

1 **BILL NO. S-22-03-26**

2 **SPECIAL ORDINANCE NO. S-_____**

3
4 AN ORDINANCE approving the RED RIVER – WASTE
5 AND RECYCLING REMOVAL TRANSITION
6 AGREEMENT between the City of Fort Wayne,
7 Indiana, and RED RIVER WASTE SOLUTIONS, LP

8 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF**
9 **THE CITY OF FORT WAYNE, INDIANA;**

10 **SECTION 1.** That the RED RIVER – WASTE AND RECYCLING
11 REMOVAL TRANSITION AGREEMENT between the City of Fort Wayne, Indiana,
12 and RED RIVER WASTE SOLUTIONS, LP, as outlined in Exhibit A attached
13 hereto and incorporated herein by reference is hereby in all things ratified,
14 confirmed and approved.

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

17
18
19
20 _____
21 Council Member

22 APPROVED AS TO FORM AND LEGALITY

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24 
25 _____
26 Carol Helton, City Attorney
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SOLID WASTE TRANSITION AGREEMENT

This Solid Waste Transition Agreement (“Contract”) is made and entered into this ²⁹ day of March 2022, by and among Red River Waste Solutions, LP (the “Debtor” or the “Contractor”), the City of Fort Wayne, Indiana, by its Mayor and its Board of Public Works (“Fort Wayne” or “City”) (each a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, the Debtor and Fort Wayne entered into a contract for Solid Waste Collection on June 1, 2017, with a service initiation date of January 1, 2018 (the “Solid Waste Contract”);

WHEREAS, the Parties entered into that certain Mutual Release and Settlement Agreement dated March __, 2022 (the “Settlement Agreement”), which became effective on _____, 2022, where the Solid Waste Contract was deemed rejected pursuant to § 365 of the Bankruptcy Code, effective as of December 30, 2021.

WHEREAS, upon the execution of this Contract and effective date of the Settlement Agreement, as between the Solid Waste Contract and this Contract, this Contract will be the controlling and operative agreement between the Debtor and Fort Wayne.

NOW, THEREFORE, for and in consideration of the foregoing recitals and premises, the mutual representations, warranties, covenants, and agreements contained herein for good and valuable consideration, the receipt sufficiency and adequacy of which is hereby acknowledged and confessed, the Parties acknowledge, agree, and confirm as follows:

TRANSITION TERMS

I. DEFINITION OF TERMS

The following words have the following meanings, regardless of whether the terms are capitalized throughout 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 in 2017, together with the bid submitted by the Contractor in 2017.

BULK ITEM – A large, non-Freon containing appliance or piece of furniture with a weight or volume greater than that allowed for containers.

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 DOCUMENTS – The Contract and the Bidding Documents.

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.

COMMUNITY CLEAN UP SERVICES – On-call collection and waste removal services which would be utilized in separate instances: 1) for routine, scheduled community clean-ups, and 2) where urgent or emergent conditions require service beyond the weekly collection and many customers would need to set out larger amounts of material than permitted. For the routine cleanups, the City would request up to six (6) events per year on a Saturday to provide extra service to a designated neighborhood. Expected level of effort this task will be one (1) rear-loading collection vehicle operating for 8-16 hours. For urgent or emergent situations, the level of effort will be greater, and unscheduled. Unless otherwise mutually agreed upon, no individual clean up event for an urgent or emergent situation shall exceed 100 hours.

CONTRACT YEAR – January 1, 2022 through June 30, 2022, unless sooner terminated by the City.

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 Contract.

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.

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.

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.

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.

TERMINATION FEE – A fee payable by the City to Contractor if the City elects to terminate the Contract prior to the expiration of the Term on June 30, 2022, as calculated in Section 3 of this Contract.

TON – A short ton of 2,000 pounds.

TRANSITION FEE – The sum of \$300,000 payable ratably on a monthly basis, paid over the Term of the Contract.

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 Solid Waste in accordance with the Contract would pose a safety hazard to Contractor's employees or other persons.

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

YARD WASTE – Organic waste materials such as grass, de minimus amounts of leaves, garden clippings, branches and brush that are generated from residential units and their surrounding properties which is tied and bundled and does not exceed three (3) feet in length or weigh in excess of sixty (60) pounds. Root balls and rocks are not included in the definition.

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 six (6) months, unless sooner terminated by the City (the "Termination Date"). The City may terminate this Contract prior to June 30, 2022, by providing Contractor with fifteen (15) Business Days' written notice. If the Termination Date occurs prior to June 30, 2022, the City shall pay a Termination Fee to Contractor equal to the unpaid amount of the Transition Fee as of the Termination Date. The Contractor agrees that the effective date of the Contract is January 1, 2022, and the initiating date of the term of service under the Contract shall be January 1, 2022. 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 Refuse from all qualifying occupied units currently eligible to receive City service and for the collection of refuse 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 per 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 Willi 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.

(a) Base Contract Price for collection of:

Single-Family Dwellings	\$4.98 per occupied single-family dwelling per month
	If/when the number of Single-Family Dwellings with 2 Carts exceeds 7,000, the Contractor shall also bill \$5.98 for each unit in excess of 7,000 that has a second cart
Multi-Family Dwellings	\$ 9.96 per occupied multi-family dwelling per month with no multi-family multiplier applied for purposes of billing
Public litter barrels	\$ No Charge per receptacle per collection
Community Clean-up Services	\$150.00 per hour

(b) In addition to the foregoing, City shall also pay Contractor as follows:

- (i) Transition Service Fee. City shall also pay Contractor a Transition Fee of Fifty Thousand Dollars (\$50,000) per month for the Term of the Contract, unless terminated earlier by the City in accordance with the terms hereof.
- (ii) Supplemental Transition Service Fee. In addition to the Base Rate and the \$300,000 Transition Fee, City shall also pay Contractor a Supplemental Transition Service Fee for both (a) waste collection services under this Contract and (b) recycling collection services under the Recycling Collection Contract between the Parties of even date herewith, for the Term of the Contract, unless terminated earlier by the City in accordance with the terms hereof, as follows:

<u>Date</u>	<u>Amount</u>
March __, 2022	\$1,000,000
April 1, 2022	\$ 150,000
May 1, 2022	\$ 150,000
June 1, 2022	\$ 150,000
July 1, 2022	\$ 150,000
Total:	\$1,600,000

5. 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.

6. 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.

7. 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).

8. 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) Excess Automobile Liability Insurance	\$10,000,000 aggregate
(f) Products Liability Insurance	\$1,000,000 per occurrence
(g) Completed Operations Liability Insurance	\$1,000,000 per occurrence
(h) 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 certificates after five (5) days' written notice of such failure is cause for immediate termination of the Contract.

9. 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 agrees to provide a minimum of three fulltime Supervisors to oversee the performance of this contract unless otherwise approved in advance and in writing by the City. 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.

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 three full-time Supervisors to oversee the performance of this contract unless otherwise approved in advance and in writing by the City.

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 SOLID WASTE

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

10. 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 Refuse herein provided for, in accordance with the terms of this Contract, the City reserves the right, but shall not be obligated, to collect any residential solid or recycling waste that Contractor fails to collect on the regularly scheduled pick-up date, accounting for the appropriate cure period. The City will work with Contractor in good faith to assist Contractor's collection efforts, whether by focusing on misses, delayed pick-up, or entire route support. The City will likely have limited capacity to supplement Contractor's services.

The City shall be reimbursed by Contractor for any solid waste collected by the City from its residential customers as follows: (i) for January 2022, \$90,000; (ii) for February 2022, in an amount equal to \$114.33 for each ton of waste disposed of at the City landfill; and (iii) for March 2022 through the Termination Date, in an amount equal to \$114.33 per for each ton of waste disposed of at the City landfill, calculated on a monthly basis, provided that the City will waive the first \$50,000 in penalties per month.

The City will continue its customary practice of daily notifications to Contractor of misses from calls received to its 311 call system. The Contractor will use best efforts to comply with its contractual obligations to provide timely collection services to the City. The City will work with Contractor in good faith to address Contractor collection deficiencies and minimize the reimbursements sought from the

Contractor. All reimbursements will be applied in the ordinary course of administration of the collection contracts, unless Contractor disputes the City entitlement to reimbursement. All such disputes, challenges, and objections related to a contested reimbursement sought by the City will be decided by the Bankruptcy Court.

A Residential collection location that does not properly conform to prepared guidelines or City ordinance for Refuse 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 Refuse (contaminated materials, overweight items, etc.) with appropriate notice identifying the deficiency preventing the Refuse from being collected by the Contractor. Such Refuse shall be collected by the Contractor, on the next regularly scheduled collection day, after the resident has corrected the deficiency with the set-out.

11. 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.

12. 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.

13. 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.

