

BILL NO. S-17-05-22 **SPECIAL ORDINANCE NO. S-_____**

AN ORDINANCE approving CONTRACT FOR RECYCLING COLLECTION between RED RIVER WASTE SOLUTIONS LP and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the CONTRACT FOR RECYCLING COLLECTION by and between RED RIVER WASTE SOLUTIONS LP and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for seven (7) year contract for Recycling Collection for the City of Fort Wayne, Indiana. Annual rates are subject to contract escalations:

involving a total cost for RECYCLING COLLECTION: \$2.05 PER MONTH per Single-Family Unit and \$S4.10 for Multi-Family Units. Estimated total cost for Recycling Collection per year is TWO MILLION AND 00/100 DOLLARS – (\$2,000,000.00). A copy said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

DIGEST SHEET

Department: Solid Waste Dept.

Resolution Number: 104-1-11-17-1

Title of Ordinance: Recycling Collection Contract

Description of Project (Be Specific):

Seeking approval of the residential Recycling Collection Contract with Red River Waste Solutions for Fort Wayne Residents. Cost is \$2.05 per single family dwelling per month and \$4.10 per Multi-family dwelling per month. Contract begins January 1, 2018.

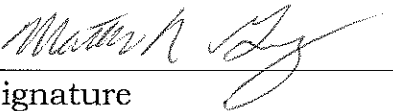
What Are The Implications If Not Approved:

Residents will not have a hauler provided by the City to pick up recyclables.

If Prior Approval Is Being Requested, Justify:

NA

Additional Comments:


Signature


Date



CITY OF FORT WAYNE

TOM HENRY, MAYOR

Date: May 3, 2017

To: Members of City Council

From: Matt Gratz *MG*
Solid Waste Manager

Re: Recycling Collection Contract

The Solid Waste Department is seeking approval of the Recycling Collection Contract with Red River Waste Solutions LP. The contract price is \$2.05 per single family unit and \$4.10 for multi-family units per month. These rates are subject to annual contract escalations. The contract escalation is the same as is in the current waste contracts.

We currently bill roughly 82,500 households. The cost of recycling collection for 2018 is estimated at \$2 million. This amount is expected to increase annually given increasing #'s of households and expected contract escalations.

If you have any questions concerning the contract, please contact me at 427-2474.

Thank You.

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An Equal Opportunity Employer

SOLID WASTE DEPARTMENT CITY OF FORT WAYNE

Contract

for

Recycling Collection

Contract Initiation Date:

June 1, 2017

Service Initiation Date

January 1, 2018

Thomas C. Henry, Mayor

BOARD OF PUBLIC WORKS

Robert P. Kennedy
Chair

Mike Avila
Member

Kumar Menon
Member

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1. DEFINITION OF TERMS

The following words have the following meanings, regardless of whether the terms are capitalized throughout this Agreement.

ANNIVERSARY DATE -- The anniversary of service initiation date, which is January 1 of each year of the term of this contract.

BAGS -- Paper or plastic sacks designed for refuse or solid waste with sufficient wall strength to maintain physical integrity when lifted by top; securely tied at the top for collection with a capacity not to exceed 33 gallons and a loaded weight not to exceed 60 pounds.

BIDDING DOCUMENTS - Bid specifications, documents, and addendums that were publicly released by the City of Fort Wayne Board of Public Works, together with the bid submitted by the Contractor.

BUNDLE - Yard and garden trimmings, Refuse, Construction and Demolition Debris, or newspapers and magazines securely tied together with string, rope or twine forming an easily handled package not exceeding 3 feet in length or 60 pounds in weight.

CITY - The City of Fort Wayne, Indiana, acting by and through its Board of Public Works. Geographically, the term City refers to the City of Fort Wayne, Indiana, and any geographic area which becomes annexed thereto during the term of this Contract.

CITY DEPARTMENT FACILITIES -- Buildings and other facilities, or space within such buildings or facilities, owned or leased by the City from which Refuse, Recyclable Materials, Single-Stream Recyclable Materials, or all of the above are generated for collection.

CONTAINERS- (a.) Reusable Container - A receptacle made of plastic, metal, or fiberglass with a capacity not to exceed 33 gallons, a loaded weight of no more than 60 pounds, and a tight-fitting lid. (b.) Non-Reusable Container - See definition of Bags. (c.) Any container larger than 33 gallons holding debris in plastic bags not exceeding 60 pounds. Contractor-provided containers for residents must be distinguishable from commercial containers.

CONTRACT - This Solid Waste Department Contract for Recycling Collection, and any attachments, exhibits, and amendments hereto.

CONTRACT DOCUMENTS -- The Contract and the Bidding Documents.

CONTRACT SECURITY -- A Performance Bond as required by the City to secure performance of the Contractor under the Contract.

96-GALLON CONTAINER -- A plastic, wheeled container and an attached lid, with a capacity of ninety-six (96) gallons.

48-GALLON CONTAINER -- A plastic, wheeled container and an attached lid, with a capacity of forty-eight (48) gallons.

CONTRACT YEAR -- January 1 through December 31 of each calendar year.

CONTRACTOR -- Red River Waste Solutions LP (Red River).

DISPOSAL -- Legally authorized deposit of waste, Refuse, Recyclables, or Yard Waste materials under contract with the receiving site and in accordance with all laws, regulations and rules of the Disposal Site, Materials Recovery Facility, or any governmental agency.

DISPOSAL SITE – A properly licensed depository for the processing or final Disposal of Refuse, including but not limited to, sanitary landfills, transfer stations, incinerators, composting facilities and waste processing and separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction.

FORCE MAJEURE EVENTS – Any failure or delay in performance due to contingencies beyond a party's reasonable control, including strikes, riots, terrorist acts, compliance with applicable laws or governmental orders, fires, and acts of God, shall not constitute a breach of this Agreement.

GARBAGE – Animal or vegetable waste resulting from the handling, preparation, cooking, serving or consumption of food and including food containers, but shall not include Hazardous Waste or Unacceptable Waste.

GUARANTOR – Red River Waste Solutions LP.

HAZARDOUS WASTE – Waste designated as hazardous by the United States Environmental Protection Agency or by the appropriate state agency as further defined under Title 329, Indiana Administrative Code, Section 2-2 as the same is now in effect or may hereinafter be amended.

INDUSTRIAL WASTE – Any waste generated by a manufacturing or industrial process that is not a regulated Hazardous Waste.

INSOLVENCY – A party's inability to pay its debts as they mature.

MATERIALS RECOVERY FACILITY (MRF) – A facility where Single-Stream Recyclable Materials are separated and processed for marketing to end users or for beneficial use.

MULTI-FAMILY DWELLING – A building that contains two (2) to four (4) residential living units.

MUNICIPAL SOLID WASTE – Solid Waste resulting from or incidental to municipal, community, residential, commercial, institutional, or recreational activities, and includes Garbage, Rubbish, Refuse, ashes, street cleanings, and other Solid Waste other than Industrial Waste, but excludes Hazardous Waste and Unacceptable Waste.

NET REVENUE – Revenue from commodity sales that a Contractor for the processing of Single-Stream Recyclable Materials realizes from such commodities received under its Contract with the City, less transportation costs from the Contractor's Materials Recovery Facility or other recycling facility owned or operated by the Contractor to the purchaser's facility.

PERFORMANCE BOND – Bond from a Surety that guarantees compensation to the City in the event that the City must assume the obligations and/or duties of the Contractor in order to continue the service as defined by the Contract's Specifications.

RECYCLABLE MATERIALS or RECYCLABLES – Aluminum cans, aluminum foil and foil pans, steel, empty steel paint cans, tin, and bimetal cans; plastic (#1, #2, #3, #4, #5, #6, and #7); glass containers (amber, clear, blue, and green in color); cardboard, fiberboard, newspapers, mixed paper, magazines, phone books, and catalogues.

