining the minimum hourly wage required under 8.13(2) above, the CPI Multiplier shall be calculated annually by the Director of Finance, for wages to be provided on and after July 1 of each year, by dividing the most recently published Consumer Price Index for all Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, by the most recently published CPI-U as of July 1, 2022.

(3) Minimum Benefits

(a) to the extent Contractor (or its Subcontractor under Subcontract) provides health benefits to any of its employees, provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Contractor (or its Subcontractor); and

(b) provide to each full-time, non-temporary, non-seasonal covered Employee at least the minimum number of earned sick leave days required by Code Section 17-1305(2).

(4) If covered, absent a waiver, Contractor shall promptly provide to the City all documents and information as the City may require verifying its (and its Subcontractors' compliance with the requirements of Chapter 17-1300 and Executive Order 03-14. Contractor and its Subcontractors shall notify each affected employee what wages are required to be paid pursuant to Chapter 17-1300 and Executive Order 03-14.

(5) Absent a waiver, a Contractor subject to Chapter 17-1300 and Executive Order 03-14 shall comply with all their requirements as they exist on the date when the Contractor entered into this Contract with the City or when this Contract is amended. Absent a waiver, Contractor shall also be responsible for the compliance of its Subcontractors with the requirements of Chapter 17-1300 and Executive Order 03-14. Contractor shall take such steps as are necessary to notify its Subcontractors of these requirements, including, without limitation, incorporating this Section 8.13, with appropriate adjustments for the identity of the parties, in its Subcontracts with such Subcontractors. A Contractor or any of Contractor's Subcontractors subject to Chapter 17-1300 and the Executive Order that fail to comply with their provisions may, after notice and hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. Furthermore, the Council may, by resolution adopted after a public hearing, determine that there are reasonable grounds to believe that an employer subject to Chapter 17-1300 has failed to comply with its provisions, and that if such failure is established, then debarment would be an appropriate remedy for such failure. A copy of any such adopted resolution shall be forwarded to the Director of Finance, or such other officer or agency designated by the Mayor, who shall without undue delay provide appropriate notice and opportunity for hearing, and after such hearing, make a final determination as to whether there has been a violation of Chapter 17-1300, and whether debarment, as provided by Chapter 17-1300, should be imposed. Such debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract. The debarment procedure by Council resolution shall be in addition to any other procedure for debarment or suspension from City contracts established under Chapter 17-1300.

(6) Without limiting the applicability of Article 6 (Defaults and Remedies) above, Contractor's failure to comply, or the failure of Contractor's Subcontractors to comply with the requirements of Chapter 17-1300 or Executive Order 03-14 shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(7) Contractor's covered employees shall be deemed third-party beneficiaries of Contractor's representation, warranty, and covenant to the City under this Section 8.13 only, and the covered employees of a Subcontractor of Contractor performing under a Subcontract shall be

deemed third-party beneficiaries of their employer's representation, warranty and covenant to Contractor under this Section.

(8) The Office of Labor Standards may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code. An overview offering guidance on the applicability of, and requirements placed on City contractors and their first tier Subcontractors by Chapter 17-1300 of the Code and Executive Order 03-14 is available on the City's website (at <https://secure.phila.gov/eContract/> under the "About" link) (see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors").

#### **8.14 Chapter 17-1400 of the Philadelphia Code: Contributions and Other Mandatory Disclosures.**

(1) Contractor confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made, and agrees that none shall be made during the Term of this Contract, and any Additional Term, by Contractor, any Subcontractor, or any party from which a contribution can be attributed to the Contractor or Subcontractor, that would render the Contractor or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of Sections 17-1404(1) and 17-1405 of the Code; and that disclosures made as part of its application to receive a Non-Competitively Bid Contract contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Contract voidable at the City's option, and, as to contributions made by or attributable to Contractor, shall make the Contractor liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Contractor allowed under the Contract, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this Section 8.14 (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Contractor shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Section 8.14, and as described elsewhere in this Contract, shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

(2) Contractor shall, during the term of the Contract, any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance the Contractor, or any Subcontractor or Consultant utilized by Contractor in connection with this Contract, has made, or any individual or entity has made if such contributions can be attributed to Contractor, or such Subcontractor or Consultant pursuant to the attribution rules of Section 17-1405, during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.

(a) Such disclosure shall be made on a form provided by the Department awarding the Contract, and the form shall be signed and filed with such Department within five

(5) business days of the contribution. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Contractor or of a Consultant.

(b) It shall not be a violation of Section 8.14 if Contractor fails to disclose a contribution made by a Consultant because the Contractor was unable to obtain such information from the Consultant, provided the Contractor demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(i) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the Contract, and before the Consultant communicated with a City department or office, official or employee on behalf of the Contractor;

(ii) Including in such agreement a provision requiring the Consultant to provide the Contractor in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by the Contractor if the Consultant fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of the Contractor as of the date of such termination;

(iii) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit the Contractor to comply with the provisions of Chapter 17-1400; and

(iv) Invoking the termination provisions of the written agreement in a full and timely manner.

(3) The Contractor shall, during the Term of the Contract, any Additional Term, and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401 of the Code) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in Section 17-1401 of the Code) given to any Person in response to any such request. The Contractor shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.

(a) Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five (5)

business days after a request was made or a payment in response to a request was made, as the case may be.

(b) The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Director of Finance, Procurement Department, and the Department of Records.

(c) The Contractor shall, during the Term, and any Additional Term, of the Contract disclose the name and title of each City officer or employee who directly or indirectly advised the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor that a particular Person could be used by the Contractor to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Contractor shall also disclose the date the advice was provided, and the name of such particular Person.

(i) Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five business days after the Contractor was so advised.

(ii) The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

#### **8.15 Executive Order 03-11: Gifts.**

(1) Pursuant to Executive Order 03-11, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment, invitation, food, drink or loan, unless consideration of equal or greater value is conveyed in return, from any of the following sources:

(a) A person seeking to obtain business from, or who has financial relations with the City;

(b) A person whose operations or activities are regulated or inspected by any City agency;

(c) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;

(d) A person seeking legislative or administrative action by the City; or

(e) A person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.

(2) Contractor understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, Contractor shall be subject to sanctions with respect to future



City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

## **ARTICLE 9** **MISCELLANEOUS**

### **9.01 Governing Law.**

This Contract shall be deemed to have been made in Philadelphia, Pennsylvania. This Contract and all disputes arising under this Contract shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to principles of Pennsylvania law concerning conflicts of laws.

### **9.02 Amendments; Waiver.**

This Contract may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written Amendment signed by the Parties. Except to the extent that the Parties may have otherwise agreed in writing in an Amendment, no waiver, whether express or implied, by either Party of any provision of this Contract shall be deemed: (a) to be a waiver by that Party of any other provision in this Contract; or (b) to be a waiver by that Party of any breach by the other Party of its obligations under this Contract. Any forbearance by a Party in seeking a remedy for any noncompliance or breach by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

### **9.03 Integration.**

The Contract Documents forming this Contract, including the exhibits incorporated by reference therein, contain all the terms and conditions agreed upon by the Parties, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties (except to the extent specifically set forth herein). No other prior or contemporaneous agreements, covenants, representations or warranties, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any Party or to vary any of the terms contained in this Contract.

### **9.04 No Joint Venture.**

The Parties do not intend to create, and nothing contained in this Contract shall be construed as creating, a joint venture arrangement or partnership between the City and Contractor with respect to the Work.

### **9.05 City as Third-Party Beneficiary.**

The Parties acknowledge that the City is the sole intended third party beneficiary of this Contract. Provided however, that the City shall have no rights or remedies available to it to a

greater extent than those available to PMA under this Contract, and any exercise of such rights and remedies is subject to all limitations applicable to PMA as set forth in this Contract.

**9.06 Counterparts.**

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

**9.07 Severability and Partial Invalidity.**

The provisions of this Contract shall be severable. If any provision of this Contract or the application thereof for any reason or in any circumstance shall to any extent be held to be invalid or unenforceable, the remaining provisions of this Contract and the application of such provision to Persons, or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

**9.08 Survival.**

Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Contract shall survive the expiration or earlier termination of this Contract, along with the following: Contractor's representations, warranties and covenants set forth in Article 8 above; and Contractor's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section 8.03 (Indemnification) above.

**9.09 Determination of Disputes.**

Any dispute arising between PMA and Contractor under or with respect to either Party's covenants, obligations, powers, rights or duties under this Contract shall be submitted to and decided by the Commissioner or his or her designee. The Commissioner or his or her designee shall render and reduce to writing his or her decision, and furnish a copy to Contractor by notice under this Contract. In connection with any dispute under this Contract, the Commissioner shall offer Contractor an opportunity to offer evidence in support of its position concerning the subject matter of the dispute.

**9.10 Interpretation of Certain Words.**

Whenever in this Agreement, the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words or phrases of like import are used, it shall be understood that the order, direction, requirements, permission, or allowance of PMA is intended only to the extent of judging compliance with the terms of this Agreement. None of these terms shall imply PMA has any authority or responsibility for supervision of Contractor's forces or operations, such supervision and the sole responsibility therefore being strictly reserved solely to Contractor. Similarly, the words "approved," "reasonable," "suitable," "acceptable," "proper," "satisfactory,"

or words of like effect and import, unless otherwise provided, shall mean approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of PMA, subject to limitation as provided in the preceding sentence.