14. 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 Solid Waste on the regular scheduled collection day due to a Weather Emergency, Contractor shall collect such uncollected waste 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 Solid Waste 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 Solid Waste that was missed on the previous collection day (as provided in section 18a. above), Contractor shall collect such uncollected Solid Waste as follows:
 - i. 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 Solid Waste 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.
 - ii. Contractor shall use its reasonable best efforts to collect any other Solid Waste that was 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.
 - iii. If Contractor, using its reasonable best efforts, is unable to collect such Solid Waste that was not collected due to a Weather Emergency within such five-day period, then Contractor will collect any such uncollected Solid Waste on the next regularly scheduled collection day for each missed dwelling.

15. STEALING OF GARBAGE OR 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.

16. SCOPE OF WORK

Contractor shall be responsible for the collection of Refuse 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 per 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 deliver all collected Refuse to the Disposal Site or transfer station that the City has contracted with for Disposal at the Republic Services Landfill located at 6231 MacBeth Rd., Fort Wayne, Indiana. Contractor must follow vehicle routes as required by the City from the collection areas within the City to the Disposal Site and any transfer stations. See Appendix B for routes. The City will be invoiced directly by the Disposal Site.

Collection shall be curbside or alley where alleys are available. 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 Solid Waste Container(s) are placed behind a parked vehicle or the City-provided Recycling cart, the Contractor is expected to walk the 48-Gallon or 96-Gallon Solid Waste 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 Solid Waste 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 Solid Waste was not collected.

A map of current collection days is attached hereto as Appendix C. 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. 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.

The City will provide 96-Gallon Container(s) or 48-Gallon Container(s) to each Single Family Dwelling. Multi-family Dwellings, 2 - 4 units, will be given two (2) 96-Gallon Containers. Residents are allowed to rent additional City carts. The Contractor must collect all carts each week using some form of automation. Carts are not to be hand emptied by the Contractor. All carts and containers must be placed back down where the resident set them out for collection. Contractor shall not leave carts and containers in the middle of driveways. In the event the carts are not placed back in their proper location, the Contractor may be penalized \$100 for each occurrence. Such penalties shall be deducted from the Contractor's invoice on a monthly basis.

The amount of extra Bags, cans, Bundles, and Bulk Items is unlimited. Residents will be allowed to place extra Refuse in 33-gallon Garbage Bags, biodegradable lawn bags, 33-gallon Refuse Containers, and Bundles that do not exceed three feet in length and 60 pounds in weight for collection. No Hazardous Waste will be accepted for collection. Latex paint that has been dried out and placed with the Garbage or Refuse for collection is acceptable. If a resident sets out Refuse in a personal container larger than 33-gallons, the Contractor may empty the container at their own discretion.

Contractor will be responsible for collection of unlimited amounts of Bulk Items each week, set out with Refuse for collection on the normal collection day. If the Contractor's collection vehicle cannot service the Bulk Item(s), the Contractor must collect the Bulk Item(s) no later than one (1) day after the regularly scheduled day of collection.

The City has a sixty (60)-pound limit on the amount of Construction and Demolition Debris that can be set out by residents for collection each week. All Construction and Demolition Debris must be containerized in Bags, cans, the City cart, or Bundles. Bundles cannot exceed three (3) feet in length. Any Construction and Demolition Debris items that do not meet the three (3) feet requirement and the sixty (60)-pound limit requirement will not be accepted. All glass windows and/or doors will not be accepted. All wood or other materials cannot have nails or other sharp objects protruding from them in a way that could pose a safety risk. No cement, concrete, bricks, asphalt, rock, stone, landscape stone, etc. is allowed to be set out for collection.

Yard Waste is accepted with Refuse collection. Yard Waste can be placed in plastic or biodegradable lawn Bags, 33-gallon Refuse Containers, and Bundles not exceeding three (3) feet in length. The amount of Yard Waste that can be set out for collection is unlimited. Small amounts of leaves may be set out for collection as long as they are mixed in with the regular Refuse or Yard Waste.

City 96-Gallon Containers and 48-Gallon Containers will be delivered and maintained by the City. In the event that the Contractor accidentally loses a City-provided 96-Gallon Container or 48-Gallon Container in the Contractor's collection vehicle, the Contractor will be responsible for reimbursing the City for the cost of another City 96-Gallon Container or 48-Gallon Container, whichever the case, and its delivery by the City's cart maintenance contractor. Where a resident reports a City 96-Gallon Container or 48-Gallon Container was taken by the Contractor and witnesses the Contractor take the 96-Gallon Container or 48-Gallon Container, the Contractor will be responsible for reimbursing the City for the cost of the 96-Gallon Container or 48-Gallon Container, as applicable, and its delivery. The resident must provide proof the Contractor took the container such as description of vehicle, driver and time of incident. The Contractor must report all 96-Gallon Containers and 48-Gallon Containers lost in Contractor's collection vehicles to the City within 24 hours.

Contractor shall furnish weekly Refuse collection service for all public litter barrels in the City. Locations of public litter barrels have been provided to Contractor. Contractor must empty any additional litter barrels that may be added to this list throughout the term of the Contract. For various Festivals (German Fest, Three Rivers Festival, Rib Fest, etc.) throughout the spring and summer months, frequency of litter barrel collection will be increased to daily if the need arises.

Contractor will be required to periodically pick up a maximum of 15 illegal dump sites per month when the need arises. The City will contract with Allen County Community Corrections to bag up any loose debris or move Bulk Items to a location that is accessible by Contractor collection vehicles. Each illegal dump site collection will not exceed twenty-five (25) Bags and five (5) Bulk Items. In the event the illegal dump site is larger than this specification, the Contractor will not be responsible for the collection of the illegal dump site.

Contractor will be responsible for participation in the City's annual "Great American Cleanup" activities, as it may be directed by the City. The Great American Cleanup is a national litter cleanup and beautification program that the City participates in annually. The current date of the cleanup is the third Saturday in May. If the date changes due to weather or modifications to the program, the Contractor will still be obligated to participate. Roughly over 5,000 volunteers register for this event locally and clean up over 180 sites around the City. Groups either locate bags and debris at intersections, trail ways, vacant lots, their place of business, or with their regular Refuse collection. Contractor will be responsible for debris placed out with residents' regular Refuse collection and all other locations as instructed by the City. The number of volunteers and cleanup sites are not limited, and as the program continues to grow in size, the Contractor will be responsible for collection of all Bags and debris. Examples of debris that will be located with bags include, but are not limited to: Bulk Items, miscellaneous car parts, two by fours, bundles of yard waste, etc. Contractor will not be responsible for collecting tires, Hazardous Waste, Unacceptable Waste, or large brush piles. All bags and debris not set out with residents' regular refuse must be collected within three (3) days following the day of the event.

Contractor will be responsible for the collection of Refuse 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 waste 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. Refuse is to be collected on its 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.

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. If a holiday falls on a Sunday, no "slide" shall be enacted.

17. EQUIPMENT

General:

Contractor is responsible for providing all equipment needed to satisfy its obligations hereunder. All equipment 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. Refuse collection vehicles shall be leak proof and manage the collection process without fallout or blowout of Refuse, 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.

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 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 workorder 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:

- i. Identify vehicles;
- ii. Record month to date, year to date, and life to date maintenance data associated with a vehicle; and
- iii. 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 Solid 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 Solid 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 three (3) trucks 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 Solid Waste 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. These spare vehicles must be equivalent in size to the regular vehicles that would normally operate the route.

18. 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 email 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) 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.

19. 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.

20. 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 illegal dumpsites and community clean-up that were collected for the month, total Tons collected for that month. 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).

21. 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.

22. 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.

23. BINDING EFFECT

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

24. 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.

25. 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.

26. DISPUTE RESOLUTION

Any dispute relating to this Contract shall be submitted to the Bankruptcy Court for resolution by motion and request for a hearing.

27. REPRESENTATION BY COUNSEL; MUTUAL DRAFTING

The Parties hereto agree that they have been represented by counsel during the negotiation and execution of this Contract and have participated jointly in the negotiation and drafting of this Contract and hereby waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document. In the event an ambiguity or question of intent or interpretation arises, this Contract shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Contract.

28. CONSTRUCTION

The captions and headings of the paragraphs, subparagraphs, and sections of this Contract are for convenience of reference only and are not to be considered in construing this Contract.

29. GOVERNING LAW

This Contract and any dispute arising out of or related to this Contract shall be governed and construed in accordance with the laws of the State of Indiana, including any applicable statutes of limitation, without regard to any otherwise applicable principles of conflicts of law or choice of law rules that would result in the application of the substantive or procedural rules or law of any other jurisdiction.

30. VOLUNTARY AND KNOWING PARTICIPATION

Each of the Parties has entered into this Contract freely and voluntarily, with no duress or coercion (as those terms are defined by law), after consulting with independent legal counsel of its own choice and receiving counsel's explanation of each of the terms of this Contract and having had an adequate opportunity to make whatever investigation or inquiry such Party deemed necessary or desirable in connection herewith. Further, each such Party appreciates and understands the terms of this Contract, acknowledges that it is made in good faith and is fair and reasonable, and is fully satisfied with the settlement set forth herein.