REFUSE – Discarded waste materials in a solid or semi-liquid state, consisting of Garbage, Rubbish or a combination thereof, but excludes Hazardous Waste and Unacceptable Waste.

RESIDENTIAL UNIT – A group of rooms located within a building or mobile home, and forming a single, inhabitable unit, with facilities which are, or intended to be, used for living, sleeping, cooking and eating. This definition also includes buildings containing four or fewer separate or contiguous single-family dwelling units whose owner has not elected to procure commercial waste removal by a registered hauler.

RUBBISH -- Solid Waste consisting of combustible and non-combustible materials, Yard Waste and garden wastes, but excludes Hazardous Waste and Unacceptable Waste, Freon-containing appliances, infectious wastes, tires, and Construction and Demolition Debris over 60 pounds.

SINGLE-FAMILY DWELLING -- A building that contains one (1) residential living unit.

SINGLE-STREAM -- Commingled materials that are stored and collected together.

SINGLE-STREAM RECYCLABLE MATERIALS or SINGLE-STREAM RECYCLABLES -- Recyclables which are stored and collected together and which consist of Aluminum, aluminum foil and foil pans, steel, empty steel paint cans, tin, and bimetal cans; plastic (#1, #2, #3, #4, #5, #6 and #7); glass containers (amber, clear, blue, and green in color); cardboard, fiberboard, newspapers, mixed paper, magazines, phone books, and catalogues.

SOLID WASTE -- Refuse, Rubbish, Garbage and Yard Waste, but excludes Hazardous Waste and Unacceptable Waste.

SUBCONTRACTOR -- An individual, firm or corporation having a direct contract with Contractor for the performance of a part of the Work.

SURETY -- A party who is legally liable for the debt, default, or failure of the Contractor under the Performance Bond or other bond.

UNACCEPTABLE WASTE -- Category of materials which shall include: Highly flammable substances, Hazardous Waste, liquid wastes, special wastes, certain pathological and biological wastes, explosives, toxic materials, radioactive materials, material that the disposal facility is not authorized to receive and/or dispose of, and other materials deemed by state, federal, or local law, or in the reasonable discretion of Contractor, to be dangerous or threatening to health or the environment, or which cannot be legally accepted at the applicable disposal facility. This excludes minimal contamination of garbage that exists in normal sorting process of recyclables.

WEATHER EMERGENCY -- Excessive snow, ice, temperature or other extreme weather condition where the Board of Commissioners of Allen County declare a Level 1 or Level 2 Weather Emergency; and as a result of which (in the exercise of Contractor's professional judgment): (a) the collection routes are impassable or unsafe for Contractor's collection vehicles and/or (b) attempting to pickup Recyclables in accordance with the Contract would pose a safety hazard to Contractor's employees or other persons.

WORK - The Recyclable services performed by Contractor pursuant to the terms of this Contract.

TON -- A short ton of 2,000 pounds.

2. INTENT AND PURPOSE

It is the intent of the City of Fort Wayne to provide its residents a comprehensive integrated municipal solid waste and recycling management service consisting of a weekly pickup from each dwelling unit of refuse and a bi-weekly (every-other-week) collection of recyclables, and to process for market those recyclables. Collection service is to be based upon total collection to be from all residential dwelling units within the boundaries of the City.

3. TERM OF CONTRACT

The term of service of this Contract shall be for a period of seven (7) years, with an option to renew at the discretion of the City for one (1) period of three (3) years, conforming to the same terms and conditions established with this initial Contract. The City shall exercise the extension by providing Contractor with written notice of City's intention to extend at least forty-five (45) days prior to the expiration of the Initial Term. The Contractor awarded the Contract by the City agrees that the initiating date of the contract is on or about June 1, 2017, and the initiating date of the term of service under the Contract shall be January 1, 2018. Failure to commence Work on the established initiation date for Work under the Contract shall result in liquidated damages of \$10,000.00 per calendar day. In the event funds for the continued fulfillment of the Contract by the City are insufficient, the City shall have the right to terminate the Contract without penalty by giving prior written notice of not less than ninety (90) calendar days to the Contractor.

4. CONTRACT PRICE

Contract pricing includes costs and administrative procedures, for the collection of Recyclables from all qualifying occupied units currently eligible to receive City service, recycling from City Departments, and for the collection of recycling from public receptacles. Single-Family Dwellings and Multi-Family Dwellings of two (2) to four (4) residential units per building, will be serviced one (1) time on an every other week collection schedule. In rare circumstances, there are five (5) or six (6) unit buildings that are self-owned condominiums that receive City services. Each unit in these buildings has its own water meter and is charged the Single-Family Dwelling rate for each unit. Any new dwelling units such as these self-owned condominiums built during the Contract term will only be allowed service on a case by case basis and must be agreed upon by the City and the Contractor. Mobile home parks will be charged ninety (90) percent of total available lots.

Contract Price for collection of:

Single-Family Dwellings	\$2.05 per occupied single-family dwelling per month
Multi-Family Dwellings	\$4.10 per occupied multi-family dwelling per month with no multi-family multiplier applied for purposes of billing
Public Recycle Receptacles	\$0.00 No Charge per receptacle per collection

5. ADJUSTMENT OF CONTRACT PRICE DURING TERM OF CONTRACT

The unit price(s) as applicable, except for the fixed cost component, shall be adjusted annually, beginning January 1, 2019, by indices described below to be effective on the anniversary date of each Contract Year throughout the Term of Contract and any renewal terms(s). The adjustment will be subject to the performance of these indices during the 12 months preceding the date of each new Contract Year. The unit price(s) percentages are as follows: (1) Fixed thirty-eight point fifty-five percent (38.55%) and not subject to adjustment, (2) Fuel ten point sixty-four percent (10.64 %), and (3) All Other Variable Costs fifty point eighty-one percent (50.81%).

The percentage of the Contract Price that is identified as "fixed" shall not be subject to adjustment throughout the Term of Contract and any renewal term(s). The percentage of the Contract Price that is identified as "fuel" will be subject to adjustment by the Producer Price Index – Commodities, Not

Seasonally Adjusted, No. 2 Diesel Fuel ("PPI"), a fuels and related products cost index published by the US Department of Labor, Bureau of Labor Statistics, and may be found at <https://www.bls.gov/ppi/> in IVB.

The percentage of the Contract Price that is identified as "all other variable costs" will be subject to adjustment by the Gross National Product Implicit Price Deflator ("GNPIPD"), which is published quarterly by the US Department of Commerce, Bureau of Economic Analysis and may be found at the following website: <http://www.bea.gov/iTable/iTableHtml.cfm?reqid=9&step=3&isuri=1&903=13> in IVB). Implicit Price Deflators for Gross Domestic Product Addendum. The annual adjustment of the fuel cost percentage of the Contract Price will not be limited. The annual adjustment of the other variable costs percentage of the Contract Price is limited to a maximum of four (4) percent (or other lower amount if the GNPIPD change over the 12-month period of adjustment is less than four (4) percent). If the percentage change in the published GNPIPD or the PPI for the period of adjustment is a negative value, such negative value shall be applied as the adjustment in the Contract Year for which the Contract Price(s), as applicable, is (are) being adjusted.

If the GNPIPD or the PPI shall not be determined and published or if the GNPIPD or the PPI as either is constituted on the effective date of the Contract is thereafter substantially changed, there shall be substituted for such index another index which is determined and published on a basis similar to the GNPIPD or the PPI, as the case may be, as shall be mutually agreed upon by the City and the Contractor.