**9.11 Headings.**

The titles, captions or headings of Articles, Sections and Exhibits or schedules in this Contract are inserted for convenience of reference only; do not in any way define, limit, describe or amplify the provisions of this Contract or the scope or intent of the provisions, and are not a part of this Contract.

**9.12 Oral Statements Not Binding; Amendments**

The written terms and provisions of this Agreement shall supersede all oral statements of any representatives of the parties. Oral statements shall not be effective or be construed as being a part of this Agreement. This Agreement shall not be changed or modified except as specifically provided herein or by a duly executed written amendment between PMA and Contractor.

**9.13 Statutes and Other Citations.**

All statutory or other citations of law referenced in the Contract shall refer to the statute or citation referenced, as it may be amended or superseded from time to time.

**9.14 Days.**

Any references to a number of days in this Contract shall mean calendar days unless this Contract specifies business days.

**9.15 Forum Selection Clause; Consent to Jurisdiction.**

The Parties irrevocably consent and agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two (2) forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums on grounds of venue or *forum non conveniens*, and the Parties expressly consent to the jurisdiction and venue of these two (2) forums. The Parties further agree that service of original process in any such lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Section 5.04 of this Agreement.

**9.16 Waiver of Jury Trial.**

Contractor hereby waives trial by jury in any legal proceeding in which PMA or the City is a party and which involves, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to this Contract or the relationship created or evidenced hereby. This provision is a material consideration upon which PMA relied in entering into this Contract.

**9.17 Notices.**

All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under this Contract shall be in writing and shall be deemed to have been duly made (a) when received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (e.g., Federal Express or United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile; and (d) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested. In each case notices shall be sent to the addresses set forth in Section of this Agreement.

*[Remainder of page is intentionally blank, signatures to follow]*

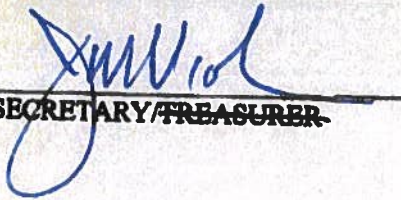
**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the day and year first above written.

**PHILADELPHIA MUNICIPAL AUTHORITY**

BY:   
EXECUTIVE DIRECTOR

**CONTRACTOR**

BY:   
~~PRESIDENT/VICE PRESIDENT~~

BY:   
Asst. ~~SECRETARY/TREASURER~~



**EXHIBIT A**  
**ORDINANCE**

# City of Philadelphia



(Bill No. 190413)

## AN ORDINANCE

Authorizing the Streets Commissioner and Procurement Commissioner, on behalf of the City, to enter into an Intergovernmental Agreement with the Philadelphia Municipal Authority through which the City will assume certain rights and obligations under an agreement the Authority will enter into with Waste Management of Pennsylvania, Inc. for the processing and marketing of recyclable materials, all under certain terms and conditions.

WHEREAS, the Streets Department requires the support of a contractor to process and market recyclable materials; and

WHEREAS, Waste Management of Pennsylvania, Inc., has been selected through a competitive process to provide recycling processing and marketing services for materials collected by the City and other authorized governmental agencies; and

WHEREAS, the Streets Department acting with the Procurement Department has requested the Philadelphia Municipal Authority to enter into an agreement with Waste Management of Pennsylvania, Inc. for recycling processing and marketing services ("Recycling Agreement"), and the Recycling Agreement will require the City and the Authority to enter into an Intergovernmental Agreement through which the City will assume certain rights and obligations of the Authority under the Recycling Agreement; now therefore

### *THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. The Streets Commissioner and Procurement Commissioner, on behalf of the City of Philadelphia, are hereby authorized to enter into an Intergovernmental Agreement with the Philadelphia Municipal Authority, through which the City will assume certain of the Authority's rights and obligations under a Recycling Agreement that the Authority will enter into with Waste Management of Pennsylvania, Inc.

SECTION 2. The authorization in Section 1 of this Ordinance is conditioned on the Recycling Agreement being substantially in the form set forth in Exhibit "A" attached hereto.

SECTION 3. The Intergovernmental Agreement authorized in Section 1 of this Ordinance shall be substantially in the form set forth in Exhibit "B" attached to the Recycling Agreement.

SECTION 4. The Economic Opportunity Plan for the Recycling Agreement, which will be an exhibit to the Recycling Agreement, is attached hereto as Exhibit "B".

SECTION 5. The City Solicitor is hereby authorized to review and approve the agreements necessary to effectuate this Ordinance, and to impose such terms and conditions on them as the

# City of Philadelphia

*BILL NO. 190413 continued*

Certified Copy

City Solicitor may deem necessary and proper to protect the interests of the City and to carry out the purpose of this Ordinance.

SECTION 6. The Chief Clerk of City Council shall keep all Exhibits to this Ordinance on file and make them available to the public for inspection and copying during regular offices hours.

SECTION 7. This Ordinance shall take effect immediately.

[Note: Exhibits to this Bill are on file in the Office of the Chief Clerk.]



# City of Philadelphia

*BILL NO. 190413 continued*

Certified Copy

# City of Philadelphia

*BILL NO. 190413 continued*

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 13, 2019. The Bill was Signed by the Mayor on June 19, 2019.



Michael A. Decker  
Chief Clerk of the City Council

**EXHIBIT B**  
**INTERGOVERNMENTAL AGREEMENT**

**INTERGOVERNMENTAL RECYCLING PROCESSING AND  
MARKETING AGREEMENT**

**THIS INTERGOVERNMENTAL RECYCLING PROCESSING AND  
MARKETING AGREEMENT** (“Intergovernmental Agreement”) is dated as of July 8, 2019 (the “Agreement Effective Date”) by and between The City of Philadelphia (“City”) acting through its Streets Department and The Philadelphia Municipal Authority, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania (“Authority” or “PMA”).

**RECITALS**

WHEREAS, the Authority is a body corporate and politic organized under the provisions of the Pennsylvania Municipality Authorities Act of 1945 (the Act of May 2, 1945, P.L. 382, as amended) pursuant to ordinances of the Council of the City of Philadelphia; and

WHEREAS, the Streets Department has requested that the Authority enter into a Recycling Processing and Marketing Agreement (the “Recycling Agreement”) with Waste Management of Pennsylvania, Inc. (the “VENDOR”) as further described herein; and

WHEREAS, the Council of the City of Philadelphia enacted an ordinance, Bill No. 190413, approved by the Mayor on June 19, 2019, duly empowering the City and the Authority to enter this Intergovernmental Agreement and Exhibits thereto; and

WHEREAS, by resolution dated July 8, 2019, the Authority Board of Directors has authorized its Chairman, Vice-Chairman or its Executive Director to execute this Intergovernmental Agreement; and

WHEREAS, the VENDOR and the Authority have entered into the Recycling Agreement contemporaneously with this Intergovernmental Agreement; and

WHEREAS, the Recycling Agreement is attached hereto as Exhibit A to this Intergovernmental Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein, the City and the Authority (collectively, the “Parties”) hereby agree as follows:

1. Definitions.

Capitalized terms used and not defined in this Intergovernmental Agreement shall have the meanings ascribed to them in the Recycling Agreement.

2. Term.

The term of this Intergovernmental Agreement shall commence on the Effective Date and shall terminate one day after the expiration or termination of the Recycling Agreement; provided that to the extent that any obligations of the Authority under the Recycling Agreement survive expiration or termination of the Recycling Agreement, the City's corresponding obligations under this Intergovernmental Agreement shall remain in effect and be enforceable following such expiration or termination.

3. Obligations of the Authority.

- (a) **Administrative Obligations.** Authority shall provide all required administrative services necessary to fulfill its obligations to the VENDOR and the City for the prompt and timely submission of any required representations and documents required under the Recycling Agreement.
- (b) The Authority shall provide the City with copies of any notices received by the Authority from the VENDOR, unless the Authority shall have determined by reasonable means that the City received a copy of such notice directly from such party.
- (c) The Authority shall provide the City with a copy of any notices received from any governmental authority with respect to the Recycling Agreement or transactions contemplated by this Intergovernmental Agreement or the Recycling Agreement.
- (d) The Authority shall not amend, modify, alter or otherwise change the Recycling Agreement, once fully executed, without the prior written consent of the City.
- (e) The Authority shall not assign the Recycling Agreement once fully executed, without the prior written consent of the City.
- (f) The Authority shall make payments to the VENDOR as directed by the City following the receipt of invoices, the City's confirmation of the invoices and payment by the City to the Authority.
- (g) The Authority shall pay over to the City any payments due from the VENDOR with respect to the Recycling Agreement.

4. Obligations of the City

- (a) With the exception of administrative obligations of the Authority set forth herein, the City hereby assumes and shall perform such obligations directly or indirectly, including all financial and operational obligations specifically required of the Authority to the VENDOR under the Recycling Agreement.

(b) Wherever the Recycling Agreement states that PMA or the Authority shall provide, respond, inspect, review, approve, provide data or undertake similar obligations, the City shall undertake those obligations.

(c) The City shall timely review, approve or reject all or part of invoices submitted by the VENDOR and shall make timely payments to the Authority for all such approved or approved portions of invoices.