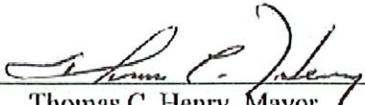
31. COUNTERPARTS

Delivery of executed signature pages in one or more counterparts (including via facsimile or the electronic exchange of portable document format [PDF] copies) all of which shall together constitute one and the same instrument and shall be sufficient to render this Contract effective in accordance with its terms.

[Remainder intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Contract as of the day and year set forth above.

CITY OF FORT WAYNE, INDIANA BY:

By: 
Thomas C. Henry, Mayor

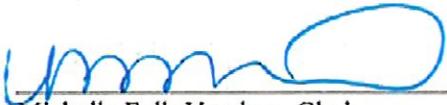
CITY OF FORT WAYNE, INDIANA
BY: Its Board of Public Works


Shan Gunawardena, Chair 3.29.22


Kumar Menon, Member 3.29.22


Chris Guerrero, Member 3.29.22

Attest:


Michelle Fulk-Vondran, Clerk 3.29.22

CONTRACTOR:
Red River Waste Solutions L.P.,
a Texas limited partnership

By: _____
James Calandra, Chief Restructuring Officer

ACKNOWLEDGEMENT

State of Indiana)
) SS:
County of Allen)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, this 29th day of March 2022, personally appeared the within named **Shan Gunawardena, Kumar Menon, Chris Guerrero and Michelle Fulk-Vondran**, 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.

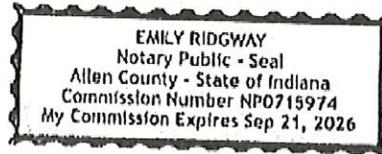
IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

My Commission Expires: 09/21/2026

Emily Ridgway
Notary Public

Resident of Allen County.

Emily Ridgway
Printed Name of Notary

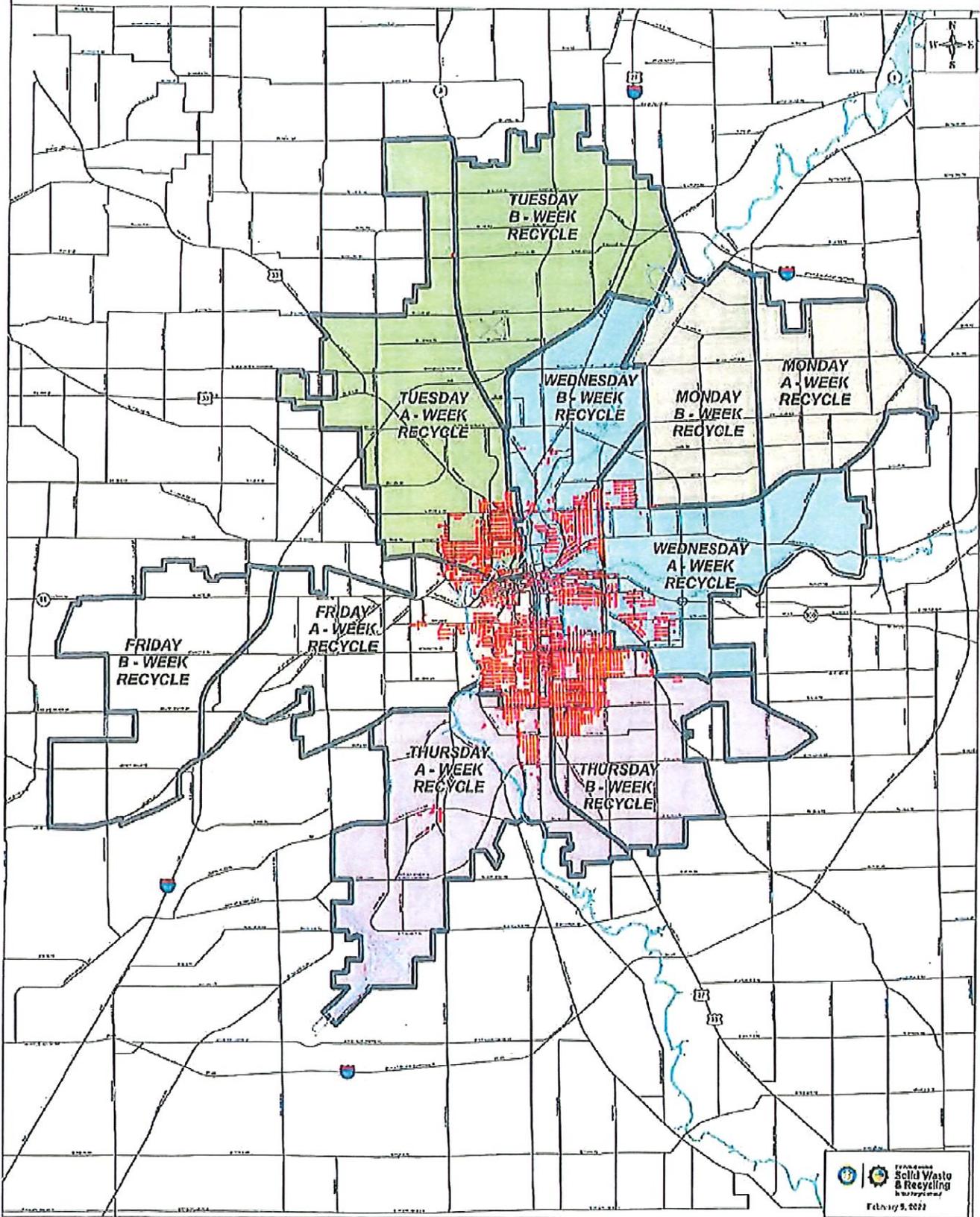


**APPENDIX A MOBILE HOME PARKS RECEIVING SERVICE
APPENDIX A**

CUSTOMER NAME	SERVICE ADDRESS	TOTAL # OF UNITS	# OF UNITS BILLED
ALLEN CO MHP INC	1503 E PAULDING RD	40	36
EVERGREEN MOBILE HOME PARK	6908 ELZEY ST	16	14
COZY ACRES	3203 SANDPOINT RD	26	23
STAN ADAMS TRAILER	4541 LIMA RD	10	9
DON MEYERS TRAILER PARK	3414 N CLINTON ST	32	29
SHADY GROVE MOBILE HOME PK	1235 VANCE AVE	10	9
IDEAL MOBILE HOME PK	4503 LIMA RD	18	18
CORTINI LLC DBA SOUTHERN COURT	5415 S HANNA ST	56	50
ALLIANCE PROPERTY MGT LTD	7112 DECATUR RD	12	11

Appendix C City of Fort Wayne

TRASH COLLECTION DAY & RECYCLE WEEK



RECYCLING COLLECTION TRANSITION AGREEMENT

This Recycling Transition Agreement (“Contract”) is made and entered into this 29 day of March 2022, by and among Red River Waste Solutions, LP (the “Debtor” or the “Contractor”), the City of Fort Wayne, Indiana, by its Mayor and its Board of Public Works (“Fort Wayne” or “City”) (each a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, the Debtor and Fort Wayne entered into a contract for Recycling Collection on June 1, 2017, with a service initiation date of January 1, 2018 (the “Recycling Contract”);

WHEREAS, the Parties entered into that certain Mutual Release and Settlement Agreement dated March __, 2022 (the “Settlement Agreement”), which became effective on _____, 2022, whereby the Recycling Contract was deemed rejected pursuant to § 365 of the Bankruptcy Code, effective as of December 30, 2021.

WHEREAS, upon the execution of this Contract and effective date of the Settlement Agreement, as between the Recycling Contract and this Contract, this Contract will be the controlling and operative agreement between the Debtor and Fort Wayne.

NOW, THEREFORE, for and in consideration of the foregoing recitals and premises, the mutual representations, warranties, covenants, and agreements contained herein for good and valuable consideration, the receipt sufficiency and adequacy of which is hereby acknowledged and confessed, the Parties acknowledge, agree, and confirm as follows:

TRANSITION TERMS

1. DEFINITION OF TERMS

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

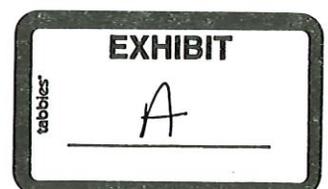
BAGS – Paper or plastic sacks designed for refuse or solid waste with sufficient wall strength to maintain physical integrity when lifted by top; securely tied at the top for collection with a capacity not to exceed 33 gallons and a loaded weight not to exceed 60 pounds.

BIDDING DOCUMENTS – Bid specifications, documents, and addendums that were publicly released by the City of Fort Wayne Board of Public Works in 2017, together with the bid submitted by the Contractor in 2017.

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 DOCUMENTS – The Contract and the Bidding Documents.