If the US Department of Commerce, Bureau of Economic Analysis changes the methodology for calculating the GNPIPD, which causes historical data used to calculate the Contract Price adjustment for any Contract Year to be restated, such changes shall only apply to future adjustments and not to adjustments already implemented. If the US Department of Labor, Bureau of Labor Statistics changes the methodology for calculating the PPI, which causes historical data to be used to calculate the Contract Price adjustment for any Contract Year to be restated, such changes shall only apply to future adjustments and not to adjustments already implemented.

6. CHANGES IN SCOPE

As the approach to Solid Waste and recycling management continually evolves, the City intends to remain in the forefront of cost-effective, environmental management of its Municipal Solid Waste. The goal of the City's integrated Municipal Solid Waste and Recycling Management Plan is to minimize waste, preserve landfill space, recycle valuable resources, offer environmentally sound handling of refrigerants and provide a better solution to yard waste management.

As recycling markets continue to develop, the City may want to negotiate Contract amendments. The City may also want to add a separate "organics" collection or pay as you throw (PAYT) program to its Residential Solid Waste Collection Contract. Management of household hazardous wastes and some special wastes provide certain challenges that also will remain under consideration for future developments in financially viable environmental management. Yard Waste, excluding large amounts of leaves, is currently a Contract requirement. If federal, state, or local regulations or policy changes occur, the Contract will be modified to reflect change in Contractor's scope of work and commensurate fees. The City will continue to encourage grasscycling and backyard composting. The Contractor shall make reasonable efforts to assist the City in its environmental education and awareness efforts.

Any changes in scope under the Contract are subject to Indiana law and this Contract. In the event that the City wants to develop a program outside the scope of the contract(s), the City would give the contractor(s) right of first refusal to negotiate with the City to provide such service or adopt such change in scope. Should the contractor(s) decline, the City reserves the right to seek competitive bids to complete the work.

7. PERFORMANCE BOND

Contractor shall execute and deliver a Performance Bond to the City in an amount equal to one hundred

percent (100%) of the annual Contract Price, exclusive of any credits, rebates, or revenue sharing, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Performance Bond amount for each succeeding Contract Year shall be the proposed amount for such Contract Year and shall be renewed by the Contractor and maintained throughout the Term of the Contract.

All Performance Bonds shall be in the forms prescribed by the Bidding Documents and be executed by such Sureties as (i) are licensed to conduct business in the State of Indiana, and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on the Audit Staff Bureau of Accounts, U.S. Treasury Department. Each Performance Bond signed by an agent must be accompanied by a certified copy of the authority to act. Said Performance Bond shall provide that a modification, omission, or addition to the terms and conditions of the Contract or specifications; a defect in the Contract; or a defect in the proceedings preliminary to the letting and awarding of the Contract does not discharge the Surety. If the Surety on any Performance Bond furnished by Contractor is declared bankrupt, or becomes insolvent, or its right to do business is terminated in Indiana, Contractor shall within ten (10) days following receipt of notification thereof, substitute another Performance Bond and Surety, both of which must be acceptable to the City.

Performance Bond shall be sent to the following address:

City of Fort Wayne
Division of Public Works
Citizens Square
200 E. Berry Street Suite 210
Fort Wayne, IN 46802

8. INTENTIONALLY DELETED

9. INDEMNIFICATION

The Contractor does hereby agree:

To indemnify, hold harmless and defend the City from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage or expense of whatsoever kind and nature, including reasonable attorney's fees, which the City may suffer or incur by reason of bodily injury, including death, to any person or persons, or by reason of damage to or destruction of any property, including the loss thereof (collectively, "Claims), to the extent of Contractor's (or its employees, agents or Subcontractors) negligent acts, omissions or willful misconduct in performing the Work pursuant to the Contract, or which the City may sustain or incur in connection with any successful litigation, investigation, or other expenditures incident thereto, including any suit instituted by the City to enforce the obligation of this Section 9. It is the intent of the parties hereto that the Contractor shall indemnify the City under this indemnification clause to the fullest extent permitted herein, but shall have no indemnification obligations for Claims that arise from the negligent acts, omissions or willful misconduct of the City (or its employees, agents or contractors; and

To be held responsible for all injuries to persons and for all damages to the property of the City to the extent caused by or resulting from the negligent acts, omissions or willful misconduct of Contractor, its employees, agents or Subcontractors during the progress of, or connected with the prosecution of the work to be performed pursuant to this Contract; and

To promptly repair any damage to the extent caused by Contractor, its employees, agents, or Subcontractors (following investigation and finding of cause) to yards, driveways, alleys, curbs, streets, garages, fences, etc., other than normal wear and tear caused by Contractor or any other party.

10. SUBCONTRACTORS

The Contractor will not be permitted to subcontract more than ten percent (10%) of the Contract. Contractor shall maximize prime responsibility for equipment and labor necessary to complete such Contract as may be entered into. The City requires same qualification, experience, bonding and insurance of Subcontractor(s) as the Contractor. The City reserves the right to approve or reject Subcontractor(s) and will hold the Contractor responsible for coordination of Subcontractor(s) performance of services hereunder. Contractor's covenants of indemnification hereunder shall in all events extend to the acts and omissions of any Subcontractor in the performance of the work.

11. NONLIABILITY

The City shall not be liable for any injuries to the property of Contractor or any loss or damage sustained by Contractor caused by or resulting from any activity and/or incidents that are in any way connected with the performance of the Work pursuant to the Contract by Contractor or any activity and/or incidence that is incidental thereto unless such injuries or losses are caused by the negligent acts, omissions or willful misconduct of the City (or its employees, agents or contractors).

12. INSURANCE

Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and shall maintain insurance with limits set forth below which may arise out of or result from Contractor's performance and furnishing of the services and Contractor's other obligations under the Contract Documents, whether it is to be performed or furnished by the Contractor, any Subcontractor or supplier, or by anyone directly employed by any of them to perform or furnish any of the Work pursuant to this Contract, or by anyone for whose acts any of them may be liable relating to the Work to be performed pursuant to this Contract.

The Contractor shall at all times during the Contract maintain in full force and effect Employer's Liability, Worker's Compensation, Public Liability and Property Damage insurance, including contractual liability coverage for the provisions of Section 9 (Indemnification). The Contractor shall not commence Work under the Contract until it has obtained all insurance required and such insurance has been approved by the City; nor shall the Contractor allow any Subcontractor to commence Work under its Subcontract until all similar insurance required of the Subcontractor has been obtained and approved. All insurance shall be by insurers and for policy limits acceptable to the City, and before commencement of Work hereunder, the Contractor agrees to furnish the City certificates of insurance or other evidence satisfactory to the City to the effect that such insurance has been procured and is in force. The certificates shall contain the following express obligation:

"This is to certify that the policies of insurance described herein have been issued to the insured to which this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days' prior written notice will be given the certificate holder."

For the purpose of the Contract, the Contractor shall carry the following types of insurance and such insurance shall be maintained during the life of the Contract in at least the limits specified below:

COVERAGES

MINIMUM LIMITS OF LIABILITY

(a) Worker's Compensation Insurance, Including Occupational Disease and Employer's Liability Insurance, sufficient to cover all employees in Contractor's employ during the Term of Contract and any renewal period.	Statutory coverage as required by Indiana Law
(b) Comprehensive General Liability Insurance, including property damage and personal injury coverage	\$1,000,000 per occurrence/ \$2,000,000 aggregate combined single limit
(c) Excess Commercial General Liability Insurance	\$10,000,000 aggregate
(d) Comprehensive Automobile Liability Insurance with respect to both personal injury and property damage	\$1,000,000 per occurrence combined single limit
(e)	
(f) Excess Automobile Liability Insurance	\$10,000,000 aggregate
(g) Products Liability Insurance	\$1,000,000 per occurrence
(h) Completed Operations Liability Insurance	\$1,000,000 per occurrence
(i) Environmental Impairment Liability Insurance (applicable only to the Disposal Contractor) for environmental pollution liability including coverage for bodily injury, property damage, including loss of use of damaged property or property that has not been physically injured or destroyed; cleanup costs; and defense or settlement of claims, all in connection with any loss arising from the insured site. Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any watercourse or body of water, which results in bodily injury and property damage.	\$5,000,000 per occurrence

If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and the retroactive date.