(d) The City shall timely and promptly review all required representations and documents required under the Recycling Agreement.

5. City's Indemnification of the Authority.

Subject to the provisions and limitations of this Section, the City hereby indemnifies and holds harmless the Authority and each member, officer, and employee of the Authority against any and all claims, losses, damages or liabilities, joint and several, to which the Authority or any member, officer or employee of the Authority or any member, officer or employee of the Authority may become subject, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of this Intergovernmental Agreement or the Recycling Agreement, unless the losses, damages or liabilities arise from an adjudication of bad faith, fraud or deceit of the member, officer or employee or the Authority. In the event any claim is made or action brought against the Authority, or any member, officer, or employee of the Authority, the Authority may request that the City assume the defense of the claim and any action brought thereon and pay all reasonable expenses incurred therein; or the Authority may assume the defense of any such claim or action, provided, however, that counsel selected by the Authority shall be approved by the City, and further provided that the City may engage its own counsel to participate in the defense of any such action. The defense of any such claim shall include the taking of all actions necessary or appropriate thereto.

6. Successor Authority.

In the event that the Authority ceases to exist or otherwise does not perform its obligations hereunder, the City shall have the right to appoint and substitute a successor authority (the "Successor Authority") to succeed to the rights and assume the obligations of the Authority hereunder. Such Authority shall be substantially similar with respect to its relationship to the City and its powers to contract and to manage contracts. The City's right to appoint a Successor Authority shall be a continuing right and shall not be exhausted by the exercise thereof.

7. Limitation of Liability: Special Obligations of the Authority.

Notwithstanding anything contained in this Intergovernmental Agreement to the contrary, the payment obligations of the Authority arising under this Intergovernmental Agreement are special obligations of the Authority, payable solely from payments received from the City. The Authority will do all things lawfully within its power to obtain, maintain and properly request from the City and pursue funds from which the payments may be made.

8. Tort Claims Act.

Nothing in this Intergovernmental Agreement or the Recycling Agreement shall waive or be construed to waive or amend, or be deemed to waive or amend, any immunity which the City or the Authority, or their officials, members, officers, agents, employees or representatives, may have under Title 42, Chapter 85 of the Pennsylvania Consolidated Statutes Annotated, as applicable, or other Applicable Law.

9. Effect of City Approval

The review, approval or acceptance by the City Streets Department of any documents submitted to the City by the Authority, the VENDOR or any other party under or in connection with this Intergovernmental Agreement or the Recycling Agreement shall not constitute approval otherwise required under Applicable Law by any other City of Philadelphia departments, boards or commissions, or by any other federal, state or local governmental authority having jurisdiction.

10. No Merger.

The rights and obligations of the Parties under this Intergovernmental Agreement shall remain in effect and shall not merge, even if the same Party holds rights of both Parties hereunder, unless such Party terminates this Intergovernmental Agreement in writing.

11. Severability.

In the event that any of the provisions, or portions or applications thereof of this Intergovernmental Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment in the provisions of this Intergovernmental Agreement with a view toward effecting the purpose of this Intergovernmental Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

12. Notice.

(a) Any notice required to be given by City to the Authority hereunder shall be in writing and shall be addressed to:

The Philadelphia Municipal Authority  
1515 Arch Street, 9th Floor  
Philadelphia, PA 19102  
Attention: Lorna Gallman, Executive Director

(b) Any notice required to be given by the Authority to the City hereunder shall be in writing and shall be addressed to:

City of Philadelphia Streets Department  
Municipal Services Building, Room 730  
1401 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19102  
Attn.: Commissioner

All notices under this Section shall be delivered in person, sent via certified mail with a return receipt requested or sent via facsimile and shall be effective when received at the address specified above. The Parties hereto, by like notice in writing, may designate, from time to time, another address or facsimile number to which notices may be given pursuant to this Intergovernmental Agreement.

13. Entire Agreement.

This Intergovernmental Agreement contains the entire agreement between the Parties hereto and supersedes any and all prior written and oral agreements, proposals, negotiations, understandings and representations pertaining to the subject matter hereof.

14. Amendments.

The parties acknowledge that from time to time the Intergovernmental Agreement may require amendments to support the Parties interests and obligations under the Recycling Agreement. Such requests for amendment from either Party shall not be unreasonably denied or delayed. However, no amendments or modifications of this Intergovernmental Agreement shall be valid unless evidenced in writing and signed by a duly authorized representative of the Party against which enforcement is sought.

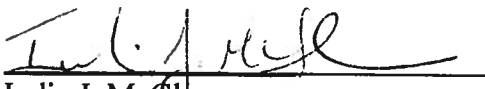
15. Third Party Rights.

The Parties hereby acknowledge the VENDOR is a third-party beneficiary to this Intergovernmental Agreement. Except with respect to the VENDOR as third-party beneficiary, this Intergovernmental Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other Person.

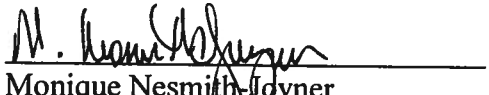


**IN WITNESS WHEREOF**, the Parties have executed this Intergovernmental Agreement as of the date first above written.


**APPROVED AS TO FORM:**  
Marcel S. Pratt, City Solicitor

BY:   
India J. McGhee  
Assistant City Solicitor

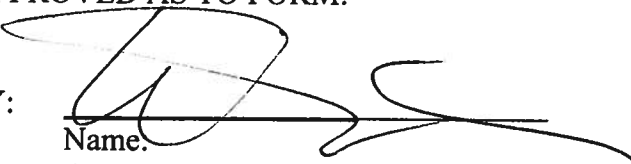
**THE CITY OF PHILADELPHIA,**  
acting by and through its  
Procurement Department

BY:   
Monique Nesmith-Loyner  
Acting Procurement Commissioner

and its Streets Department

BY:   
Carlton Williams  
Streets Commissioner

**APPROVED AS TO FORM:**

BY:   
Name:  
General Counsel, PMA

**THE PHILADELPHIA MUNICIPAL  
AUTHORITY**

BY:   
Lorna Gallman  
Executive Director

## EXHIBIT C

### BLENDED VALUE CALCULATOR & REVENUE PAYMENT FORMULA

#### A. Blended Value Calculator

The Revenue Payment to either PMA or the Contractor shall be determined according to the following Blended Value Pricing Calculator, which will be adjusted monthly throughout the Contract term.

PMA's share of Material Blended Value is fixed at 70% for the duration of contract.

WM Processing Fee will be adjusted annually with CPI, fixed at 3.5% per year.

<b>Blended Value Calculators (per ton)</b>		
	<b>Delivered to Philadelphia Materials Recovery Facility</b>	<b>Delivered to Philadelphia Transfer Station</b>
Total Material Blended Value (BV)	Updated Monthly (see below)	Updated Monthly (see below)
PMA's Share of Material Blended Value (PMVS)	70% of BV	70% of BV
WM Processing Fee (WMPF)	\$104 per ton	\$126 per ton
Net Revenue Per Ton	PMVS – WMPF	PMVS – WMPF

#### Calculation of Total Material Blended Value (BV)

- The percentage of each Recyclable and Non-Recyclable component set forth below is multiplied by the current value of each component; and
- Each commodity value per ton is added together to obtain the Blended Value per ton.
  - Value of a commodity may be negative.
- The Composition %'s below will be used to determine Total Material Blended Value
  - Material compositions may be audited quarterly and adjusted, with joint participation by WMPA and PMA.

Commodity	Material Composition (%)
Aluminum Cans	1.1%
Steel Cans	2.2%
Natural HDPE	0.7%
Colored HDPE	0.9%
PET	3.7%
Plastic 3-7	2.4%
Aseptic	0.3%
Scrap Metal	0.0%
All Paper	19.7%
Mixed Broken Glass	25.9%
#11 OCC	18.1%
Residue	25.0%
	100.0%

- Current Value (price) components will be determined utilizing the Reference Source Indices in Exhibit D.
- The value of aseptic containers and scrap metal is \$0.00 per ton.
- The value of Non-Recyclable Residue shall be (\$110.00) per ton, adjusted annually by 3.5% per year.
- By way of example, pricing for August 2018 would be calculated as follows:

Aug-18

Commodity	Current Value	Delivery to Philadelphia Materials Recovery Facility (MRF)		Delivery to Philadelphia Transfer (TS)	
		Material Composition (%)	Material Blended Value (\$)	Material Composition (%)	Material Blended Value (\$)
Aluminum Cans	\$ 1,570.00	1.1%	\$ 17.43	1.1%	\$ 17.43
Steel Cans	\$ 220.00	2.2%	\$ 4.88	2.2%	\$ 4.88
Natural HDPE	\$ 820.00	0.7%	\$ 6.09	0.7%	\$ 6.09
Colored HDPE	\$ 300.00	0.9%	\$ 2.63	0.9%	\$ 2.63
PET	\$ 347.50	3.7%	\$ 12.90	3.7%	\$ 12.90
Plastic 3-7	\$ (23.21)	2.4%	\$ (0.55)	2.4%	\$ (0.55)
Aseptic	\$ -	0.3%	\$ -	0.3%	\$ -
Scrap Metal	\$ -	0.0%	\$ -	0.0%	\$ -
All Paper	\$ (10.00)	19.7%	\$ (1.97)	19.7%	\$ (1.97)
Mixed Broken Glass	\$ (35.00)	25.9%	\$ (9.08)	25.9%	\$ (9.08)
#11 OCC	\$ 67.50	18.1%	\$ 12.21	18.1%	\$ 12.21
Residue	\$ (110.00)	25.0%	\$ (27.50)	25.0%	\$ (27.50)
<b>Total Material Blended Value</b>		<b>100.0%</b>	<b>\$ 17.08</b>	<b>100.0%</b>	<b>\$ 17.08</b>
City's Share of Material Blended Value		70.0%	\$ 11.94	70.0%	\$ 11.94
WM Processing Fee			\$ 104.00		\$ 126.00
Rebate (Tip Fee) to City			\$ (92.06)		\$ (114.06)