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, 2022 through June 30, 2022, unless sooner terminated by the City.

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 Contract.

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.

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.

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 six (6) months, unless sooner terminated by the City (the "Termination Date"). The City may terminate this Contract prior to June 30, 2022, by providing Contractor with fifteen (15) Business Days' written notice. If the Termination Date occurs prior to June 30, 2022, the City shall pay a Termination Fee to Contractor equal to the unpaid amount of the Transition Fee as of the Termination Date. The Contractor agrees that the effective date of the Contract is January 1, 2022.

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.

(a) Base 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

(b) Supplemental Transition Service Fee. In addition to the Base Rate and the \$300,000 Transition Fee, City shall also pay Contractor a Supplemental Transition Service Fee for both (a) recycling collection services under this Contract and (b) solid waste collection services under the Solid Waste Transition Services Agreement between the Parties of even date herewith, for the Term of the Contract, unless terminated earlier by the City in accordance with the terms hereof, as follows:

<u>Date</u>	<u>Amount</u>
March __, 2022	\$1,000,000
April 1, 2022	\$ 150,000
May 1, 2022	\$ 150,000
June 1, 2022	\$ 150,000
July 1, 2022	<u>\$ 150,000</u>
Total:	\$1,600,000

5. 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.

6. 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.

7. 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).

8. 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

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|-----|---|----------------------------|
| (e) | Excess Automobile Liability Insurance | \$10,000,000 aggregate |
| (f) | Products Liability Insurance | \$1,000,000 per occurrence |
| (g) | Completed Operations Liability Insurance | \$1,000,000 per occurrence |
| (h) | 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 certificates after five (5) days' written notice of such failure is cause for immediate termination of the Contract.

9. 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 agrees to provide a minimum of three fulltime Supervisors to oversee the performance of this contract unless otherwise approved in advance and in writing by the City. 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.

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 three full-time Supervisors to oversee the performance of this contract unless otherwise approved in advance and in writing by the City.

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.

10. 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, the City reserves the right, but shall not be obligated, to collect any recycling waste that Contractor fails to collect on the regularly scheduled pick-up date, accounting for the appropriate cure period. The City will work with Contractor in good faith to assist Contractor's collection efforts, whether by focusing on misses, delayed pick-up, or entire route support. The City will likely have limited capacity to supplement Contractor's services.

For March 2022 through the Termination Date, the City shall be reimbursed by Contractor for any recycling waste collected by the City from its residential customers in an amount equal to \$210 for each ton of waste collected, calculated on a monthly basis. For January 2022, the amount already offset by the City is final and shall not be subject to further adjustment. For February 2022, the City did not assess any penalties and shall not assess any penalties for February 2022.

The City will continue its customary practice of daily notifications to Contractor of misses from calls received to its 311 call system. The Contractor will use best efforts to comply with its contractual obligations to provide timely collection services to the City. The City will work with Contractor in good faith to address Contractor collection deficiencies and minimize the reimbursements sought from the Contractor. All reimbursements will be applied in the ordinary course of administration of the collection contracts, unless Contractor disputes the City entitlement to reimbursement. All such disputes, challenges, and objections related to a contested reimbursement sought by the City will be decided by the Bankruptcy Court.

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.

11. 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.

12. 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.

13. 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.

14. 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:

- i. 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.
- ii. Contractor shall use its reasonable best efforts to collect any other Recyclables that was 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.
- iii. If Contractor, using its reasonable best efforts, is unable to collect such Recyclables that was 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.

15. 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.

16. 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 have been provided to Contractor.

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 has been provided to Contractor. 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.

17. EQUIPMENT

General:

Contractor is responsible for providing all equipment needed to satisfy its obligations hereunder. All equipment 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 of Refuse, 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.

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 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 workorder 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:

- i. Identify vehicles;
- ii. Record month to date, year to date, and life to date maintenance data associated with a vehicle; and
- iii. 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 Recyclables 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 Recyclables 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 "I, H, and L" alleys in the City. The Contractor must have available on a daily basis at least three (3) trucks 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. These spare vehicles must be equivalent in size to the regular vehicles that would normally operate the route.

18. 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 email 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) 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.

19. 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.

20. 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).

21. 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.

22. 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.

23. BINDING EFFECT

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

24. 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.

25. 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.

26. DISPUTE RESOLUTION

Any dispute relating to this Contract shall be submitted to the Bankruptcy Court for resolution by motion and request for a hearing.

27. REPRESENTATION BY COUNSEL; MUTUAL DRAFTING

The Parties hereto agree that they have been represented by counsel during the negotiation and execution of this Contract and have participated jointly in the negotiation and drafting of this Contract and hereby waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document. In the event an ambiguity or question of intent or interpretation arises, this Contract shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Contract.

28. CONSTRUCTION

The captions and headings of the paragraphs, subparagraphs, and sections of this Contract are for convenience of reference only and are not to be considered in construing this Contract.

29. GOVERNING LAW

This Contract and any dispute arising out of or related to this Contract shall be governed and construed in accordance with the laws of the State of Indiana, including any applicable statutes of limitation, without regard to any otherwise applicable principles of conflicts of law or choice of law rules that would result in the application of the substantive or procedural rules or law of any other jurisdiction.

30. VOLUNTARY AND KNOWING PARTICIPATION

Each of the Parties has entered into this Contract freely and voluntarily, with no duress or coercion (as those terms are defined by law), after consulting with independent legal counsel of its own choice and receiving counsel's explanation of each of the terms of this Contract and having had an adequate opportunity to make whatever investigation or inquiry such Party deemed necessary or desirable in connection herewith. Further,

each such Party appreciates and understands the terms of this Contract, acknowledges that it is made in good faith and is fair and reasonable, and is fully satisfied with the settlement set forth herein.

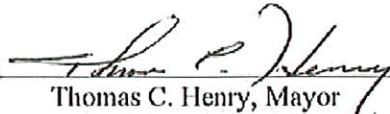
31. COUNTERPARTS

Delivery of executed signature pages in one or more counterparts (including via facsimile or the electronic exchange of portable document format [PDF] copies) all of which shall together constitute one and the same instrument and shall be sufficient to render this Contract effective in accordance with its terms.

[Remainder intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Contract as of the day and year set forth above.

CITY OF FORT WAYNE, INDIANA BY:

By: 
Thomas C. Henry, Mayor

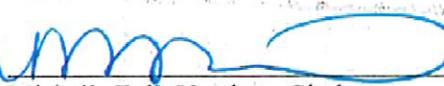
CITY OF FORT WAYNE, INDIANA
BY: Its Board of Public Works


Shan Gunawardena, Chair 3.29.22


Kumar Menon, Member 3.29.22


Chris Guerrero, Member 3.29.22

Attest:


Michelle Fulk-Vondran, Clerk 3.29.22

CONTRACTOR:

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

By: _____
James Calandra, Chief Restructuring Officer

ACKNOWLEDGEMENT

State of Indiana)
) SS:
County of Allen)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, this 29th day of March 2022, personally appeared the within named **Shan Gunawardena, Kumar Menon, Chris Guerrero and Michelle Fulk-Vondran**, 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.

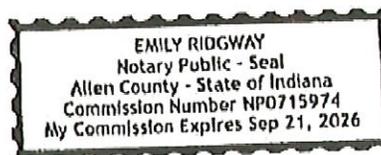
IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

My Commission Expires: 09/21/2026

Emily Ridgway
Notary Public

Resident of Allen County.