The City and Contractor, reserve the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by both parties based upon changes in statutory law or court decisions.

The City shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto.

The certificate(s) of insurance must show the City of Fort Wayne, its Divisions and Departments as an additional insured but only to the extent of the Contractor's negligence and not the negligence of the City and a certificate holder, and include 30 days' advance notification to the City of cancellation or non-renewal.

All certificates of insurance shall be sent to the following address:

City of Fort Wayne
Division of Public Works
Citizens Square
200 E. Berry Street, Ste 210
Fort Wayne, IN 46802

Failure on the part of the Contractor to comply with the insurance requirements shall not relieve it of the liability under such requirements. For purpose of this Contract, the Contractor shall cause the City to become a named insured on any and all such policies of insurance referred to herein, as the City's interest may appear. In addition, the insurance shall have an amendment to policy indicating that even though the City is named as an additional insured, it shall not preclude recovery for damages to any City property. The Contractor shall furnish to the City, prior to thirty (30) days of the beginning of the Contract, certificates of insurance evidencing all the foregoing insurance requirements, as applicable. Failure to provide such certificate after five (5) days' written notice of such failure is cause for immediate termination of the Contract.

13. **CONTRACTOR'S RESPONSIBILITY**

SUPERVISION

Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques and procedures of refuse collection, transportation, and disposal; and recycling collection and transportation. Contractor shall be responsible to see that the finished Work complies accurately with the intent of the Contract Documents.

Contractor agrees to provide a minimum of one (1) full-time Supervisor to oversee the performance of this Contract unless otherwise approved in advance and in writing by the Public Works Director or his/her designee. Contractor agrees to provide the City with two weeks advanced notice of scheduled vacations and time off of the personnel assigned to supervise the performance of this Contract.

EMPLOYEE CONTROL

All of the Contractor's employees shall be competent and able to perform the duties assigned to them for all Work covered by this Contract. The Contractor must employ only neat, orderly, courteous, sober, competent and efficient employees and shall remove any employee who refuses or neglects to obey or carry out his/her instructions. The Contractor shall prohibit drinking of alcoholic beverages by its employees while on duty or in the course of performing their duties under this Contract.

COMPLIANCE WITH LAWS-PERMITS

The Contractor shall procure at its own expense, and keep current, all permits, licenses, and bonds necessary for the conduct and completion of the Work and/or required by municipal, state and federal regulations and laws. The Contractor shall give all notices, pay all fees, and comply with all federal, state and municipal laws, ordinances, rules and regulations bearing on the conduct and completion of the Work. This Contract, as to all matters not particularly referred to and defined therein, shall notwithstanding, be subject to the provisions of all pertinent state statutes and ordinances of the City, which ordinances are hereby made a part hereof with the same force and effect as if specifically set out herein.

SAFETY AND PROTECTION

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and

programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to, all employees on the Work and other persons who may be affected thereby, other property in the City or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.

TITLE TO RECYCLABLE MATERIALS

Title to Recyclable Materials shall pass to Contractor upon collection by Contractor for the purposes of collection and delivery to the designated Materials Recovery Facility and upon delivery to the Materials Recovery Facility, title shall pass to the Materials Recovery Facility. Title to and liability for any Unacceptable Waste shall at no time pass to the Contractor.

14. CONTROL AND PENALTIES

The Contractor shall work under the direct supervision of the Solid Waste Department of the City. Complaints, missed collections and directions necessary for satisfactory service will be handled through the Solid Waste Department. The Solid Waste Department (through its authorized representative) shall notify the Contractor, by telephone communication or email, of any missed or unsatisfactory collections, and the Contractor must make those collections by 5:00 pm the following day, unless otherwise approved in writing by the Public Works Director or his/her designee. In addition, Contractor will work with the Solid Waste Department to resolve all citizen complaints and problems to the satisfaction of the Solid Waste Department. In the event Contractor fails to collect and remove or properly deliver Recyclables/Recyclable Materials herein provided for, in accordance with the terms of this Contract, for a period of seven (7) working days (Force Majeure Events excepted), the City may, upon one (1) day's written notice to Contractor cause all such Recyclables and such material to be collected and disposed of by the City or the City may contract with any third party and utilize their workforce and equipment to cure such collection failure, and any and all costs and expenses which may be incurred by the City shall be paid by Contractor to the City immediately upon demand therefore or may be paid by the City as a charge against any monies due Contractor by the City, at the election of the City. If employees of the City have been used to perform work that is the Contractor's responsibility, City may charge the Contractor at \$100.00/hour per employee used to perform the work with a one (1) hour minimum charge for each occurrence.

A Residential collection location that does not properly conform to prepared guidelines or City ordinance for Recyclable Materials or Single-Stream Recyclable Materials set-out shall be immediately brought to the attention of Solid Waste Department personnel by the Contractor. The Contractor shall tag set-outs of improperly prepared Recyclable Materials (contaminated materials, etc.) with appropriate notice identifying the deficiency preventing the Recyclable Materials from being collected by the Contractor. Such Recyclable Materials or Single-Stream Recyclable Materials shall be collected by the Contractor, on the next regularly scheduled collection day, after the resident has corrected the deficiency with the set-out.

In the event the Contractor has not materially complied with all terms, conditions and provisions of this Contract, and has failed to cure such noncompliance, or upon any material default or breach of this Contract, which continues beyond any applicable cure period, the City shall have all remedies provided in Section 19 hereof.

15. ASSIGNMENT OF CONTRACT

The Contractor shall not assign the Contract or any part thereof without the prior written consent of the Common Council of the City of Fort Wayne (the "Common Council"), such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Contractor may, without the City's consent but with written notice to the City, consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if the successor entity (a) assumes in writing all the obligations of the Contractor hereunder (including those relating to the maintenance of the Performance Bond in Section 7) and, if required by law, is duly qualified to do business in the State of Indiana, and (b) delivers to the City a certificate sworn by a duly authorized officer of the successor entity to the effect that its obligations under this Contract are legal, valid, binding and enforceable, subject to

applicable bankruptcy and similar insolvency or moratorium laws..

16. NONDISCRIMINATION

In compliance with federal law and IC 5-16-6-1, and IC 22-9-1-10, Contractor hereby agrees:

- That in the hiring of employees for the performance of Work under the Contract or any Subcontract hereunder, no Contractor or Subcontractor shall by reason of race, age, religion, color, sex, national origin, ancestry, or handicap, discriminate against any person who is qualified and available to perform the work to which the employment relates as defined by law except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient operation or as provided by law.
- That no Contractor, Subcontractor, or any person on the Contractor's behalf, shall, in any manner, with respect to tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment, discriminate against or intimidate any employee hired for the performance of Work under the Contract on account of race, age, religion, color, sex, national origin, ancestry, or handicap.
- That the Contract may be cancelled or terminated by the City and all monies due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms and conditions of this section of the Contract.

17. CITY OF FORT WAYNE ALCOHOL AND DRUG POLICY

Contractor's employees shall comply with both policies of the City of Fort Wayne and the Contractor.