## EXHIBIT D

### REFERENCE SOURCE INDICES

- **All Paper (“AP”)**: The average of the domestic published prices during the month for Mixed Paper (54) OBM from RISI *Pulp and Paper Week*, Northeast/New York.
- **Old Corrugated Cardboard (“OCC”)**: The average of the domestic published prices during the month for OCC (11) OBM from RISI *Pulp and Paper Week*, Northeast/New York.
- **Aluminum Cans (“Al C”)**: The average of the first published prices during the month from [SecondaryMaterialsPricing.com/RecyclingMarkets.net](http://SecondaryMaterialsPricing.com/RecyclingMarkets.net), Aluminum Cans (Loose, ¢/lb., dropped off) index for the New York (NE USA/Maritimes) Market Region shall be used.
- **Mixed Metal Tin, Steel & Bi-Metal Cans (“MM”)**: The average of the first published prices during the month from [SecondaryMaterialsPricing.com/RecyclingMarkets.net](http://SecondaryMaterialsPricing.com/RecyclingMarkets.net), Steel Cans (Sorted, \$ per ton dropped off) index for the New York (NE USA/Maritimes) Market Region shall be used.
- **Mixed Plastics (“MPL”)**: The average of the first published prices during the month from [SecondaryMaterialsPricing.com/RecyclingMarkets.net](http://SecondaryMaterialsPricing.com/RecyclingMarkets.net), commingled (#3-7, Baled, ¢/lb., picked up) index for the New York (NE USA/Maritimes) Market Region, less \$50.00, will be used.
- **PET Plastics (“PET”)**: The average of the first published prices during the month from [SecondaryMaterialsPricing.com/RecyclingMarkets.net](http://SecondaryMaterialsPricing.com/RecyclingMarkets.net), PET (Baled, ¢/lb., picked up) index for the New York (NE USA/Maritimes) Market Region shall be used.
- **HDPE Plastics (natural) (“HDPE NP”)**: The average of the first published prices during the month from [SecondaryMaterialsPricing.com/RecyclingMarkets.net](http://SecondaryMaterialsPricing.com/RecyclingMarkets.net), Natural HDPE (Baled, ¢/lb., picked up) index for the New York (NE USA/Maritimes) Market Region shall be used.
- **HDPE Plastics (colored) (“HDPE CP”)**: The average of the first published prices during the month from [SecondaryMaterialsPricing.com/RecyclingMarkets.net](http://SecondaryMaterialsPricing.com/RecyclingMarkets.net), Colored HDPE (Baled, ¢/lb., picked up) index for the New York (NE USA/Maritimes) Market Region shall be used.
- **Mixed Glass (“MG”)**: The average of the first published prices during the month from [SecondaryMaterialsPricing.com/RecyclingMarkets.net](http://SecondaryMaterialsPricing.com/RecyclingMarkets.net), 3 Mix (\$/ton del. As Recyclable or Disposable) index for the New York (NE USA/Maritimes) Market Region, less \$15.00, will be used.
- **Aseptic Cartons (“AC”)**: Zero dollars (\$0) per ton.
- **Other Materials**: The City reserves the right to add or delete Other Materials to the program if the parties agree. If additional Recyclable Materials are added to or deleted from the

program, mutually agreeable and appropriate modifications to the Commodity Share Percentage and Blended Value Calculator will be agreed to through written change order.

## EXHIBIT E

### RECYCLABLE MATERIALS AND NON-RECYCLABLE MATERIALS

The following materials are the Targeted Materials that have been designated as Recyclable or Non-Recyclable:

RECYCLABLES must be loose (not bagged) and include ONLY the following:

Aluminum Cans – empty	Newspaper
PET Bottles with symbol #1 – with screw tops only	Mail
HDPE Plastic Bottles with the symbol #2 (milk, water bottles, detergent, shampoo bottles, etc.)	Uncoated Paperboard (exs., cereal boxes, food and snack boxes)
PP Plastic Bottles and Tubs with symbol #5	Uncoated Printing, Writing and Office Paper
Plastics ## 3, 4, 6 and 7	Magazines, Glossy Inserts and Pamphlets
Steel and Tin Cans	Old Corrugated Containers/Cardboard (uncoated)
Glass Food and Beverage Containers – brown, green, or clear	Other Materials as Mutually Agreed Upon

NON-RECYCLABLES include, but are not limited to, the following:

Plastic Bags and Bagged Materials (even if containing Recyclables)	Microwavable Trays
Mirrors	Window or Auto Glass
Light Bulbs	Coated Cardboard
Porcelain and Ceramics	Plastics Unnumbered
Expanded Polystyrene	Coat Hangers
Glass and Metal Cookware and Bakeware	Household Appliances and Electronics
Hoses, Cords, Wires	Yard Waste, Construction Debris, and Wood
Flexible Plastic or Film Packaging and Multi-Laminated Materials	Needles, Syringes, IV Bags, or other medical supplies

Food Waste and Liquids	Textiles, Cloth, or Fabrics (exs. Bedding, Pillows, Sheets, etc.)
Excluded Materials, or Containers which Contain(ed) Excluded Materials	Napkins, Paper Towels, Tissue, Paper Plates, Paper Cups, Plastic Utensils
Batteries	Propane Tanks, Fuel Canisters
	Aseptic Containers

**DELIVERY SPECIFICATIONS:**

Materials delivered by or on behalf of PMA may not contain Excluded Materials. "Excluded Materials" means radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous, or toxic substances or materials, or regulated medical or hazardous waste as defined by, characterized, or listed under applicable federal, state, or local laws or regulations, materials containing information (in hard copy or electronic format, or otherwise) which is protected or regulated under any federal, state, or local privacy and data security laws, including but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), or other such regulations or ordinances.

## EXHIBIT F

### NON-RECYCLABLES AND CONTAMINATED LOAD PROTOCOL

- Individual recycling loads with an excess of 25% contamination will be downgraded and billed at the residue rate applicable at that time. The value of residue is \$110.00 per ton, adjusted annually with CPI fixed at 3.5% per year.
  - Contamination shall be defined as the presence in a given load of Non-Recyclable Materials, as defined in Exhibit E, or Recyclable Materials that contain contaminants such as moisture, grease, food waste, dirt, organic materials, etc.
- Contractor's Non-Recyclables and Contaminated Load Protocol shall be audited for verification on a quarterly basis through a process established by agreement of the parties.
- Contractor will support PMA and the City in their efforts to reduce contamination and will share the financial benefits with PMA in the form of direct credits to the monthly tipping fee as contamination levels improve.
- All inbound loads from the City will be inspected and assigned a grade and contamination level. Such grading and contamination level determination will be performed pursuant to Contractor's Loose Material Inbound Downgrading Procedure attached as Exhibit G.
- Contractor will calculate average contamination levels on a monthly basis and issue credits to PMA according to the following schedule:
  - Credits are available each calendar month if contamination levels for the month warrant a credit. Credits apply to all tons delivered to Contractor in a calendar month and will be treated as separate from the base monthly billing.

MONTHLY CONTAMINATION AVG	APPLICABLE CREDIT/ TON
> 25%	No Credit/ individual loads rejected as necessary
20% - 24.99%	No Credit
15% - 19.99%	\$ 3.50/ ton credit
10% - 14.99%	\$ 6.00/ ton credit
5% - 9.99%	\$ 8.50/ ton credit
< 5%	\$ 11.00/ ton credit



## **EXHIBIT G**

### **LOOSE MATERIAL INBOUND DOWNGRADING PROCEDURE**

#### **Contractor Operating Procedure:**

- Truck arrives and is directed where to tip
- Establish a safety parameter using loader to block traffic
- Grader performs visual inspection to determine contamination percentage
- Grade all 3<sup>rd</sup> party loads (Phase I)
- Use picture and grading guidance
- Three Key Steps
  - Ensure safety process followed
  - Completely fill out the Inbound Grading Form – both sides
  - Take a minimum of four (4) pictures
- Grader completes Grading Form and communicates downgrade to scale house
- Driver returns to scale house and is given ticket reflecting downgrade
- Driver signs ticket
- Scale house or Ops Specialist enters downgrade and uploads ticket, downgrade form, and photos to the Sharepoint Downgrade Database

## **EXHIBIT H**

### **RULES AND REGULATIONS AT FACILITY**

#### **Scale House:**

1. Driver shall approach Scale SLOWLY.
2. Driver shall report to scale house operator and identify origin and material type such as Single Stream Residential.
3. Weigh inbound.
4. Weigh outbound and pick up scale ticket.