Emily Ridgway
Printed Name of Notary

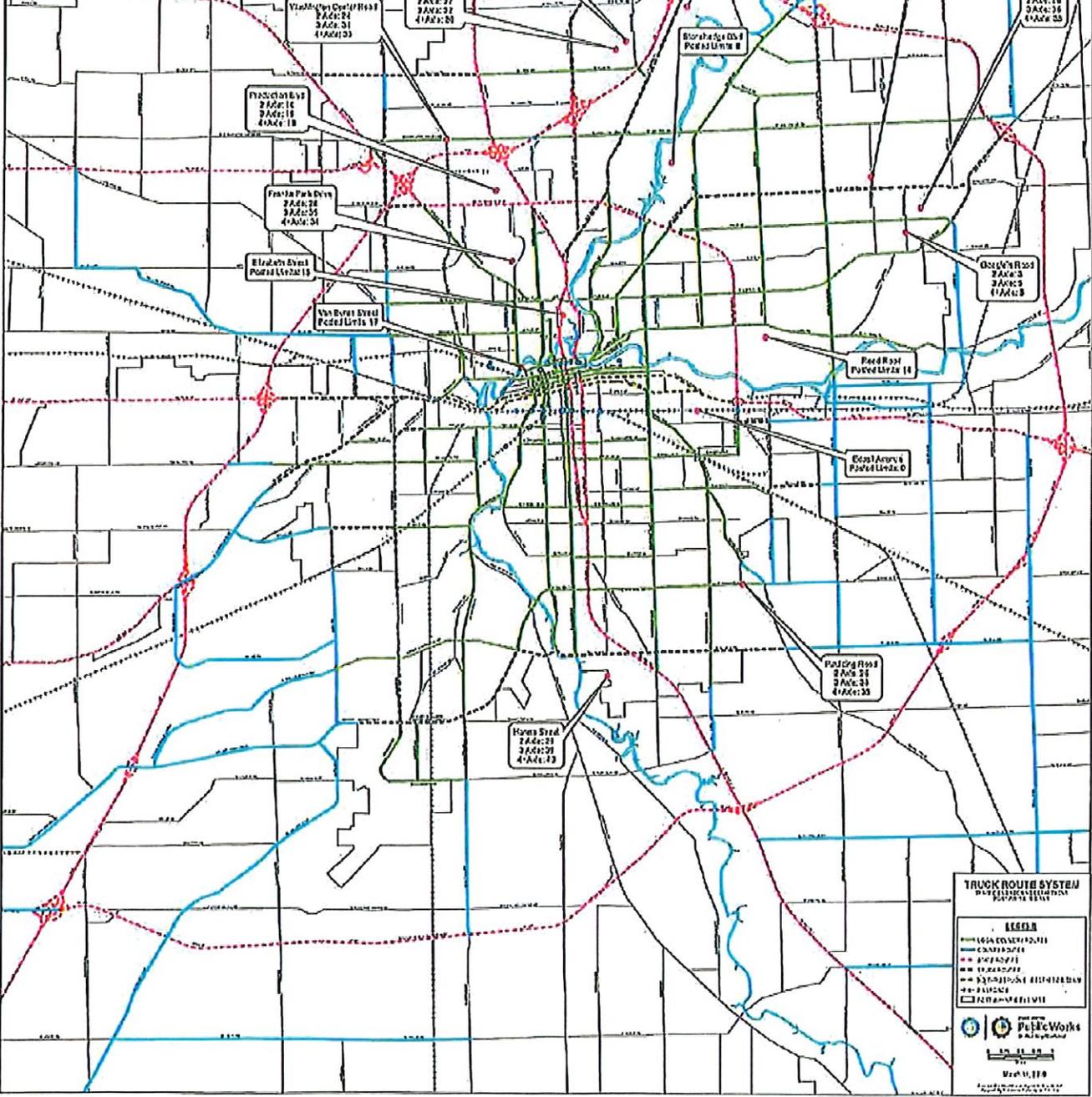


APPENDIX A MOBILE HOME PARKS RECEIVING SERVICE

CUSTOMER NAME	SERVICE ADDRESS	TOTAL # OF UNITS	# OF UNITS BILLED
ALLEN CO MHP INC	1608 E PAULDING RD	40	38
EVERGREEN MOBILE HOME PARK	6906 ELZEY ST	16	14
COZY ACRES	3203 SANDPOINT RD	28	23
STAN ADAMS TRAILER	4541 LIMA RD	10	9
DON MEYERS TRAILER PARK	3414 N CLINTON ST	32	29
SHADY GROVE MOBILE HOME PK	1236 VANCE AVE	10	9
IDEAL MOBILE HOME PK	4503 LIMA RD	18	18
CORTINI LLC DBA SOUTHERN COURT	5415 S HANNA ST	56	50
ALLIANCE PROPERTY MGT LTD	7112 DECATUR RD	12	11

Appendix C

NO. OVERPASS	LOCATION	POSTED HEIGHT
1	ATKINS BLVD	12' 0"
2	ATKINS BLVD	12' 0"
3	ATKINS BLVD	12' 0"
4	ATKINS BLVD	12' 0"
5	ATKINS BLVD	12' 0"
6	ATKINS BLVD	12' 0"
7	ATKINS BLVD	12' 0"
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49	ATKINS BLVD	12' 0"
50	ATKINS BLVD	12' 0"



TRUCK ROUTE SYSTEM
DATE: 11/11/11

LEGEND

- OVERPASS
- TRUCK ROUTE

Public Works
DATE: 11/11/11

**APPENDIX D LOCATION OF LITTER BARRELS
Litter Barrel Locations**

Location	Type of Litter Barrel/Size of Litter	Description
700 S. Calhoun St.	Top Loading, 33 gallon plastic can liner	SW Corner of 700 block of S. Calhoun and 100 W. Main; near traffic signal post
600 block of S. Calhoun St.	Side Loading Compactor, 46 gallon plastic bag liner	Next to the light post by Riegel's
131 W. Columbia St.	Top Loading, 33 gallon plastic can liner	2' from light post
200 W. Main St.	Top Loading, 33 gallon plastic can liner	NW corner Main and Harrison St. 1.5' from back of sidewalk on Main and 25' from Harrison curb
200 W. Berry St.	Top Loading, 33 gallon plastic can liner	NE corner of Maiden and Berry; 1.5' off back of walk at park entrance
200 W. Wayne St.	Top Loading, 33 gallon plastic can liner	NE side of Webster and Wayne; 15' off back of walk at park entrance
1200 S. Harrison St.	Top Loading, 33 gallon plastic can liner	NE corner of Douglas and Harrison St. 3' in off of Harrison curb by the signal post
1100 S. Calhoun St.	Top Loading, 33 gallon plastic can liner	SW corner of S. Calhoun and Jefferson; 3' in from S. Calhoun next to signal post
100 W. Wayne St.	Top Loading, 33 gallon plastic can liner	NW corner of Wayne and S. Calhoun; 3' in from Wayne side by light post
100 E. Wayne St.	Top Loading, 33 gallon plastic can liner	SE corner of Wayne and S. Calhoun; 8' in on Wayne side by yellow fire hydrant
110 W. Wayne St.	Top Loading, 33 gallon plastic can liner	N side of W. Wayne by Tuscany Pizza
800 S. Harrison St.	Top Loading, 33 gallon plastic can liner	NE corner of Harrison and Wayne; 9.5' in from Harrison side
100 W. Berry St.	Top Loading, 33 gallon plastic can liner	NE corner of Berry and Harrison; 1.5' in from back of walk on Berry
800 S. Clinton St.	Top Loading, 33 gallon plastic can liner	NW corner of Washington and Clinton
300 E. Wayne St.	Top Loading, 33 gallon plastic can liner	In Front of Farmers Market
200 E. Main St.	Top Loading, 33 gallon plastic can liner	NE corner of Barr and Wayne; 7' from Wayne side by traffic signal post
200 E. Superior St.	Side Loading Compactor, 46 gallon plastic bag liner	Corner of Main and Barr; by brick pillar
500 S. Calhoun St.	Top Loading, 33 gallon plastic can liner	NE corner of Superior and Clinton; 3' in from Superior next to the yellow box
100 W. Main St.	Top Loading, 33 gallon plastic can liner	SE corner of Superior and S. Calhoun; 9.5' from the Calhoun side
100 E. Main St.	Top Loading, 33 gallon plastic can liner	SW Corner of Main and S. Calhoun
100 E. Main St.	Side Loading Compactor, 46 gallon plastic bag liner	Courthouse Green; 2 barrels Clinton at Berry; Clinton at Main
100 E. Berry St.	Top Loading, 25 gallon plastic can liner	Courthouse green; mid block of Main
700 Witt St.	Top Loading, 25 gallon plastic can liner	SE corner of S. Calhoun and E. Berry St.
600 E. Pontiac	Top Loading, 25 gallon plastic can liner	Cement barrel; mid-block
900 E. Pontiac	Top Loading, 25 gallon plastic can liner	Cement barrel, SW corner of S. Hanna and Pontiac St.
1100 E. Pontiac	Top Loading, 25 gallon plastic can liner	Cement barrel; 2 litter barrels
1600 S. Calhoun	Top Loading, 33 gallon plastic can liner	Cement barrel
1700 S. Calhoun	Top Loading, 33 gallon plastic can liner	2 barrels, SW corner S. Calhoun and Grand, NE corner Murry and S. Calhoun
1800 S. Calhoun	Top Loading, 33 gallon plastic can liner	In front of 1725 S. Calhoun
1900 S. Calhoun	Top Loading, 33 gallon plastic can liner	In front of 1816 S. Calhoun
2100 S. Calhoun	Top Loading, 33 gallon plastic can liner	2 barrels, corner of Calhoun and Masterson, NW corner Williams and S. Calhoun
2300 S. Calhoun	Top Loading, 33 gallon plastic can liner	2 barrels, in front of 2124 S. Calhoun and 2101 S. Calhoun
2400 S. Calhoun	Top Loading, 33 gallon plastic can liner	NE corner of W. Taber and S. Calhoun
2700 S. Calhoun	Top Loading, 33 gallon plastic can liner	NE corner of W. Sultenfield and S. Calhoun
2900 S. Calhoun	Top Loading, 33 gallon plastic can liner	2 barrels, SE corner Pontiac and S. Calhoun and NW corner Leith and S. Calhoun
3200 S. Calhoun	Top Loading, 33 gallon plastic can liner	NE corner Esmond and S. Calhoun
3300 S. Calhoun	Top Loading, 33 gallon plastic can liner	NE corner Packard and S. Calhoun
3500 S. Calhoun	Top Loading, 33 gallon plastic can liner	East side of street by South Side High School parking lot
3600 S. Calhoun	Top Loading, 33 gallon plastic can liner	East side of street by South Side High School parking lot
3800 S. Calhoun	Top Loading, 33 gallon plastic can liner	2 barrels, in front of 3610 S. Calhoun, and NE corner of Oakdale and S. Calhoun
		In front of 3824 S. Calhoun

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This **MUTUAL RELEASE AND SETTLEMENT AGREEMENT** (this "Agreement"), is executed as of March 29, 2022, by and between Red River Waste Solutions, LP (the "Debtor"), the City of Fort Wayne, Indiana, by its Mayor and its Board of Public Works ("Fort Wayne"), and Argonaut Insurance Company ("Argo") (each a "Party" and, collectively, the "Parties"). Except sooner between Fort Wayne and Argo as otherwise provided herein, this Agreement shall be effective and binding as set forth herein and inure to the benefit of the Parties and their permitted assigns and successors as of the Effective Date (as defined herein).