18. FORCE MAJEURE

Neither the Contractor nor the City shall be liable for the failure to perform their duties nor for any resultant damage, loss, etc., if such failure is caused by a catastrophe, riot, war, governmental order or regulation, act of God or other similar act beyond the reasonable control of the Contractor or City. If such circumstances persist for more than fourteen (14) days or if after their cessation the Contractor is unable to render full or substantial performance for a period of fourteen (14) days, Contractor or the City may terminate this Contract upon written notice given in thirty (30) days advance notice to the other party.

a. General Rule (One Day Delay) If Contractor is unable to collect any Recyclables on the regular scheduled collection day due to a Weather Emergency, Contractor shall collect such uncollected Recyclables on a "one day later" schedule for the rest of the week, including Saturday, to complete the week's collection work.

b. Consecutive Weather Emergency Days – If Contractor is unable to collect Recyclables on the regularly scheduled collection day for two (2) or more consecutive days due to a Weather Emergency (or if due to a continuing Weather Emergency, Contractor is unable to collect the Recyclables that were missed on the previous collection day (as provided in section 18a. above), Contractor shall collect such uncollected Recyclables as follows:

1. Starting on the first regular collection day (after a Weather Emergency) that Contractor is able to collect a full-day route, Contractor: (i) shall collect all Recyclables that were missed on the immediately preceding regular collection day (i.e., going back one day); and (ii) will also provide as much of the regularly-scheduled collection service for that day as possible. Contractor will continue collections in this mode for five (5) work days after the Weather Emergency has ended, taking into consideration Department of Transportation regulations on truck driver hours.

2. Contractor shall use its reasonable best efforts to collect any other Recyclables that were not collected due to the Weather Emergency within five (5) days (including Saturdays, but not including Sundays and holidays) from the regularly-scheduled collection day for each dwelling.

3. If Contractor, using its reasonable best efforts, is unable to collect such Recyclables that were not collected due to a Weather Emergency within such five-day period, then Contractor will collect any such uncollected Recyclables on the next regularly-scheduled collection day for each missed dwelling and, if the Recyclables at any dwelling exceed the capacity of the approved containers on that next pickup day, Contractor will collect any additional Recyclables in unapproved containers.

19. DEFAULT

- (a) All disputes arising between the Contractor and the City shall be subject to negotiation between the Contractor and the City. Negotiation of a dispute shall not be grounds for the Contractor to abandon the performance of the terms of the Contract. The parties further agree to try to resolve any disputes between them for a period of thirty (30) days through the joint actions of Contractor and the Solid Waste Department, or longer by written agreement between the parties. Substantial and material failure to perform the Contract by the Contractor that continues after the negotiation period ends shall be grounds for termination of the Contract by the Board of Public Works acting on behalf of the City. Such decision to terminate shall not be made arbitrarily or capriciously and the City must provide Contractor with fifteen (15) business days' written notice of any alleged grounds for termination in order for Contractor to have the opportunity to rectify or cure the problem. Should all negotiation efforts to resolve any dispute fail, then the parties may elect to have the dispute resolved through a court of general jurisdiction in Allen County, Indiana.
- (b) If negotiations between the City and the Contractor as described in (a) above fail to resolve disputes, and the Contractor continues to be in material default in the performance of any of Contractor's obligations under the Contract and fails to cure such default within ten (10) days following written notice of default from the City, the City shall provide Contractor with the opportunity to present to the Board of Works or the Common Council (as determined by the City) a written statement and/or an oral presentation which explains the reason(s) for the Contractor's material default and failure to timely cure together with such additional information which the Contractor deems relevant to this issue. The time frame for the submission of such written statement and/or oral presentation shall be determined by the City, taking into account the then current meeting schedules of the Board of Works and the Common Council. In the event the Contractor's written submission and/or oral presentation is to or before the Board of Works, the Board of Works shall submit its recommended action with respect to the Contractor to the Common Council. Upon (a) receipt of the written statement from the Contractor and/or following Contractor's oral presentation, and following the receipt of the Board of Works recommended action with respect to the Contractor, or (b) Contractor's election, after being given the opportunity but elects not to submit a written statement or make an oral presentation to the Board of Works or the Common Council, the City may (a) continue the Contract with Contractor or (b) cancel and terminate the Contract and proceed under the terms of the Performance Bond upon the affirmative vote of a majority of the members of the Common Council.

The failure by the City to declare a material default hereunder or to terminate the Contract in the event of a material default as provided in this Section and to proceed in the exercise and enforcement of the City's rights hereunder shall not operate as a waiver , modification or impediment to the City's future right to declare a material default hereunder, to cancel and terminate this Contract or to exercise the City's rights and privileges granted hereunder upon the occurrence of any subsequent material default by Contractor hereunder.

20. STEALING OF RECYCLABLES

In the event that a recycling collection Contractor chooses to take cardboard that has been set out with the Garbage for collection, the City will allow this practice. However, the recycling collection Contractor shall not rummage through containers and scatter debris while looking for Recyclables. The City will not allow the Solid Waste collection Contractor to take material set out for recycling collection. A penalty of \$100 per occurrence per household will be assessed against the Contractor if the City proves fault that the Contractor

took material set out for recycling collection. For any disputes, the Board of Public Works will be the judging authority and its decision will be final.

In the event scavengers are picking through containers for any valuable Recyclables, the City will prosecute these violators under Chapter 50 of the City Garbage Ordinance.

21. INTENTIONALLY DELETED

22. WAIVERS

A waiver by either party of any breach of any provisions hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance. Where the condition to be waived is a material part of the Contract such that its waiver would affect the essential bargains of the parties, the waiver must be supported by consideration and take the form of Contract modifications as provided for elsewhere in this section.

23. ILLEGAL AND INVALID PROVISIONS

Should any term, provision, or other part of this Contract be declared illegal and/or unenforceable, such term or portion shall be stricken and the remainder of the Contract shall remain in full force and effect.

24. JOINT AND SEVERAL LIABILITY

If the Contractor is comprised of more than one individual, corporation or other entity, each of the entities comprising the Contractor shall be jointly and severally liable.

25. BINDING EFFECT

The provisions, covenants, and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.

26. AMENDMENT OF THE CONTRACT

No modification or amendment of the terms hereof shall be effective unless written and signed by the authorized representatives of all parties.

27. MERGER CLAUSE

PREVIOUS AGREEMENTS SUPERSEDED – This Contract constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are to be without effect in the construction of any provision or term of this Contract if they alter, vary or contradict this Contract.

28. SCOPE OF WORK

Contractor shall be responsible for the collection of Single-Stream Recyclables from all qualifying units eligible to receive City service, Single-Family Dwellings and Multi-Family Dwellings of two (2) to four (4) residential units per building one (1) time every other week. In rare circumstances, there are five (5) or six (6) unit buildings that are self-owned condominiums that receive City services. Each unit in these buildings has its own water meter and is charged the Single-Family Dwelling rate for each unit. Any new dwelling units such as this built during the Contract term will only be allowed service on a case by case basis and must be agreed upon by the City and the Contractor.

The Contractor will collect from all qualified mobile home units. Appendix A, attached hereto, lists all mobile home parks that are to receive service. For billing to mobile home parks, the City takes 90% (ninety percent) of total available lots to figure the number of occupied units to bill.

Contractor will also collect recyclables from City Department Facilities one (1) time every other week. Locations of City Department Facilities are included in Appendix B attached hereto.

Contractor will deliver all collected Recyclables to the processing facility or transfer station that the City has contracted with for processing. Contractor must follow truck routes as required by the City from the collection areas within the City to the Materials Recovery Facility and any transfer stations. See Appendix C for routes.

Contractor will be responsible for collection of the Recyclable Materials from public recycling receptacles. Collection of these public receptacles would be one (1) time per week. This may increase to daily during festival time. The City will negotiate with the Contractor regarding collection days of these receptacles. In the event contamination of Recyclables becomes an issue, the City may remove these containers at any time. Appendix D attached hereto provides the locations of existing public litter barrels. A recycling program for litter barrels will be phased in and may not be implemented in all areas. In addition, the Contractor would be responsible for collection of Recyclables from receptacles at any new locations the City chooses to place public receptacles during the term of the contract.