#### **Tip Floor Rules:**

1. Wait for operator's OK to enter tip floor for dumping.
2. Safety gear shall be worn when driver exits cab.

#### **Yard Rules:**

1. Driver shall maintain safe speeds while traveling within the yard.
2. Driver shall not allow litter to be discharged from the body or cab.
3. Driver shall not loiter in the yard.

**EXHIBIT I**  
**ECONOMIC OPPORTUNITY PLAN**

**City of Philadelphia**

**Office of Economic Opportunity**

**M E M O R A N D U M**

TO : Scott McGrath, Environment Planning Director, Street Department

FROM : Marjorie Chance, MBE Specialist II, Office of Economic Opportunity *MC*

: Request for Proposals (RFP) – **Recycling Processing and Marketing Services for the Philadelphia Street Department**

Mayor's Executive Order 03-12 Minority, Women and Disabled Business Enterprise (M/W/DSBE) – Participation Ranges

- **Compliance Review**

DATE : March 6, 2019

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The OEO has reviewed three (3) proposal for adherence to the Mayor's Executive Order 03-12 M/W/DSBE ranges for participation. The M/W/DSBE ranges for this project were:

MBE Ranges - 15% - 17%

And

WBE Ranges - 10% - 15%

**Responsive and Responsible**

- **Waste Management of Pennsylvania**

Should you have questions, please contact Marjorie Chance, MBE Specialist II at (215) 683-2080. Please inform her of the winning proposal at [marjorie.chance@phila.gov](mailto:marjorie.chance@phila.gov).

cc: File  
mc

City of Philadelphia  
Economic Opportunity Plan

[Recycling Processing and Marketing for the Street Department]

Introduction, Definitions and Diversity Practices

A. Chapter 17-1600 of The Philadelphia Code requires the development and implementation of "Economic Opportunity Plan(s)" for certain classes of contracts and covered projects as defined in Section 17-1601. This Economic Opportunity Plan ("Plan") memorializes the Contractor's "Best and Good Faith Efforts" to provide meaningful and representative opportunities for Minority Business Enterprises ("MBEs"), Woman Business Enterprises ("WBEs") and Disabled Business Enterprises ("DSBEs") (collectively, "M/W/DSBEs" which also includes firms designated as Disadvantaged Business Enterprises or "DBEs"<sup>1</sup>) and employ an appropriately diverse workforce in [Recycling Processing and Marketing Planning] ("Project"). The term "Best and Good Faith Efforts," the sufficiency of which shall be in the sole determination of the City, means: a Contractor's efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives of Chapter 17-1600 within this project. Best and Good Faith Efforts are rebuttably presumed met, when a Contractor makes commitments and causes its professional services providers and contractors retained by Contractor (collectively, the "Participants" and each a "Participant") to make commitments within the M/W/DSBE Participation Ranges established for this Project and employ a diverse workforce as enumerated herein.

Any contract resulting from this RFP is subject to the Plan requirements as described in Section 17-1603 (1). Accordingly, by submission of this Plan, a responsive and responsible Contractor makes a legally binding commitment to abide by the provisions of this Plan which include its commitment to exercise its Best and Good Faith Efforts throughout the Project and its commitment to cause its Participants to use their Best and Good Faith Efforts to provide subcontracting opportunities for M/W/DSBEs in all phases of the Project and to employ a diverse workforce. This Plan expressly applies to all contracts awarded in connection with the Project. The objectives set forth in this Plan shall be incorporated in all Contractor requests for proposals, bids and solicitations and communicated to all Participant levels.

B. For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by the City of Philadelphia through its Office of Economic Opportunity ("OEO"). Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency<sup>2</sup> or identified in the OEO Registry will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at [www.phila.gov/oEO/directory](http://www.phila.gov/oEO/directory). If Contractor is certified by an approved certifying agency, a copy of that certification should be furnished with the proposal.

<sup>1</sup> "DBE" or "Disadvantaged Business Enterprise" means a socially and economically disadvantaged minority or woman owned business that is certified under 49 C.F.R. Part 26. If applicant makes solicitation(s) and commitment(s) with a DBE, applicant shall indicate which category, MBE or WBE, is submitted for counting.

<sup>2</sup> A list of "OEO approved certifying agencies" can be found at [www.phila.gov/oEO](http://www.phila.gov/oEO)

C. Contractor is required to submit a statement summarizing current and past practices relating to its diversity practices ("Diversity Practices Statement"). This statement shall identify and describe examples of processes used to develop diversity at all levels of Contractor's organization including, but not limited to, board and managerial positions. This Diversity Practices Statement should also summarize Contractor's strategic business plans specific to its current or past practices of M/W/DSBE utilization on its government and non-government projects and procurement activities. The Statement shall specifically identify, for the last three years preceding the execution of this EOP (or such greater period of time as may have been set forth in the record retention requirement of an applicable EOP), all City contracts and financial assistance containing an EOP obligating Contractor and any of Contractor's "related corporate entities." "Related corporate entities" shall mean any business entity controlled by a person or business with a majority interest in the Contractor's business. For these identified contracts containing an EOP, Contractor shall enumerate the levels of M/W/DSBE participation and diverse workforce attainment achieved, comparing Contractor's achievement to the participation ranges and workforce goals contained in each identified EOP. Attachment "A" to this Plan is provided for this purpose and should be submitted with Contractor's proposal although the City reserves the right to request it at any time prior to contract award.

See Attached

D. Contractor also agrees to identify in this Plan, any "Equity Ownership" which shall mean the percentage of beneficial ownership in the Contractor's firm or development team that is held by minority persons, women and disabled persons. In the event Equity Ownership is identified, Contractor agrees to abide by the reporting requirements enumerated in Section 17-1603 (1)(g)(3). N/A WM Publicly Owned

E. Contractor and its Participant(s) hereby verify that all information submitted to the City including without limitation, the Plan and all forms and attachments thereto, are true and correct and are notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities. Contractor and its Participants also acknowledge that if awarded a contract/subcontract resulting from this RFP, it is a felony in the third degree under 18 Pa.C.S. Section 4107.2 (a)(4) if, in the course of the contract/subcontract, Contractor and/or its Participant(s) fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

#### Goals

##### A. M/W/DSBE Participation Ranges

As a benchmark for the expression of Best and Good Faith Efforts to provide meaningful and representative opportunities for M/W/DSBEs in the contract, the following participation ranges have been developed. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable on this Project through the exercise of Best and Good Faith Efforts. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the size and scope of the project and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract:

**MBE Ranges**                      **WBE Ranges**  
(Recycling Processing Marketing)    15%-17%    And    10%-15%

### **B. Workforce Diversity Goals and Requirements**

Contractor and its Participants agree to exhaust their Best and Good Faith Efforts to employ minority persons, by race and ethnicity, and females in its workforce of apprentices and journeypersons at the following levels<sup>1</sup>:

African American Journeypersons – 22% of all journey hours worked across all trades  
Asian Journeypersons – 3% of all journey hours worked across all trades  
Hispanic Journeypersons – 15% of all journey hours worked across all trades  
Female Journeypersons – 5% of all journey hours worked across all trades

Minority Apprentices – 50% of all hours worked by all apprentices  
Female Apprentices – 5% of all hours worked by all apprentices

### **III. Contractor Responsiveness and Responsibility**

A. Contractor shall identify all its M/W/DSBE commitments on the form entitled, "M/W/DSBE Solicitation For Participation and Commitment Form." The Contractor's identified commitment to use an M/W/DSBE on this form constitutes a representation by Contractor, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Contractor has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by Contractor further represents that if Contractor is awarded the contract, Contractor will subcontract with the listed firm(s) for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, Contractor shall apply the standard mathematical rules in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern. Contractor is to maintain the M/W/DSBE percentage commitments throughout the term of the contract which shall apply to the total amount of the contract and any additional increases. In the event the Contractor's contract is increased by change order and/or modification, or amendment, it shall be the responsibility of the Contractor to apply its Best and Good Faith Efforts to the amended amount in order to maintain any participation ranges committed to on the total dollar amount of the contract at the time of contract completion. See Attachment A-3

#### **1. Commercially Acceptable Function**

A contractor that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort in that regard only if its M/W/DSBE subcontractor performs a commercially acceptable function ("CAF"). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as

<sup>1</sup> These goals have been informed by the City of Philadelphia Fiscal Year 2017 Economic Opportunity Plan Employment Composition Analysis. Contractor and its Participants are responsible for maintaining records that demonstrate an appropriately diverse workforce for this Project which may include customary hourly wage records.

required by the work to be performed), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved; M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees. The City may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF and in determining the amount of credit the Contractor receives towards the participation ranges. For example, a contractor using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

B. Upon award, letters of intent, quotations, and any other accompanying documents regarding commitments with M/W/DSBEs, including the M/W/DSBE Participation and Commitment Form, become part of the contract. M/W/DSBE commitments are to be memorialized in a written subcontract agreement and are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). Any change in commitment, including but not limited to termination of the subcontract, reduction in the scope of committed work, substitutions for the listed firms, changes or reductions in the listed dollar/percentage amounts, must be pre-approved in writing by OEO. Throughout the term of the contract, Contractor is required to continue its Best and Good Faith Efforts.