RECITALS

WHEREAS, the Debtor and the City of Fort Wayne entered into (i) a contract for Recycling Collection on June 1, 2017, with a service initiation date of January 1, 2018 (the "Recycling Contract"), and (ii) a contract for Solid Waste Collection on June 1, 2017, with a service initiation date of January 1, 2018 (the "Solid Waste Contract," and, collectively, with the Recycling Contract, the "Fort Wayne Contracts");

WHEREAS, at the request of the Debtor, Argo executed Performance Bond No. SUR0053425 in which the Debtor was named as Principal, Argo was named as Surety, and Fort Wayne was named as Obligee with an initial bond period of December 12, 2018, through December 31, 2019, in the penal sum of \$2,400,000 as it relates to the Recycling Contract (the "Recycling Performance Bond"). At the request of the Debtor, Argo executed a Continuation Certificate dated December 18, 2019, extending the Recycling Performance Bond through December 31, 2020. Argo executed a second Continuation Certificate at the request of the Debtor dated December 17, 2020, extending the Recycling Performance Bond through December 31, 2021. No additional Continuation Certificates have been executed after the expiration of the Recycling Performance Bond effective January 1, 2022;

WHEREAS, at the request of the Debtor, Argo executed Performance Bond No. SUR53424 in which the Debtor was named as Principal, Argo was named as Surety, and Fort Wayne was named as Obligee with an initial bond period of December 12, 2018, through December 31, 2019, in the penal sum of \$4,900,000 as it relates to the Solid Waste Contract (the "Solid Waste Performance Bond," and, with the Recycling Performance Bond, the "Performance Bonds"). At the request of the Debtor, Argo executed a Continuation Certificate dated December 18, 2019, extending the Solid Waste Performance Bond through December 31, 2020. Argo executed a second Continuation Certificate at the request of the Debtor dated December 17, 2020, extending the Solid Waste Performance Bond through December 31, 2021. No additional Continuation Certificates have been executed after the expiration of the Solid Waste Performance Bond effective January 1, 2022;

WHEREAS, on May 13, 2021, Argo filed *Plaintiff's Verified Original Complaint* against the Debtor in the United States District Court for the Western District of Texas (Austin Division)

(the "Argo Lawsuit"), alleging substantial risk of loss arising from and related to the Performance Bonds and claims against the Debtor;

WHEREAS, the Debtor denies Argo's allegations in the Argo Lawsuit;

WHEREAS, Fort Wayne asserts that the Debtor has defaulted under the Fort Wayne Contracts and at various times prior to the Petition Date and on December 9, 2021, has made claims under the Performance Bonds, based on those defaults;

WHEREAS, Argo has commenced its investigation of the claims asserted against the Performance Bonds by Fort Wayne;

WHEREAS, Debtor denies Fort Wayne's assertions and believes that it has various causes of action against Fort Wayne, including causes of action arising under §§ 510, 544, and 548, and the Texas Uniform Fraudulent Transfer Act (the "Debtor Claims");

WHEREAS, Fort Wayne denies that it has any liability to Debtor and disputes the Debtor assertions of the Debtor Claims;

WHEREAS, on October 14, 2021 (the "Petition Date"), the Debtor filed a bankruptcy petition pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the "Bankruptcy Court"), captioned *In re Red River Waste Solutions, LP*, Case No. 21-42423-ELM (the "Chapter 11 Case");

WHEREAS, on December 14, 2021, Argo filed the *Argonaut Insurance Company's Emergency Motion to Compel Immediate Assumption or Rejection of Fort Wayne Bonded Contract* [Docket No. 228] in the Chapter 11 Case (the "Emergency Motion");

WHEREAS, in discussions with the Debtor, Argo asserted a claim against the Debtor for at least the amounts paid to Fort Wayne under the Performance Bonds;

WHEREAS, the Debtor denies the relief requested in the Emergency Motion and the bases for such relief;

WHEREAS, the Parties dispute, challenge, and contest all allegations made against each by the others, and no Party admits to any violation of law, wrongdoing, or liability;

WHEREAS, the Parties now wish to settle all disputes without any Party acknowledging any fault or liability; and

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the Parties agree as follows:

ARTICLE I
Recitals; Definitions

1.1 **Recitals.** The recitals are specifically incorporated into the body of this Agreement and shall be binding on the Parties.

1.2 **Effective Date.** Except as to the agreement between Argo and Fort Wayne for the settlement of the Fort Wayne claims against the Performance Bonds, which shall have an effective date as provided in Article IV of this Agreement, this Agreement is effective (the "**Effective Date**") one (1) Business Day after the later of (a) entry of a Final Order by the Bankruptcy Court approving this Settlement Agreement and (b) the Effective Date of the Plan (as defined therein).

1.3 **Business Day.** A Business Day shall refer to any day other than a Saturday, a Sunday, or any day that is deemed to be a legal holiday.

ARTICLE II
Rejection of the Fort Wayne Contracts

2.1 **Contract Rejection.** On the Effective Date, the Fort Wayne Contracts shall be deemed rejected pursuant to § 365 of the Bankruptcy Code, effective as of December 30, 2021. From and after the execution of the Transition Agreements (hereinafter defined), as between the Fort Wayne Contracts and the Transition Agreements, the Transition Agreements will be the controlling and operative agreement between Debtor and Fort Wayne.

ARTICLE III
Debtor's Fort Wayne Operations

3.1 **Post-Petition Date Agreement Between the Debtor and Fort Wayne.** The Debtor will collect solid waste and recycling for Fort Wayne pursuant to the terms of post-Petition Date agreements between the Debtor and Fort Wayne (the "**Transition Agreements**"), which is attached as **Exhibit A**, through the earlier of (a) June 30, 2022, and (b) the effective date of termination of the Fort Wayne Contracts as determined by the City of Fort Wayne (the "**Termination Date**"). Fort Wayne may terminate the Transition Agreements prior to June 30, 2022, by providing the Debtor with fifteen (15) Business Days' written notice of the Termination Date. Fort Wayne's termination of the Transition Agreements shall not modify any terms of this Agreement, including, without limitation, Fort Wayne's payment obligations under this Agreement and the Transition Agreements. For the avoidance of doubt, subject to Section 4.3 of this Agreement, no amounts to be paid by Argo and Fort Wayne under this Agreement and the Transition Agreements shall be reduced in any manner, and no amounts to be paid by Fort Wayne to the Debtor under this Agreement and the Transition Agreements shall be reduced in any manner for any reason, including termination.

ARTICLE IV
Argo's and Fort Wayne's Payment Obligations

4.1 Argo's Payment Obligations. Argo shall pay \$1.6 million dollars to Fort Wayne (the "Argo Payment") within three (3) Business Days after execution of this Agreement. The provisions of this Agreement as between Argo and Fort Wayne, including the mutual releases between Argo and Fort Wayne provided herein, shall be effective as of the delivery by Argo of the Argo Payment to Fort Wayne (the "Argo Effective Date").

4.2 Fort Wayne's Payment Obligations. Fort Wayne shall pay \$1.6 million dollars to the Debtor on or after the Effective Date as follows: (a) \$1.0 million dollars on the later to occur of January 31, 2022, and three Business Days following Receipt by Fort Wayne of the Argo Payment, and (b) \$150,000 each on March 25, 2022, April 29, 2022, May 27, 2022, and June 24, 2022, provided that Fort Wayne has received the Argo Payment prior to such payment date. If Fort Wayne has not received the Argo Payment prior to a payment date, then the payment due on that date will be paid within three Business Days after Fort Wayne receives the Argo Payment. If one or more payments fall due prior to the Effective Date, Fort Wayne shall hold such payments and deliver the held payments to Debtor as soon as possible following the occurrence of the Effective Date. In addition to this \$1.6 million dollar payment obligation owed by Fort Wayne to the Debtor, Fort Wayne shall pay the Debtor for its performance of solid waste and recycling collection services from January 1, 2022, through the Termination Date at the rates set forth in the Transition Agreements plus \$300,000, and pay the Termination Fee if the Transition Agreements is terminated prior to June 30, 2022. These payments for performance pursuant to the Transition Agreements shall be separate and apart from the \$1.6 million dollars in payments made by Fort Wayne to the Debtor as set forth in this Agreement.