Single-Stream Recyclable Materials are defined as: aluminum cans, aluminum foil and foil pans, steel, empty steel paint cans, tin, and bimetal cans; plastic (#1, #2, #3, #4, #5, #6 and #7); glass containers (amber, clear, blue, and green in color); cardboard, fiberboard, newspapers, mixed paper, magazines, phone books, and catalogues; but not limited to these items. Every two years, materials may be added or deleted from the recycling program based on the market value of the materials. Any changes to the recycling program must be agreed upon in writing by both parties.

The Contractor will also provide collection of Single-Stream Recyclables to all City Department Facilities. The City will provide 96-Gallon Container(s) to these facilities or, if approved by the City in advance and in writing, some other container type.

The City will provide 48-Gallon or 96-Gallon Containers to all residents and City Department Facilities that want to participate in the recycling program.

Collection shall be curbside or alley where alleys are available. If residents have their Refuse collected in the alley, then their Single-Stream Recyclables will be collected in the alley as well. It will be the resident's responsibility to see that 48-Gallon Container(s) or 96-Gallon Container(s) are placed at the curb or alley, as close as practical to vehicle routes by 6:00 a.m. on the designated collection day. If the 48-Gallon or 96-Gallon Recycling Container(s) are placed behind a parked vehicle or the City-provided solid waste cart, the Contractor is expected to walk the 48-Gallon or 96-Gallon Recycling Container(s) out in order to empty them safely and properly. Curbside will refer to that portion of the right-of-way adjacent to and within five (5) feet of paved, traveled roadways. All carts must be placed back down where the resident set them out for collection. Contractor shall not leave carts in the middle of driveways. In the event the carts and containers are not placed back in their proper location, the contractor may be penalized \$100 for each occurrence. Where the Contractor has reason to leave Single-Stream Recyclables uncollected at a residence, the Contractor or its agents shall inform the resident by written notice, sticker, door hanger, mailing, or telephone as to why the Single-Stream Recyclables were not collected.

A map of current collection days is attached hereto as Appendix E. Any change in the scheduled days of collection will be subject to City approval, which will not be unreasonably withheld. Contractor will be responsible for all costs associated with notifying residents of a change in their collection day.

A senior and handicapped assist list will be maintained by the City for elderly and handicapped persons requiring assistance for collection of Solid Waste and Single-Stream Recyclables. Elderly is defined as older than 70 years of age and living alone. Contractor will need to return the 48-Gallon Container(s) or 96-Gallon

Container(s) to the place where they were set out for collection. Additional residents may be added to this assist list as need arises.

Contractor will be responsible for the collection of Recyclables from all qualifying units of any areas that are annexed by the City during the Contract term. In addition to annexed areas, the Contractor is responsible for servicing all new homes built in the City that qualify for City services.

Normal hours of collection are to be from 6:00 a.m. to 6:00 p.m., Monday through Friday. Contractor will be allowed to collect Recyclables until 9:00 p.m. on a limited basis when circumstances warrant an extension of collection hours. Contractor must obtain approval from the City Solid Waste Manager prior to collecting later than 6:00 p.m. Single-Stream Recyclable Materials are to be collected on their scheduled day of collection. Missed collections reported to the City 311 call center will be emailed to the Contractor daily. The Contractor has until 5:00 p.m. the following day to have the miss collected. Saturdays may be used to collect missed pick-ups from the previous day. Misses reported to the Contractor on Friday must be collected by 5:00 p.m. on Saturday. In the event a resident emails a miss to the City after hours on Friday evenings, these emails will be forwarded directly to the Contractor as the City receives them on Friday. These emailed misses must be collected on Saturday by 5:00 p.m. Any misses from the previous week reported to the City 311 call center before 10:00 a.m. on Monday mornings will be reported to the Contractor immediately. Contractor must collect these misses by 5:00 p.m. on Monday. The City expects and will hold the Contractor to a benchmark of a maximum of one (1) miss per 1,000 households per week. Failure to meet this benchmark will result in a penalty on \$100.00 for each miss over the benchmark. Failure to collect the miss by 5:00 p.m. the following day will result in a \$50.00 penalty for each occurrence. If a resident is missed more than two (2) times during a three (3)-month period, the Contractor will be penalized \$100.00 for each occurrence over this two (2)-miss threshold. Once the address in question that has been on the frequent miss threshold list for ninety (90) days without an additional miss, the address will be taken off the list. If there is an instance where a whole street or whole addition is missed more than one (1) time during a three (3)-month period, the Contractor will be penalized \$100.00 for each home that is missed.

In the event a street or alley is closed, the City shall advise the Contractor of the closing and assist in providing access to accomplish required collections. If the street is blocked due to short-term utility work lasting less than one day, the Contractor is expected to go back to get the missed collections no later than the following day.

The following holidays when falling on a weekday will be observed as non-collection days by the Contractor:

- New Year's Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas Day

In the event a holiday falls on a Sunday and the holiday is observed by the City on Monday, there will be no collections on Monday. All collections will be one (1) day late that week.

If a holiday falls on a scheduled collection day, the Contractor shall use a "slide" system and provide collection services one day later for all collection customers between the holiday and the following Saturday. For example, if a holiday falls on a Monday, Monday services shall be performed on Tuesday, Tuesday services shall be performed on Wednesday, etc. If the holiday falls on a Friday, only the services for that Friday shall "slide" to the next calendar day.

29. EQUIPMENT

General:

As of January 1, 2018, all vehicles in the Contractor's fleet used for the City Contract must not be a model year prior to 2016. No vehicle used during the term of this Contract shall be more than seven (7) years old. If the contract is extended, the age of vehicles can be ten (10) years old. At no time shall the average age of

a vehicle in the fleet used for the City contract exceed ten years. This includes any spare vehicles that are used by the Contractor. Contractor must provide the City with documentation on a monthly basis that it has available a minimum of two (2) spare collection vehicles per ten (10) routes utilized to provide collection services to the City. Failure to have the specified spare collection vehicles available shall result in a five thousand (\$5,000) per month penalty. Failure to provide the required documentation shall result in a two hundred dollar (\$200) dollar per month penalty. All vehicles must be of the side-loading or rear-loading variety. No top-loading or front-loading vehicles are allowed to be used unless approved by the City of Ft. Wayne Solid Waste Manager. The Contractor must provide a written plan to the City which adequately ensures that the Contractor will be in full compliance with these requirements within six (6) months of starting the contract. These trucks must meet at a minimum, all federal, state, and local regulations governing waste removal and Department of Transportation standards.

Contractor vehicles shall be licensed in the State of Indiana and shall operate in compliance with all applicable federal, state, and municipal regulations. All vehicles shall be manufactured and maintained to conform to the United States Department of Transportation (DOT) Standards.

Contractor shall provide a fleet of collection vehicles sufficient in number and capacity to efficiently perform the Work required by the Contract in strict accordance with its terms. Contractor shall have available on collection days sufficient back-up vehicles for each type of collection vehicle used to respond to complaints and emergencies as specified above. Recycling collection vehicles shall be leak proof and manage the collection process without fallout or blowout, even during substantial winds; automated side-load service arm should have, at minimum, a 7-foot reach to keep weight of vehicle off the edge of pavement. Automated arm and grabber shall be capable of handling the cart sizes without damage. Disposal hoppers shall be equipped with anti-blowout equipment whether the devices are standard or add-on. Vehicle must be designed to distribute weight of vehicle to minimize road damage. Total loaded vehicle gross weight shall not exceed 70,000 pounds.

Each collection vehicle, including spares, shall be provided with a global positioning system (GPS) unit which has the following functions:

- Location recording using XY coordinates and street address;
- Logging of pick up and spatially linking to location data;
- Cellular technology link to a server that the City can access via the web; and
- Store and forward capability of above listed data when cellular signal is unavailable.