C. In the event Contractor does not identify on the M/W/DSBE Participation and Commitment Form that it has made M/W/DSBE commitments within the participation ranges established for this Contract, Contractor must complete and submit a *Documentation of Best and Good Faith Efforts Form* ("BGFE Form"), documenting its solicitations and any commitments with M/W/DSBEs, and detailing any efforts made to include M/W/DSBEs in the contract. The submission of the BGFE Form is an element of proposal responsiveness and failure to include this form may result in the rejection of the Proposal. The BGFE Form must include at a minimum, certification and documentary evidence that the following actions were taken: See Attachment A-4/A-5

1. Solicitation directed to M/W/DSBEs registered with OEO and qualified M/W/DSBEs certified by agencies approved by OEO. Contractor must provide a list of all certification directories used for soliciting participation for this Contract. Contractor must determine with reasonable certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without follow up, is not acceptable; and

2. Contractor provided interested M/W/DSBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation; and

3. Contractor negotiated in good faith with interested M/W/DSBEs. A Contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and would take a firm's price and capabilities as well as the objectives of the Plan into consideration; and



4. Documentation of the following: See Attachment A-4

- i. Any commitments to use M/W/DSBEs in its bid for subcontracted services and materials supply even when Bidder would otherwise prefer to self-perform/supply these items; and
- ii. Correspondence between the Bidder and any M/W/DSBE(s) related to this Bid; and
- iii. Attendance logs and/or records of any scheduled pre-bid meeting; and

5. Certification and evidence that the following actions were taken or documentation of the following, or an explanation why these actions were not taken or why documentation does not exist:

- i. Any arms length business assistance provided to interested M/W/DSBEs which may include access/introduction to major manufacturer/suppliers, lines of credit and union halls; and
- ii. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that are owned by M/W/DSBEs and/or focus on M/W/DSBEs; and
- iii. Telephone logs of communications related to this Bid; and
- iv. Notification of and access to bid documents at the Bidder's office or other office locations for open and timely review; and
- v. Bidder sought assistance from jobs training and employment referral agencies such as the Urban Affairs Coalition, PA CareerLink Philadelphia, Philadelphia OIC and Philadelphia Works to identify candidates for employment and to perform employment outreach; and
- vi. Bidder published its policy of nondiscrimination in the hiring, retention and promotion of employees; and
- vii. Any agreement with an apprenticeship or training program that targets the employment of minority persons, disabled persons and women.

IV. Evaluation of Responsiveness and Responsibility

A. Evaluation and Determination

i. The City, acting through its OEO, will evaluate the responsiveness of the Plan to these requirements. OEO reserves the right to request further documentation and/or clarifying information at any time prior to the award of the contract which may result in Contractor's amendment of its M/W/DSBE Participation and Commitment Form or BGFE Form.

B. Administrative Reconsideration

1. If the OEO determines that the Contractor has not made sufficient Best and Good Faith Efforts, the Contractor will be notified that its proposal is nonresponsive and may file a written appeal with OEO within forty-eight (48) hours of the date of notification. The decision of OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Chief Operating Officer of the Commerce Department or his designee whose decision shall be final. If it is determined that the Contractor did not make sufficient Best and Good Faith Efforts, its Proposal will be rejected.

2. Notwithstanding compliance with the requirements set forth herein, the City reserves the right to reject any or all proposals as deemed in the best interest of the City.

#### V. Compliance and Monitoring of Best and Good Faith Efforts

A. The Contractor shall file a hard copy of this Plan, as certified below by OEO, with the Chief Clerk of City Council within fifteen (15) days of receiving a Notice of Award. The Plan shall be filed with:

Michael Decker, Chief Clerk of City Council  
Room 402 City Hall  
Philadelphia, Pennsylvania 19107

The Contractor also agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, within the time limits prescribed by OEO, all documentation which may be requested by OEO relative to the awarded contract, including the items described below. The Contractor must provide as required and maintain the following contract documentation for a period of three (3) years following acceptance of final payment under the contract:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation;
- Telephone logs and correspondence relating to M/W/DSBE commitments; and
- Records relating to Workforce Diversity.

#### B. Prompt Payment of M/W/DSBEs

The Contractor shall within five (5) business days after receipt of a payment from the City for work performed under the contract, deliver to its M/W/DSBE subcontractors their proportionate share of such payment for work performed (including the supply of materials). In connection with payment of its M/W/DSBE subcontractors, the Contractor agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

Each month of the contract term and at the conclusion of the contract, the Contractor shall provide to the OEO documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the Plan.

### C. Oversight Committee

1. For this project, the City, in its sole discretion, may establish a Project Oversight Committee consisting of representatives from the Contractor's company and the City ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.

2. If a Project Oversight Committee is established, the City will convene meetings of the Committee no later than one (1) month after issuance of the Notice To Proceed.

### VI. Remedies and Penalties for Non-Compliance

A. The Contractor agrees that its compliance with the requirements of the Plan is material to the contract. Any failure to comply with these requirements may constitute a substantial breach of the contract. It is further agreed and understood that in the event the City determines that the Contractor hereunder has failed to comply with these requirements the City may, in addition to remedies reserved under Section 17-1605 of The Philadelphia Code, any other rights and remedies the City may have under the contract, or any bond filed in connection therewith or at law or in equity, exercise one or more of the remedies below, which shall be deemed cumulative and concurrent:

- Withhold payment(s) or any part thereof until corrective action is taken.
- Terminate the contract, in whole or in part.
- Suspend/Debar the Contractor from proposing on and/or participating in any future City contracts for a period of up to three (3) years.
- Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: The "total dollar amount of the contract" shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the City.)

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with the Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors. No privity of contract exists between the City and the M/W/DSBE subcontractor identified in the contract. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with subcontracted services under any law or Executive Order or by any reason of the Contract except such rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

Waste Management of Pennsylvania, Inc.  
Rafael Carrasco, President 10/26/18  
PRINT NAME OF CONTRACTOR AND TITLE DATE

  
SIGNATURE OF CONTRACTOR AND TITLE 10/26/18  
DATE

  
IOLA HARPER, EXECUTIVE DIRECTOR, OFFICE OF ECONOMIC OPPORTUNITY\* DATE 5/7/19

*[See Forms on following pages; these Forms, must be submitted by Contractor]*

\* Pursuant to Section 17-1603 (2) of The Philadelphia Code, the representative of the City of Philadelphia's Office of Economic Opportunity, the "certifying agency", certifies that the contents of this Plan are in compliance with Chapter 17-1600.

**ANTIDISCRIMINATION POLICY SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM**  
 Minority (MBE), Women (WBE), Disabled (DBE) and Disadvantaged (DBA) Business Enterprises\*

DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)						
Bid Number or Proposal Title: B1903082		Name of Bidder/Proposer: Waste Management of Pennsylvania, Inc.		Bid/RFP Opening Date: 10/28/18		
Infrastructure						
List below ALL MBE/WBE/DBE/DBA/DBA that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.						
<input checked="" type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE	Work or Supply Effort to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
		By Phone	By Mail	Yes (if the yes above)	NO	
Company Name <b>Caribbean Opr. Inc.</b> Address 2900 Orthodox St., Philadelphia, PA Contact Person Marvin Gomes Telephone Number 215-821-3316 Fax Number Email Address OEO REGISTRY # 111801 CERTIFYING AGENCY City of Philadelphia	Transport		*	*		
		Quote Received		Amount Committed To		
		YES*	NO	Dollar Amount		
		*		\$ See Attached		
				Percent of Total Bid/RFP		
		15%*				
<input type="checkbox"/> MBE <input checked="" type="checkbox"/> WBE <input type="checkbox"/> DBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE	Transport		*	*		
		Quote Received		Amount Committed To		
		YES*	NO	Dollar Amount		
		*		\$ See Attached		
				Percent of Total Bid/RFP		
		10%*				
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE	Work or Supply Effort to be Performed					Give Reason(s) If No Commitment
		Quote Received		Amount Committed To		
		YES*	NO	Dollar Amount		
				\$		
				Percent of Total Bid/RFP		

1. If Bidder/Proposer makes solicitation(s) and commitment(s) with a DBE, Bidder/Proposer shall indicate which class type, M-DBE or W-DBE, is submitted for credit.  
 2. Attach all quotations to this form.  
 03/2010

\*Best and Good Faith Efforts based upon variables described in the hypothetical calculation attached hereto.

## EXHIBIT J

### EXAMPLE MATERIAL COMPOSITION AUDIT PROTOCOL

# Protocol for Quarterly Material Composition Audits

This protocol is for *Quarterly Material Composition Audits* of inbound single stream loads of recyclable materials that are delivered to the Philadelphia Materials Recovery Facility (MRF). The objective of the protocol is to ensure that audits are accurate and consistent and comply with the terms of the Contract for the Sale, Processing, and Marketing of City-Collected Recyclable Materials with the City of Philadelphia. This protocol is to be used to conduct quarterly material composition audits of the City of Philadelphia's inbound single stream recyclables based on standard industry practices used by most major U.S. cities and several states.