4.3 Fines and Penalties. Fort Wayne has imposed certain fines and penalties on the Debtor for alleged defaults that occurred prior to the Effective Date. The Debtor disagrees with Fort Wayne's imposition of such fines and penalties. Fort Wayne will return \$100,000 in fines and penalties. This \$100,000 is included in as a part of the \$300,000 identified in Section 4.2, and it is not additive. Fort Wayne will have the right to impose fines against the Debtor under the following terms and conditions:

- (a) January 2022. Fort Wayne imposed \$90,000 in fines and penalties and offset that \$90,000 against payments made or to be made to the Debtor. No further adjustments by Fort Wayne are allowed.
- (b) February 2022. Fort Wayne imposed \$190,000 in fines and penalties. Fort Wayne will recalculate the amount of the fines and penalties using a rate of \$114.33 per ton for solid waste and notify the Debtor of this re-calculated February 2022 fine/penalty amount. That amount will be offset against the payment(s) to be made by Fort Wayne for February 2022

services. Fort Wayne has imposed no recycling fines or penalties for February 2022 services.

- (c) March 2022 through June 2022. The first \$50,000 per month of fines and penalties imposed by Fort Wayne will be waived by Fort Wayne. For fines and penalties imposed by Fort Wayne for the Debtor's failure to collect solid waste and recycling, Fort Wayne will charge monthly \$114.33 per ton for waste and \$210.00 per ton for recycling.

For the avoidance of all doubt, upon execution of this Settlement Agreement and payment of the Settlement Payment by Argo to Fort Wayne, no fines, penalties, claims, or other assessments shall be assessed against Argo nor shall Argo be liable for any fines, penalties, claims, or other assessments, whether said fines, penalties, claims, or assessments occurred prior to or after the Performance Bond expiry dates. The Parties acknowledge that this Settlement Agreement operates as a full and final release of any and all claims, rights, and causes of action of the Parties against the Parties; provided, however, nothing in this Settlement Agreement releases any Party of its obligations under this Settlement Agreement.

ARTICLE V Liability Waivers/Releases

5.1 Waivers of Liability.

(a) Argo. In consideration of the promises set forth in this Agreement, as of the Argo Effective Date as to Fort Wayne, and as of the Effective Date as to Debtor, Argo, on behalf of itself and its officers, managers, directors, stockholders, members, employees, general or limited partners, affiliates, joint venturers, insurers, agents, representatives, and attorneys and all persons acting by, through, under or in concert with them (the "Argo Releasing Parties"), hereby irrevocably and unconditionally releases and forever discharges Fort Wayne and the Debtor and their respective officers, managers, directors, stockholders, members, employees insurers, agents, representatives and attorneys and all persons acting by, through, under or in concert with them (each, collectively, a "Fort Wayne Releasees" and a "Debtor Releasees"), or any of them, from any and all actions, causes of action, suits, claims, rights, damages, losses, costs, expenses (including attorneys' fees and costs actually incurred), contracts, agreements or controversies of any nature whatsoever, known or unknown, liquidated or unliquidated, suspected or unsuspected, fixed or contingent in law or in equity (hereinafter "Claim" or "Claims") that the Argo Releasing Parties now have, own or hold, or at any time heretofore ever had, owned or held, or could have had, owned or held against the Fort Wayne Releasee and the Debtor Releasee.

(b) Debtor. In consideration of the promises set forth in this Agreement, as of the Effective Date, Debtor, on behalf of itself and its officers, managers, directors, stockholders, members, employees, general or limited partners, affiliates, joint venturers, insurers, agents, representatives, and attorneys and all persons acting by, through, under or in concert with them

(the "Debtor Releasing Parties"), hereby irrevocably and unconditionally releases and forever discharges the Fort Wayne Releasees and Argo and their respective officers, managers, directors, stockholders, members, employees insurers, agents, representatives and attorneys and all persons acting by, through, under or in concert with them (collectively, "Argo Releasees"), or any of them, from any and all Claims that the Debtor Releasing Parties now have, own or hold, or at any time heretofore ever had, owned or held, or could have had, owned or held against the Fort Wayne Releasee and the Argo Releasee, other than the obligations owed by Fort Wayne under this Agreement and pursuant to the Transition Agreements.

(c) Fort Wayne. In consideration of the promises set forth in this Agreement, as of the Effective Date as to Debtor, and as of the Argo Effective Date as to Argo, Fort Wayne, on behalf of itself and its officers, managers, directors, stockholders, members, employees, general or limited partners, affiliates, joint venturers, insurers, agents, representatives, and attorneys and all persons acting by, through, under or in concert with them (the "Fort Wayne Releasing Parties"), hereby irrevocably and unconditionally releases and forever discharges the Debtor Releasees and Argo Releasees and Argo and their respective officers, managers, directors, stockholders, members, employees insurers, agents, representatives and attorneys and all persons acting by, through, under or in concert with them (collectively, "Argo Releasee"), or any of them, from any and all Claims that the Fort Wayne Releasing Parties now have, own or hold, or at any time heretofore ever had, owned or held, or could have had, owned or held against the Debtor Releasees and the Argo Releasees; subject, however, to the right of Fort Wayne to assess fines and penalties as set forth in this Agreement, which potential claims are not released.

(d) General. For the avoidance of doubt, the releases are intended to be as broad as inclusive as is permitted by law, including (i) all claims and causes of action that could be asserted in a proof of claim, (ii) all claims and causes of action related to the Performance Bonds, and (iii) all claims and causes of action related to any indemnity agreement with the Debtor; provided, however, no Party is releasing another Party from any cause of action or claim for breach of this Agreement or to enforce this Agreement and the Transition Agreements. For the avoidance of all doubt, this Agreement does not waive or release the Debtor from any of its obligations under or Argo's rights, claims, and defenses with respect to Performance Bond No. SUR0053950 in which the Debtor is named as Principal, Argo is named as Surety, and the City of Del Rio, Texas is named as Obligece.

5.2 Barry Pruitt. The Debtor will hire Barry Pruitt as its independent contractor to manage the "Fort Wayne Operations" on a day-to-day basis, subject to oversight by the Chief Restructuring Officer and the Debtor's board, on compensation agreed by Barry Pruitt and the Debtor.

5.3 Argo Lawsuit. Upon the Effective Date, Argo shall dismiss the Argo Lawsuit with prejudice.

5.4 Survival. The provisions of Article V shall survive any the termination of this Agreement.

ARTICLE VI
Representations and Warrants

6.1 Authority. The Parties represent and warrant that they have the requisite power and authority to release and settle each matter in this Agreement on their respective behalf.

6.2 No Assignment. No Party has assigned, transferred, pledged, hypothecated, or granted any lien or subrogation interest in or to any claim released by him herein or any part or portion of any such claim.

6.3 Voluntary and Knowing Participation. The Parties have entered into this Agreement freely and voluntarily, with no duress or coercion (as those terms are defined by law), after consulting with independent legal counsel of its own choice and receiving counsel's explanation of each of the terms of this Agreement and having had an adequate opportunity to make whatever investigation or inquiry it deemed necessary or desirable in connection herewith. Further, the Parties appreciate and understand the terms of this Agreement; acknowledge that it is made in good faith and is fair and reasonable; are fully satisfied with the settlement set forth in this Agreement; and enter into this Agreement without any legal reservation and fully intending to be legally bound hereby.

6.4 Reliance. In executing this Agreement, the Parties are not relying on and have not relied on any representation or statement by any other Party or any other Party's attorneys, accountants or agents, other than the representations and warranties contained in this Agreement. The Parties all acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding respecting any part or all of the subject matter of this Agreement has been made or relied on except to the extent expressly set forth in this Agreement.

ARTICLE VII
Miscellaneous

7.1 Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and/or assigns.

7.2 Submission to Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to adjudicate any claims or disputes that may be based on, arise out of or relate to this Agreement or any breach or default hereunder, including the imposition of any fine or penalty. Any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such proceeding.

7.3 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY PROCEEDING BROUGHT BY ANOTHER PARTY IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY

WAY CONNECTED WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, TO THE RELEASED FINES AND CLAIMS OR THE POST-EFFECTIVE DATE RELATIONSHIP OF THE DEBTOR, FORT WAYNE, AND ARGO UNDER THIS AGREEMENT.

