

AN ORDINANCE approving CONTRACT FOR RESIDENTIAL TRASH AND RECYCLING COLLECTION between GFL ENVIROMENTAL, INC., GFL ENVIROMENTAL USA, INC., and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

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

SECTION 1. That the CONTRACT FOR RESIDENTIAL TRASH AND RECYCLING COLLECTION by and between GFL ENVIROMENTAL, INC., GFL ENVIROMENTAL USA, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for eight (8) year contract for Residential Trash and Recycling Collection for the City of Fort Wayne, Indiana:

involving a total cost for RESIDENTIAL TRASH AND RECYLCING COLLECTION: \$10.75 PER MONTH per unit and \$1.50 PER MONTH per additional trash cart. Estimated total cost for Trash and Recycling Collection per year is ELEVEN MILLION AND ONE HUNDRED THOUSAND DOLLARS– (\$11,100,000.00). Pricing will be adjusted annually by the contractual escalation clause as set forth in the Contract attached hereto as Exhibit A. A copy said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

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

Council Member

APPROVED AS TO FORM AND LEGALITY


Malak Heiny, City Attorney

Residential Trash and Recycling
Collection Service Agreement

by and between

The City of Fort Wayne
Board of Public Works

and

[GFL Environmental, Inc.,]
[GFL Environmental USA, Inc.]

and

[GFL Environmental Holdings (US), Inc.],
as Guarantor

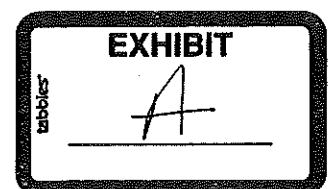


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EXHIBITS:

Exhibit A	Service Territory
Exhibit B	Map of Current Collection Days for Trash and Recycling Collection Services
Exhibit C	Locations of Existing Recycle Receptacles
Exhibit D	Location and Frequency of Collection for the City Facilities
Exhibit E	Equipment Lease Agreement
Exhibit F	Center Point of City with the Ten (10) Mile Radius
Exhibit G	Truck Routes to Trash Disposal Facility or Processing Facility

**RESIDENTIAL SOLID WASTE AND RECYCLING
COLLECTION SERVICE AGREEMENT**

THIS RESIDENTIAL SOLID WASTE AND RECYCLING COLLECTION SERVICE AGREEMENT ("Agreement") is entered into by and between the City of Fort Wayne Board of Public Works (the "City"), [GFL Environmental, Inc.], [GFL Environmental USA, Inc.] ("Contractor") and [GFL Environmental Holdings (US), Inc.] ("Guarantor"), on this _____ day of _____, 2022. Capitalized terms used and not defined herein shall have the meanings assigned to them in Appendix A attached hereto.

BACKGROUND

A. City desires to retain Contractor's services for the collection and transportation of solid waste and recycling in the geography of Fort Wayne, Indiana, as noted on Exhibit A, attached hereto and made a part hereof (the "Service Territory");

B. Contractor has been determined to be qualified for such work based on Contractor's bid price, prior experience, financial status and available equipment; and

C. Contractor and City have mutually agreed to the negotiated terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein after contained, the parties do hereby agree as follows:

1. SERVICES TO BE PROVIDED BY CONTRACTOR

- A. General Scope. Collection shall be alley collection where alleys are available unless the Issuing Office shall mandate curbside pickup because of conditions in the specific alleys. All other collection shall be curbside collections. It will be the resident's responsibility to see that carts and bags are placed in the appropriate curb or alley location as close as practical to vehicle routes by 6:00 a.m. on the designated collection day. Curbside will refer to that portion of the right-of-way adjacent to and within five (5) feet of paved, traveled roadways. If vehicles are parked in front of Trash carts, Bags, etc., the Contractor is expected to walk the items from around the vehicles for collection. Alley-side will refer to as close as possible to the alley but not more than five (5) feet from the alley, and where a fence exists, the alley-side of the fence. In instances where there is inadequate space between the fence and the alley way for the City cart, the resident will be allowed to place their cart at the curb for collection. The City will make this determination. All dwelling units located on private streets must place their Trash and Recycling carts at the end of their private street for collection, provided that, Contractor shall provide Collection Services down the length of all private streets upon which dwelling units currently receive Collection Services, where, for the avoidance of doubt, residents of such dwelling units may continue to place their carts at the curb or end of their respective driveway for collection. The City and Contractor will review any additional private streets added to the Service Territory

during the term of this Agreement to determine in good faith whether Collection Services will be provided at the end of the private street or down the length of the private street. In addition, property owners of dwelling units meeting this criteria must have a signed waiver provided by [the City/Contractor] authorizing Contractor to enter said private drive and releasing Contractor from any damage that may occur to their property while providing Collection Services.

A map of current collection days for Trash and Recycling Collection Services is provided in Exhibit B. This exhibit also denotes alleyways. Any change in the scheduled days of collection will be subject to City approval, which will not be unreasonably withheld. Should the Contractor decide to change the current collection days, a detailed written plan for implementing the change in service days must be submitted to the City sixty (60) days in advance of the effective date of the planned change in service. Contractor will be solely responsible for all costs associated with notifying residents of a change in their collection day. Process of notification must be approved by the City.