The audit protocol includes three essential tasks:

1. Develop Plan for One-time Audit
2. Conduct Audits
3. Enter and analyze Audit Data

The required "steps" for each of these tasks are listed in the three sections below:

## Develop Plan for Quarterly Material Composition Audit

For inbound single stream recycling loads, WM randomly selects loads using the following process:

**Step 1.1** Schedule a two-week sampling period and notify the city.

**Step 1.2** During each two-week sampling period, WM will randomly select 24 loads for audit. The selection will include 4 audits per city zone.

## Conduct Audits

To conduct Quarterly Material Composition Audits of inbound single stream recycling routes, select loads using the following process:

**Step 2.1 Auditor:** 1.) Confirms routes, 2.) verifies that route numbers are correct, and 3.) determines truck numbers and vehicle arrival times.

**Step 2.2** On each sampling day, the Auditor obtains an *Inbound Audit Form* for Quarterly Material Composition Audits and records route, vehicle number and expected arrival times.

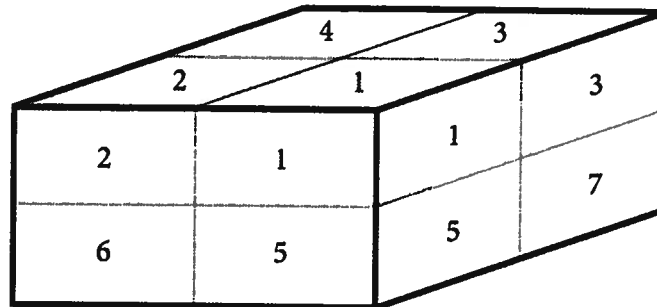
**Step 2.3** When the selected inbound single stream recycling loads arrive at the MRF, the Auditor directs the driver to dump the selected load in an elongated pile and records the following on the main page of *Inbound Audit Form* for Quarterly Material Composition Audits:

- Customer type

- Customer name
- Time and date of tip
- Fastlane ticket number, if available

**Step 2.4** The Auditor then coordinates with the *Equipment Operator* to obtain a sample for sorting using the following random selection protocol:

- Assign a random number (1-8) to each incoming load using the Rand() function in Excel, or comparable method.
- Select a 200 lb. sample from this pile using an imaginary 8-cell grid superimposed over the tipped material (see below).
- Extract a sample from the randomly-selected cell. If it is not practical to obtain a sample from the randomly selected cell, select a sample from the opposite side of the pile, e.g. If cell 1 was selected, but it is not possible to extract a sample from this cell, select cell 2. If cell 2 is not obtainable, select the nearest adjacent cell.



- Weigh the sample to ensure that it weighs 200 lbs. (Use MRF scales to calculate a pre-sort sample weight by subtracting the loader tare weight from the loader plus sample gross weight).
- Record the pre-sort sample weight on the *Inbound Audit Form for Quarterly Material Composition Audits*.
- Deposit the sample on a tarp or sort table.

**Step 2.5** Auditor fills out the main page of the *Inbound Audit Form for Quarterly Material Composition Audits* including:

- Shift
- No. of Auditors
- Auditor Name(s)
- Audit Date
- Start Time
- Pre-Sort Sample Weight
- Any Important Comments (observations)

**Step 2.6 Auditor obtains an *Inbound Audit Worksheet for Quarterly Material Composition Audits*.**

**Step 2.7 Auditor organizes sorting area and checks to ensure that:**

- All required equipment for audit is in place (see **Equipment Checklist**).
- All containers and bins have tare weights written on them to **0.1 lb.**
- Enough containers and bins for both material types are available and in place.
- Scale is weighing correctly and to the 1/10<sup>th</sup> (0.1 lb.).

**Step 2.8 Auditor photographs the sample along with a tag identifying the customer name, time and date of tip.**

**Step 2.9 Auditor sorts sample into material categories as instructed by audit video, ensuring that:**

- There are enough containers and bins TARED for all material categories.
- All sorting is on the table (NOT the floor)
- All materials that fall on the floor are recovered and sorted.

**Step 2.10 Auditor weighs all materials and enters the gross and tare weights on the *Inbound Audit Worksheet for Quarterly Material Composition Audits*.**

The gross weight of the material AND the tare weight of the container must be recorded legibly in the appropriate boxes on the *Inbound Audit Worksheet for Quarterly Material Composition Audits*.

**Step 2.11 Auditor checks to confirm that all fields on the *Inbound Audit Form Quarterly Material Composition Audits* and *Inbound Audit Worksheet for Quarterly Material Composition Audits* are filled in correctly! He/she also:**

- Calculates net weights for each material category by subtracting tare weights from gross weights.
- Double-checks to ensure that all information is recorded and calculated correctly.

**Step 2.12 Auditor recycles clean sorted materials, discards contaminated materials, and cleans the area.**

**Step 2.13 Auditor turns in completed *Inbound Audit Form for Quarterly Material Composition Audits* and *Inbound Audit Worksheet for Quarterly Material Composition Audits* to MRF management personnel.**

## **Enter and Analyze Audit Data**

Audit results will be used to update Blended Value Calculators quarterly, using the aggregated results from the previous quarter.

Note: the City may need to divert tons from the WM Philadelphia Transfer during the two-week audit period to insure there are loads from each city zone available for audit at the Philadelphia MRF.



**EXHIBIT K**  
**PERFORMANCE BOND**



Bond Effective: July 8, 2019

**CITY OF PHILADELPHIA**  
**PERFORMANCE BOND**

Bond No. 30072457

City Contract No. \_\_\_\_\_

Bond Amount \$6,000,000

Waste Management of Pennsylvania, Inc. ("Contractor") and the Surety Western Surety Company jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the City for the performance of the City Contract, **CONTRACT FOR THE SALE, PROCESSING AND MARKETING OF CITY COLLECTED RECYCLABLE MATERIALS**, for the Streets Department which is incorporated herein by reference.

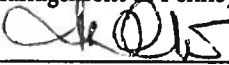
1. If the Contractor performs the City Contract, in accordance with the terms and conditions of the City Contract, the Surety and the Contractor shall have no further obligation under this Performance Bond.
2. The Surety's obligation under this Performance Bond shall arise after the City has declared a Contractor Default as defined below, formally terminated the City Contract or the Contractor's right to complete the City Contract, and notified the Surety of the City's claim under this Performance Bond.
3. When the City has satisfied the conditions of Paragraph 2 above, the Surety shall, at the Surety's sole cost and expense, undertake one or more of the following actions:
  - (a) Arrange for the Contractor to perform and complete the City Contract, provided, however, that the Surety may not proceed with this option, except upon the express written consent of the City, which consent may be withheld by the City for any reason; or
  - (b) Perform and complete the City Contract itself, through qualified contractors who are acceptable to the City, through a contract between the Surety and qualified contractors, which performance and completion shall be undertaken in strict accordance with the terms and conditions of the City Contract; or

- (c) Tender payment to the City in the amount of all losses incurred by the City as a result of the Contractor Default and as determined by the City for which the Surety is liable to the City, including all costs of completion of the City Contract and all consequential losses, costs, and expenses incurred by the City as a result of the Contractor Default, and including all unpaid fees or payments owed to the City by the Contractor under the City Contract, except that Surety's payment under this option shall in no event exceed the limit of the Bond Amount. The Surety may not proceed with this option, in lieu of the options set forth in subparagraphs (a) or (b) above, except upon the express written consent of the City, which consent may be withheld by the City for any reason.
4. The Surety shall proceed under Paragraph 3 above within ten (10) business days after notice from the City to the Surety of the Contractor Default, formal termination of the Contract or the Contractor's right to complete the City Contract, except that the Surety shall proceed within twenty-four (24) hours after notice, where the notice states that immediate action by the Surety is necessary to safeguard life or property.
5. If the Surety fails to proceed in accordance with Paragraphs 3 and 4 above, then the Surety shall be deemed to be in default on this Performance Bond three business days after receipt of written notice from the City to the Surety demanding that the Surety perform its obligations under this Performance Bond. Thereafter, if notice to the Surety is without effect, the City shall be entitled to enforce any legal or equitable remedy available to the City. If the Surety has denied liability, in whole or in part, the City shall be entitled without further notice to Surety to enforce any legal or equitable remedies available to the City.
6. After the City has terminated the City Contract or the Contractor's right to complete the City Contract, and if the Surety is proceeding under subparagraphs 3(a) or 3(b) above, then the responsibilities of the Surety to the City shall not be greater than those of the Contractor under the City Contract, and the responsibilities of the City to the Surety shall not be greater than those of the City under the City Contract. The Surety shall be obligated to the limit of Bond Amount as set forth on the front page, subject, however, to a commitment by the City for payment to the Surety of the Balance of the Contract Price in mitigation of costs and damages on the City Contract. The Surety shall be obligated, without duplication, for:
- (a) The responsibilities of the Contractor for correction of defective or unsuitable work and performance and completion of the City Contract;
- (b) Additional legal, design professional, and delay costs incurred by the City as a result of the Contractor's Default, and as a result of the Surety's actions or failures to act under Paragraph 4 above;