In addition, the GPS system server shall provide data in a standard recognized format that enables the City to generate reports. The GPS system shall be able to track each time the vehicle lifts a cart at a specific address when emptying a cart. Upon the City's request, Contractor shall provide information/databases of when a collection vehicle is at a specific address and if the Contractor collected Single-Stream Recyclable Materials from that address. Reports shall include the date and time of collection. These systems shall be capable of reading RFID tags in the event that the City inserts tags on all City-owned 96-Gallon Containers and 48-Gallon Containers. Contractor will be responsible for purchasing the necessary equipment to read the tags and create the reports to the City. The City would likely purchase RFID tags from Toter, Incorporated to be compatible with the 96-Gallon and 48-Gallon Containers and the Toter specification for ultra-high frequency RFID tags is included in the attached Appendix F. Failure to provide the required system within six months of service initialization, ensure its proper daily operation a minimum during ninety (90) percent of the City's collection days, shall result in a twenty-five hundred dollar (\$2,500) per month penalty. Failure to provide the specified reports on a timely and consistent basis shall result in a two hundred dollar (\$200) per month penalty. However, Contractor may submit an alternative to RFID subject to the City's approval, which shall not be withheld unreasonably.

Cleaning and Maintenance Standards:

Contractor shall maintain all equipment used in providing service under Contract in a safe, neat, clean and operable condition at all times. Vehicles used in the collection under the Contract shall be thoroughly washed a minimum of one (1) time per week so as to present a clean appearance. City may inspect vehicles at any time to determine compliance with sanitation requirements.

Contractor shall furnish City with a written inventory of all vehicles used in providing service, update the inventory whenever it is modified and confirm this inventory annually. The inventory shall list all vehicles used to provide the service in the City by manufacturers (chassis and body,) ID number, date of acquisition, type, capacity and route(s) in which the vehicles are utilized.

Collection Vehicle Maintenance Specifications:

In order to ensure the optimum use of available manpower, equipment, material and capital investments, Contractor shall establish a comprehensive equipment maintenance management program by providing effective support and response to management and operational requirements. This equipment maintenance program should increase the productivity of the maintenance work force, ensure a high standard of maintenance performance, maximize fiscal goals with regard to equipment maintenance and contribute to uninterrupted operation of equipment.

Contractor shall compile a Maintenance and Procedures Manual (Manual) that incorporates all manufacturer's maintenance requirements and schedules for each and every collection vehicle used to perform the duties required by this Contract. The Manual shall include sections that identify the procedures that Contractor will use to implement the manufacturer's required maintenance schedules on a daily, monthly, weekly, quarterly, semi-annual and annual basis. Additionally, all drivers shall record logs, specifying the hours and mileage of use for each vehicle. This maintenance manual shall also include sections describing the following:

a.) Daily Inspection

Before beginning the day's operation, each driver shall make a "walk around" inspection of his vehicle and ensure that all items required by the manufacturer's maintenance manual have been addressed. Compliance with all CDL requirements shall be ensured. Operator shall verify that no item is overlooked, by signing the pre-trip log. Once each inspection is complete, a supervisor shall sign a report indicating that the required inspections have been completed and confirming that each collection vehicle is in good working order. All drivers shall keep current a post-trip log, noting all mileage and time data as well as any incidents or accidents that occurred. All malfunctions or defects shall be reported and repaired before returning the vehicle to service. Once all repairs have been completed, a maintenance supervisor shall sign the repair log for verification.

b.) Preventive Maintenance and Lubrication Program

A Preventive Maintenance and Lubrication (PML) program, consisting of mechanical inspections, lubrication and oil, filter and coolant conditioner change intervals designed to maintain vehicle efficiency and prevent mechanical failure, shall be put in place. The PML program shall be conducted at a minimum as required by the manufacturer's specifications for both chassis and body. Contractor shall specify the specific intervals to be used for maintenance of all vehicles. All components and systems shall be incorporated, including by way of example but not limited to: hydraulic system, lights and wiring, operator's controls, front mount pump, grease fittings, control linkage, packing mechanism, tailgate and body, throttle stop device, lubrication system, radiator, engine, steering, wheels, tires, cooling system, brakes, drive line and lift mounting bolts.

c.) Repairs

Operators shall immediately provide a report to their supervisors of any damage to or malfunction of the equipment or safety devices. No one shall operate equipment if any malfunction or breakdown poses a threat to safety. No one shall operate a vehicle if an "out-of-service" condition exists as defined in transportation regulations. All mechanical defects shall be repaired and vehicle repair logs completed before placing the vehicle back in service. Repairs shall only be attempted by authorized personnel who are qualified to perform that repair. Contractor shall ensure that necessary parts are available immediately and develop a plan for emergency needs.

d.) Recordkeeping Requirements

Contractor shall establish a chain of responsibility to ensure compliance with all DOT requirements and all manufacturer's specifications and maintenance schedules. Contractor is accountable for tracking work order, labor, parts issues, consumables, costs per vehicle, component warranties, road calls and driver

reported defects. All logs and maintenance records shall be retained throughout the term of the Contract and made available to the City upon request.

All accidents and incidents shall be logged within 24 hours of their occurrence and available in report format. The City shall have the right to audit all reports and to physically inspect the facilities and equipment to determine whether or not the Contractor's program is in compliance with this requirement. If the City finds that a specific vehicle is continually in non-compliance of any of the requirements specified above, the City may demand that vehicle not be used in the City for the remainder of the Contract term.

Contractor shall provide performance indicators such as fuel, miles per gallon, oil consumption, transmission fluid usage, coolant replacement, number of breakdowns by mechanical defect, life cycle costs for each vehicle. Vehicle information shall be recorded so that a vehicle profile is maintained that stores all pertinent vehicle information required to:

- 1.) Identify vehicles;
- 2.) Record month to date, year to date, and life to date maintenance data associated with a vehicle; and
- 3.) Identify compliance with preventive maintenance parameters.

Contractor vehicles and any other equipment shall be kept in proper repair and sanitary condition. Each vehicle shall bear as a minimum, the name of the Contractor plainly visible on both cab doors. Each vehicle shall be uniquely numbered in lettering at least four (4) inches high. Each vehicle shall have at least one broom and shovel to clean up Single-Stream Recyclable Materials or waste that may be spilled or otherwise scattered during the process of collection. All vehicles shall be sufficiently secure so as to prevent any littering of Single-Stream Recyclable Materials or waste and/or leaking of fluid. No vehicles shall be willfully overloaded.

In an instance where there is a hydraulic fluid, oil, fuel, or any other type of fluid leak or spill from a vehicle, the Contractor shall contact the Solid Waste Department immediately and shall follow all federal, state, and local regulations governing spill cleanup. Upon the event of any leak or spill, the Contractor shall have a supervisor on site within one (1) hour, after notification to a supervisor of said leak, to assess the situation, apply absorbent, and remove any stains. All material applied to the spill will need to be cleaned up and disposed of properly within twelve (12) hours. Contractor shall not wash any fluids down storm drains without a filtering system approved by the City Water Pollution Control Department. Contractor shall notify the Solid Waste Department through email on how a leak or spill has been resolved within twenty-four (24) hours of initial notification. Contractor shall provide the City with the vendor(s) used for cleanups as well as products/cleaning agents used by said vendor(s). All cleaning agents/absorbents that are used by the Contractor or vendor(s) hired by the Contractor must be approved by the City prior to use. Contractor's failure to comply with any of these provisions will subject Contractor to a penalty of \$1,000.00 per occurrence.