7.4 Governing Law. Except to any extent preempted by federal law, the laws of the State of Indiana (without regard to its conflicts of laws rules) will govern all matters relating to this Agreement.

7.5 Prevailing Party. If any dispute arises under this Agreement and litigation or arbitration (if arbitration is mutually agreed upon by all parties to this Agreement) proceedings are commenced, the prevailing party or parties shall be entitled to recover from the other party or parties all reasonable costs and expenses actually incurred in connection with such proceedings, including, without limitation, reasonable attorneys' fees and costs. The provisions of this Section shall survive any termination of this Agreement.

7.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and such counterparts together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document. For purposes of executing this Agreement, a document signed and transmitted by facsimile machine or by e-mail in .pdf format shall be treated as an original document. The signature of any Party thereon shall be considered as an original signature, and the document so transmitted shall be considered to have the same binding legal effect as an original signature on an original document. Any document so transmitted shall be thereafter promptly delivered by each Party to the others in original form.

7.7 Headings. The headings of the articles and sections contained in this Agreement are for convenience only and shall not be taken into account in determining the meaning of any provision of this Agreement.

7.8 Severability and Survival. If any provision, section, or article of this Agreement is illegal or unenforceable under equity or applicable law, the remainder of the provision, section or article shall be amended to achieve as closely as possible the effect of the original terms and all other provisions, sections and articles of the Agreement shall continue in full force and effect. Releases/waivers of liability shall survive termination of this Agreement for any cause.

7.9 Conflict. If there is a conflict between the terms of the Recycling Performance Bond, the Waste Collection Bond, the Fort Wayne Contracts, the Transition Agreements, and the terms of this Agreement, the terms of this Agreement shall govern and control.

7.10 Necessary to Effectuate the Agreement. The Debtor, Argo, and Fort Wayne mutually agree that this Agreement is necessary, and each Party shall be barred and forever estopped from asserting a contrary position.

7.11 Modification. No change, modification, or waiver of any provision of this Agreement shall be valid or binding unless such is in writing and signed by each Party to this Agreement.

7.12 Plan. "Plan" means a chapter 11 plan filed by the debtor, including all exhibits, supplements (including a plan supplement), appendices, and schedules (as amended, modified, or supplemented from time to time in accordance with the terms of the Plan).

7.13 Final Order. "Final Order" means an order or judgment of the Bankruptcy Court that: (a) is conclusive of all matters; (b) has not been reversed, stayed, or revoked; and (c) is effective. An order or judgment shall be deemed a Final Order, notwithstanding the possibility that a motion may be filed relating to such order or judgment pursuant to Bankruptcy Code §502(j), Bankruptcy Rule 3008, Bankruptcy Rules 9023 and 9024, Federal Rule of Civil Procedure 59 and 60, or any analogous statute or rule.

Signature pages to follow.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the day and year set forth above.

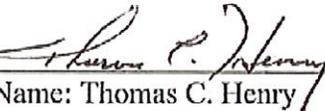
RED RIVER WASTE SOLUTIONS, LP

By: _____
Name: Jim Calandra
Title: Chief Restructuring Officer

ARGONAUT INSURANCE COMPANY

By: _____
Name:
Title:

CITY OF FORT WAYNE, INDIANA

By:  _____
Name: Thomas C. Henry
Title: Mayor

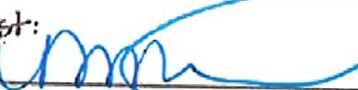
CITY OF FORT WAYNE, INDIANA

BY: Its Board of Public Works

By:  _____ 3-29-22
Name: Shan Gunawardena
Title: Chair

By:  _____ 3-29-22
Name: Kumar Menon
Title: Member

By:  _____ 3-29-22
Name: Chris Guerrero
Title: Member

Attest:  _____ 3-29-22
Michelle Fuik-Yondran

EXECUTIVE SUMMARY

RED RIVER – WASTE AND RECYCLING REMOVAL TRANSITION AGREEMENT

March 21, 2022

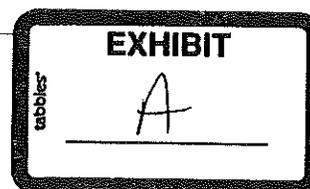
BACKGROUND:

This is a brief summary of the proposed terms and conditions of the Transition Agreement to be entered into by and between the City of Fort Wayne ("City") and Red River Waste Solutions, LP ("Red River"). Red River and the City entered into (i) a Contract for Recycling Collection on June 1, 2017, with the service initiation date of January 1, 2018 (the "Recycling Contract"), and (ii) a Contract for Solid Waste Collection on June 1, 2017, with a service initiation date of January 1, 2018 (the "Solid Waste Contract," and, collectively, with the Recycling Contract, the "Fort Wayne Contracts"). Red River filed for protection under the "Bankruptcy Code" in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division on October 14, 2021. Under the Bankruptcy Code, Red River is entitled to reject or assume the Fort Wayne Contracts. To ensure continued waste and recycling services during the period effective January 1, 2022, and concluding on June 30, 2022 (the "Transition Period"), Red River has agreed to provide ongoing waste and recycling collection services to the City in accordance with a "Transition Agreement" (the "Transition Agreement").

Red River intends to "reject" the Fort Wayne Contracts in the pending bankruptcy case, effective December 30, 2021. Red River will enter into the Transition Agreement. Below is intended as a brief summary of the terms and conditions of the Transition Agreement and related agreements outlining the settlement between Red River and the City:

SUMMARY OF TERMS OF TRANSITION AGREEMENT:

1. Continued Service. Red River will continue waste and recycling services until June 30, 2022, in the manner provided in the Transition Agreement. Fort Wayne will continue to compensate Red River in accordance with the reimbursement terms in the Transition Agreement, which is substantially similar to the reimbursement terms in Fort Wayne Contracts (the "Base Pay").
2. Argonaut Insurance Company. Argonaut Insurance Company ("Argo") provided a recycling performance bond and solid-waste performance bond (collectively, the "Performance Bonds") on behalf of Red River to the City, ensuring the performance of Red River under the terms of the Fort Wayne Contracts. A proposed settlement has been reached between Argo, Red River, and the City about the Performance Bonds. Contemporaneously, with the execution of a Mutual Release and Settlement Agreement, Argo will promptly pay the City \$1.6 million in settlement of disputed claims. The \$1.6 million will be paid by the City to Red River in installments during the Transition Period in addition to the Base Pay.
3. City Additional Contribution. The City has agreed to also make installment payments to Red River over the Transition Period in the aggregate sum of \$1.9 mm – that is, the \$1.6 mm Argo payment and an additional \$300,000 – plus the Base Pay.
4. Fines Assessed through January 30, 2022. All fines assessed by the City against Red River and offset against reimbursements otherwise payable by the City to Red River prior to January 30, 2022, will remain without any further adjustment, and shall be retained by the City.



5. Fines Assessed between February 1, 2022 and June 30, 2022. Fines assessed by the City against Red River between February 1, 2022, and June 30, 2022, may be withheld from payments by the City to Red River at a rate equal to (i) \$114.33 per ton for waste, and (ii) \$210.00 per ton for all recycling, collected by the City or its agents.
6. Fines Waived. The first \$50,000 of fines incurred by Red River in March, April, May, and June during the Transition Period will be waived by the City.
7. Barry Pruitt. At the insistence of the City, Red River has agreed to hire Mr. Barry Pruitt as an independent contractor, at Red River's expense, to oversee Fort Wayne operations effective immediately, until June 30, 2022. Barry Pruitt lives in Fort Wayne with his family, has extensive experience managing waste collection in Fort Wayne and in other major markets, and was recommended by the City to Red River.
8. Bankruptcy Court Approval. Under the Bankruptcy Code, the proposed settlement, including the Transition Agreement, must be approved by the Bankruptcy Court. Red River will ask the Bankruptcy Court to approve the proposed settlement as soon as reasonably practicable.
9. Releases. Upon approval of this proposed settlement by the Bankruptcy Court, (a) Red River will release all claims and causes of action against the City and Argo, (b) the City will release all claims and causes of action against Red River and Argo, and (c) Argo will release all claims and causes of action against Red River and the City.
10. Miscellaneous. The Bankruptcy Court will have exclusive jurisdiction to decide any disputes under the Transition Agreement, including the imposition and propriety of all fines and penalties. Red River will have other obligations under the Transition Agreement, many of which will be substantially similar to Red River's obligations under the rejected Fort Wayne Contracts, except as modified above.

The foregoing is intended only as a summary of material changes between the current Fort Wayne Contracts and the proposed Transition Agreement. It is possible that the City, either directly or through third parties, may be required to provide ongoing supplemental support for waste and recycling collection between now and June 30, 2022. The parties hope that, with experienced professional onsite management by Barry Pruitt and the outstanding efforts of Red River's existing and talented employees, the need for such supplemental support will be minimized.