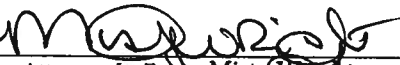
- (c) Liquidated damages as specified in the City Contract, or, if no liquidated damages are specified in the City Contract, actual damages and consequential damages incurred by the City as a result of delayed performance or non-performance of City Contract by the Contractor or the Surety; and
  - (d) Payment of all unpaid and due and owing fees or payments owed to the City under the City Contract at the time of the Contractor Default.
7. To the extent of payment to the Surety of the Balance of the Contract Price, the Surety shall defend, indemnify, and hold harmless the City from all claims, suits, causes of actions, and demands (including all costs of litigation and a reasonable attorney's fee), which are brought against the City by the Contractor or any other party and which arise from or by reason of payment to the Surety the Balance of the Contract Price.
  8. The Surety hereby waives notice of any change or modification to the City Contract, including changes of time, or changes to related subcontracts, purchase orders, and other obligations.
  9. Any proceeding, suit, or claim, legal or equitable, under this Performance Bond shall be instituted in the U.S. District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County and shall be instituted within two years of the date on which the Surety refuses or fails to perform its obligations under this Performance Bond, in accordance with Paragraphs 3 and 4 above. If the provisions of this Paragraph are void or prohibited by law, the minimum limitations period available to sureties as a defense in the jurisdiction of the proceeding, suit, or claim shall be applicable.
  10. All notices to the Surety or the Contractor shall be mailed or delivered to the respective addresses shown on the signature page. In the event of a change in the address of the Surety or the Contractor, such party shall promptly provide notice to the City and the other party, with such notice to include the City Contract No. and this Performance Bond No.
  11. When this Performance Bond has been furnished to the City in compliance with the Public Works Contractors' Bond Law of 1967, 8 P.S. § 191, et seq., any provision in this Performance Bond which conflicts with the statutory or legal requirement of such statute shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein.
  12. The law controlling the interpretation or enforcement of this Performance Bond shall be Pennsylvania law.
  13. Definitions

- (a) **Balance of the Contract Price:** The total amount payable by the City to the Contractor under the City Contract after all proper adjustments have been made, including change orders and credits due the City, reduced by all valid and proper payments made to or on behalf of the Contractor under the City Contract and reduced further by all direct costs and expenses incurred by the City as a result of the Contractor Default, including costs of additional supervision or inspection by the City of the Contractor's work under the City Contract and fees and expenses paid to consultants or others hired by the City for purposes of monitoring or investigating the Contractor's work under the City Contract.
- (b) **City Contract:** The agreement between the City and the Contractor identified on the front page.
- (c) **Contractor Default:** In the case of City Contracts for Public Works, "Contractor Default" shall mean the failure or refusal of the Contractor, after written notice from the City, to cure or remedy, or commence to cure or remedy, a Violation of City Contract (as defined in the City's Standard Contract Requirements for Public Works Contracts) within three (3) working days from receipt of such notice, or within twenty-four (24) hours from receipt of such notice, where immediate action by the Contractor is necessary to safeguard life or property. In the case of all other City Contracts, "Contractor Default" shall mean the occurrence of an "event of default" or a "termination for cause" as defined or provided for in the City Contract's terms, conditions, and provisions.

**CONTRACTOR AS PRINCIPAL:**  
 Waste Management of Pennsylvania, Inc.

Signature:  \_\_\_\_\_  
 Title: Attorney-in-Fact  
 Date: June 25, 2019  
 Address: 1000 New Ford Mill Road  
Morrisville, PA 19067

**SURETY:** Western Surety Company

Signature:  \_\_\_\_\_  
 Attorney-In-Fact Misty Wright  
 (\*Attach Power of Attorney)

Date: June 25, 2019  
 Address: 151 N. Franklin Street  
Chicago, IL 60606

(Corporate Seal)

(Surety Seal)

**POWER OF ATTORNEY**

**KNOWN ALL MEN BY THESE PRESENTS** that Waste Management, Inc. and each of its direct and indirect majority owned subsidiaries (the "WM Entities"), have constituted and appointed and do hereby appoint Deena Bridges, KD Conrad, Vanessa Dominguez, Melissa Fortier, Michael J. Herrod, Jennifer L. Jakaitis, Patricia A. Rambo, Lupe Tyler, Susan A. Welsh, Donna Williams, Terri L. Morrison, and Misty Wright of Aon Risk Services, Inc., each its true and lawful Attorney-in-fact to execute under such designation in its name, to affix the corporate seal approved by the WM Entities for such purpose, and to deliver for and on its behalf as surety thereon or otherwise, bonds of any of the following classes, to wit:

1. Surety bonds to the United States of America or any agency thereof, and lease and miscellaneous surety bonds required or permitted under the laws, ordinances or regulations of any State, City, Town, Village, Board or any other body or organization, public or private.
  
2. Bonds on behalf of WM Entities in connection with bids, proposals or contracts.

The foregoing powers granted by the WM Entities shall be subject to and conditional upon the written direction of a duly appointed officer of the applicable WM Entity (or any designee of any such officer) to execute and deliver any such bonds.

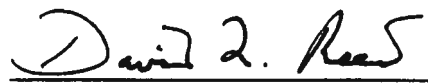
The signatures and attestations of such Attorneys-in-fact and the seal of the WM Entity may be affixed to any such bond, policy or to any certificate relating thereto by facsimile and any such bond, policy or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the applicable WM Entity when so affixed.

**IN WITNESS WHEREOF**, the WM Entities have caused these presents to be signed by the Vice President and Treasurer and its corporate seal to be hereto affixed. This power of attorney is in effect as of June 25, 2019.

Witness:

  
\_\_\_\_\_

On behalf of Waste Management, Inc. and  
each of the other WM Entities

  
\_\_\_\_\_  
David Reed  
Vice President and Treasurer

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Lupe Tyler, Lisa A Ward, Michael J Herrod, Donna L Williams, Melissa L Fortier, Vanessa Dominguez, Misty Wright, Amanda George, Naomi Harris-Thompson, Terri L Morrison, Erin M Dennison, Individually**

of Houston, TX, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

### - In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 7th day of June, 2019.



WESTERN SURETY COMPANY

Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 7th day of June, 2019, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

June 23, 2021



J. Mohr, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 25th day of June, 2019.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

**WESTERN SURETY COMPANY**  
**Sioux Falls, South Dakota**  
**Statement of Net Admitted Assets and Liabilities**  
**December 31, 2018**

ASSETS

Bonds	\$	1,935,428,756
Stocks		28,070,811
Cash, cash equivalents, and short-term investments		28,110,934
Receivables for securities		-
Investment income due and accrued		17,684,883
Premiums and considerations		48,092,741
Amounts recoverable from reinsurers		2,689,618
Current federal and foreign income tax recoverable and interest hereon		109,624
Net deferred tax asset		11,721,985
Receivable from parent, subsidiaries, and affiliates		11,902,908
Other assets		23,233
<b>Total Assets</b>	<b>\$</b>	<b><u>2,083,835,493</u></b>

LIABILITIES AND SURPLUS

Losses	\$	216,656,892
Loss adjustment expense		58,374,620
Commissions payable, contingent commissions and other similar charges		10,355,618
Other expenses (excluding taxes, license and fees)		-
Taxes, License and fees (excluding federal and foreign income taxes)		3,752,460
Federal and foreign income taxes payable		1,295,647
Unearned premiums		240,838,348
Advance premiums		5,412,052
Ceded reinsurance premiums payable (net of ceding commissions)		61,346
Amounts withheld or retained by company for account of others		5,262,414
Provision for reinsurance		182,147
Payable to parent, subsidiaries and affiliates		-
Payable on security transactions		-
Other liabilities		76,602
<b>Total Liabilities</b>	<b>\$</b>	<b><u>542,268,146</u></b>

Surplus Account:

Common stock	\$	4,000,000
Gross paid in and contributed surplus		280,071,837
Unassigned funds		<u>1,257,495,510</u>
Surplus as regards policyholders	\$	<u>1,541,567,347</u>

**Total Liabilities and Capital** **\$ 2,083,835,493**

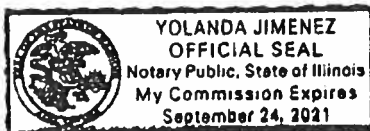
I, Victoria Baltrus, Vice President of Western Surety Company hereby certify that the above is an accurate representation of the financial statement of the Company dated December 31, 2018, as filed with the various Insurance Departments and is a true and correct statement of the condition of Western Surety Company as of that date.

Western Surety Company

By Victoria Baltrus  
Vice President

Subscribed and sworn to me this 19th day of March, 2019.

My commission expires:



By Yolanda Jimenez  
Notary Public





Aon Risk Services Southwest, Inc.  
5555 San Felipe St., Suite 1500  
Houston, TX 77056

Kim Souyack  
WASTE MANAGEMENT OF PENNSYLVANIA, INC.  
107 Silvia Street  
Ewing, NJ 08628

RE: Bond No. 30072457  
THE CITY OF PHILADELPHIA

Dear Kim Souyack:

Enclosed please find the above referenced bond executed at your request in the amount of \$6,000,000.00, dated June 25, 2019 for THE CITY OF PHILADELPHIA .

Please forward the original to THE CITY OF PHILADELPHIA and retain a copy for your files.

If you have any questions or need further assistance, please contact the Financial Assurance department at your Corporate office; contact information is:

- Diana Seng                      713-265-1322

Sincerely,

Misty Wright

enclosures  
2724062

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