Where alley collection is required, Contractor shall not operate equipment in the alleys which causes damage to public or private property. Any use of large vehicles may be banned if there are more than two (2) incidences of property and/or pavement damage within a six (6)-month period. The City expects Contractor to use smaller vehicles that can navigate in the small "T, H, and L" alleys in the City. The Contractor must have available on a daily basis at least one (1) truck with appropriate wheel base and collection body size for such activity. Collection vehicles must be enclosed and secure so as to prevent any littering.

With its Bid, the Bidder shall provide the make, model, year, capacity, and number of vehicles that will be used for Single-Stream Recyclable Materials collection. Bidder must include the average number of households each vehicle will service each day. Bidder must also include the number of spare vehicles that will be allocated to City routes each day in the event a vehicle breaks down and the number of spare vehicles must meet the prior specified requirements. Garbage vehicles may not be used as spare vehicles; the spare must be a recycling vehicle. These spare vehicles must be equivalent in size to the regular vehicles that would normally operate the route.

30. REPORTING

a.) Daily Misses

The City 311 call center will email the daily miss list to the Contractor by 6:00 p.m. each day. The Contractor will then provide information on the status of each miss by 8:00 p.m. the following day.

b.) Complaints

The City will email collection complaints to the Contractor daily. It will be the Contractor's responsibility to provide in writing information on how each complaint was addressed so that future problems do not occur. The City will need this information within 48 hours of notifying the Contractor.

c.) Property Damage

The Contractor will have 24 hours to respond to any property damage claims given to the Contractor via email by the City. Once the Contractor has reviewed claim and if accepts responsibility for the damage, the damage must be repaired within thirty (30) business days of acceptance of the claim. For property damage taking place in the fall and winter months that involves planting grass seed, Contractor must have the damage repaired and plant seed by May 15th the following spring. If the property damage is not repaired within thirty (30) business days, the City will hire a company to repair the damaged property. The Contractor will be charged the cost of the repair plus an additional fifty (50) percent in penalties.

d.) General Information

The Contractor will provide any information pertaining to routing, trucks, and truck numbers used in the City within thirty (30) days upon request by the City. This includes specific routes, tonnage numbers for those routes, and any other information the City deems necessary.

31. **STAFFING**

The Contractor must give a detailed description of the number of route supervisors, drivers, helpers, and customer service representatives that they will have dedicated solely to the City Contract. Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical and other personnel as may be necessary to provide the services required in a safe, economical and efficient manner.

All drivers shall be trained and qualified in the operation of waste collection vehicles and must have in effect a valid Commercial Driver's License.

Contractor shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection under the Contract. Contractor shall train its employees in collection to identify, and not collect Hazardous Waste.

Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by the Contract, Contractor shall take appropriate corrective measures. If City has notified Contractor of a complaint related to discourteous or improper behavior, Contractor will consider reassigning the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process.

Contractor shall designate qualified employees as supervisors of field operations, as enumerated above in Section 13, Contractor's Responsibility, *Supervision*. Supervisors will be in the field for inspection of Contractor's work and will be available by radio or phone during the Contractor's hours of operation to handle calls and complaints from the City or agents of the City, or to follow up on problems and inspect Contractor's operations.

All employees of the Contractor performing work under the Contract shall be uniformed showing their association with the Contractor while operating in the field. Contractor shall provide a list of current employees and Subcontractors to City upon request.

Any calls the Contractor receives concerning misses, property damages, complaints, or general questions of service will be transferred or directed to the City 311 call center. Contractor must have representatives or a messaging system stating this in the event a resident was to call the Contractor directly. Contractor must have an office within Allen County.

32. CONSTRUCTION; VENUE

This Contract shall be construed in occurrence with the laws of the State of Indiana. Contractor and the City agree that any legal action initiated by each party hereunder shall be heard by a court of applicable jurisdiction which is located in Allen County, Indiana.

33. PRICE ADJUSTMENT

Bid price(s) shall be adjusted annually pursuant to indices and the procedure set forth in Section 5 of this Contract.

34. PAYMENT

The City shall be invoiced, in arrears during the Term of the Contract, by the total number of occupied households. The occupied household information for the preceding month will be given to the Contractor by the City on a monthly basis. Contractor will invoice the City for the preceding month by the 10th of every current month. Invoices shall include total occupied Single-Family Dwellings and Multi-Family Dwellings and City Department Facilities and community recycle events were collected for the month, total Tons collected for that month, and "A" Week and "B" Week participation percentages for the month. Household counts and tonnage numbers shall be separated out by their respective "A" Week and "B" Week designation. The City will deduct any penalties from the invoice and make payment to the Contractor within thirty (30) days of receipt of the properly completed invoice. The City will coordinate with Contractor to reconcile differences in records that may exist regarding occupied dwellings and/or other data from that of the City versus the Contractor; provided, however, that the City and the Contractor agree to act in good faith to resolve any differences with respect to all of the foregoing matters .

In addition to reporting as noted in Section 30 above, Contractor shall include a monthly report with each invoice specifying all accidents, incidents, and citations by regulatory agencies or insurers, which occurred while performing the Work for the month being invoiced. Reports shall detail the nature and reasons for these occurrences as well as all results, findings, and actions taken to resolve same. Contractor shall also notify the Solid Waste Department promptly of any fines or penalties levied and any actions that could have an adverse impact on Contractor or service to the City or both. Failure to report such data shall subject Contractor to non-payment of invoice(s) by City until submission of complete, accurate report(s).

35. RECYCLING PROMOTION AND EDUCATION SUPPORT

Contractor must work with the City to assist in public education of residents regarding its recycling programs and management of Solid Waste. During the Contract term, the Contractor must provide funding for public education in the amount of \$2.00 per active customer per year, paid to the City semi-annually on or before January 1 and July 1. The number of active customers shall be the average of the number of units billed on in each of the six months prior to the payment. The City will involve the Contractor in developing promotional programs. Contractor will also be expected to attend any neighborhood association meetings, events, etc. to help promote programs when directed by the City.

THIS CONTRACT, made and entered into this 3 day of May, 2017, by and between the City and the Contractor.

WITNESSETH, THAT the Contractor and the City for the consideration stated herein agree as follows:

- I. APPROVAL OF CONTRACT. This Contract, although accepted on behalf of the City by its Mayor and by the Board of Public Works, shall not be binding or obligatory upon the City unless and until it shall have first been approved by the Common Council of the City of Fort Wayne, and should the Common Council of the City of Fort Wayne fail to approve the same within forty-five (45) days after the date hereof, this Contract shall become void and of no effect and the rights and obligations of the parties thereupon extinguished.

IN WITNESS WHEREOF, the City and the Contractor, by their respective duly authorized agents, hereto affix their signatures and seals at Fort Wayne, Indiana, as of this 3 day of May, 2017.

CITY OF FORT WAYNE, INDIANA .

BY: _____
Thomas C. Henry, Mayor

CITY OF FORT WAYNE, INDIANA

BY: Its Board of Public Works

Robert P. Kennedy, Chair - *Absent*

Mike Avila
Mike Avila, Member

Kumar Menon
Kumar Menon, Member

Attest: Lyndsey Richards
Lyndsey Richards, Clerk

CONTRACTOR:

Red River Waste Solutions L.P.
a Texas limited partnership

By: James A. Smith
Red River Waste Solutions GP, LLC
A Texas limited liability company, its general partner

BY: _____
James A. Smith, Manager

ATTEST: Walden James Smith President
Name and Title

(Seal)

ACKNOWLEDGEMENT

State of Indiana)
) SS:
County of Allen)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, this 3 day of May, 2017, personally appeared the within named Robert P. Kennedy, Mike Avila, Kumar Menon, and Lyndsey Richards, by me personally known, who being by me duly sworn said that they are respectively the Chair, Members and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

My Commission Expires:

12/02/2020

Lindsay K Haggerty
Notary Public

Resident of Allen County.

Lindsay K Haggerty
Printed Name of Notary