- B. Hours of Collection. Trash and Recycle collections shall be made between the hours of 6:00 a.m. – 6:00 p.m. Monday through Friday and 6:00 a.m. to 12:00 noon on Saturday if the need arises. The hours of operation for the Disposal Site, Transfer Station and Material Recovery Facility (“MRF”) will be Monday – Friday 6:00 a.m. to 6:00 p.m. and Saturday 8:00 a.m. – 12:00 noon.

In the event of extreme hot or cold weather, the City may adjust the collection hours at the written request of the Contractor. The City reserves the right to approve of any adjustments prior to those taking effect. Contractor will be solely responsible for all costs related to any necessary communication to residents as a result of such adjustment. In the event of inclement weather, the City will discuss impending weather conditions with Contractor, other area haulers and municipalities to determine whether Trash and/or Recycling collection cancellations are necessary or advisable. The City reserves the right to make the final determination on any cancellations. In the event Collection Services are cancelled for two (2) consecutive days, bidder will not be required to provide Trash and/or Recycling Collection Services for the collection routes scheduled for the days upon which Collection Services were canceled. For example, if collections are canceled on Monday and Tuesday, on Wednesday Contractor would be responsible for providing the Collection Services to the collection routes scheduled for Wednesday only. The collection routes scheduled for Monday and Tuesday, the days Collection Services were canceled, would not be serviced until the next collection week.

- C. Trash and Recycling Carts. The City supplies and maintains all Trash and Recycling carts for residents. The City will provide 96-Gallon Container(s) or 48-Gallon Container(s) to each Single -family Dwelling and Multi-family Dwelling for Trash and Recycling Collection Services. Multi-family Dwellings, 2 – 4 units, will be given two (2) 96-Gallon Containers for trash and up to four (4) 96-Gallon Containers for recycling. All City carts are Toter brand carts. Trash carts will have a black lid and recycle carts will have a yellow lid. Residents are allowed to rent

additional City Trash carts for \$2.00 per cart per month. Residents are not charged for additional recycle carts requested.

The Contractor must empty all carts on their proper collection day using some form of automation. Carts are not to be hand emptied by the Contractor. All carts and containers must be returned to the place where the residents originally set them out for collection. Contractor shall return carts at or near the location the cart was originally placed by the homeowner and shall not leave carts and containers in the middle of driveways, alleyways, etc.

In the event Contractor cannot service a dwelling for reasons such as unacceptable items, contamination, cart placement, etc. the Contractor must place a tag on the cart informing the resident the reason the cart or item was not taken. Contractor shall be responsible for production and printing cost of the tags.

Trash and Recycling carts shall be maintained, repaired and/or replaced by the City as is necessary. Such replacement carts shall be property of the City in the same manner as all of Trash and Recycling carts described herein.

- D. Cart Limits Plus Three (3) Bags Trash Collection Requirements. Residents will only be allowed to set out trash in a City provided Trash cart plus an additional three (3) plastic trash bags or three (3) yard waste bags, or a combination of plastic bags and yard waste bags (collectively, "Bags"). The City will not have a requirement that the lid be closed on the City cart at the time of collection, but will work with the Contractor in the event a resident continually overloads the cart.

Bags must be 33-gallon garbage bags or biodegradable lawn and leaf bags and may not exceed thirty-five (35) pounds in weight per bag. No Hazardous Waste will be accepted for collection. Latex paint that has been dried out and placed in the Trash for collection is acceptable.

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 or in the City cart. Residents will not be allowed to set out cement, concrete, bricks, asphalt, rock, stone, landscape stone, and any other material deemed unacceptable by the City for collection.

Yard waste is accepted with Trash collection. Yard waste can be placed in Bags set out for collection (subject to the 3 Bag limit provided above). Small amounts of leaves may be set out for collection as long as they are mixed in with the regular Trash or yard waste. Due to the state ban on leaves in landfills, the City Street Department collects leaves for residents in the fall from November through December.

- E. Recycling Collection Requirements. The recycling program is an "opt-in" program with recycling collection on a bi-weekly basis. The City designates the different collection weeks by using an "A" and "B" week schedule. Contractor will be

required to provide recycling collection according to this bi-weekly schedule. At present, the City estimates that eighty thousand (80,000) recycle carts are in service.

Contractor is also responsible for collection of the Single Stream Recyclable Materials from the public receptacles. Collection of these public receptacles will be one (1) time per week. This may increase to daily collection during festivals and other events designated in advance by the City. 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. Exhibit C provides the locations of existing recycle receptacles. In addition, the Contractor would be responsible for collection of Recyclables from receptacles at any new locations the City chooses to place public receptacles.

Single-Stream Recyclable Materials are defined as: 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, cartons, newspapers, mixed paper, magazines, phone books, and catalogues; but not limited to these items. Every two (2) 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, which agreement shall not be unreasonably withheld. 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. Exhibit D gives the location and frequency of collection for the City Facilities.

- F. Special Assistance Collection. A special assistance list ("Assist List") will be maintained by the City for elderly and handicapped persons requiring assistance for collection of Trash and/or Recyclable Materials. Residents must live alone and have a doctor's note to be on the assistance list. Assist List customers will be allowed to place their Trash and/or Recycling cart on the porch, in front of the garage, or at the side of the house for collection. Assist List customers with alley collection may set carts behind their home or at the side of the home for collection. Contractor will need to return the carts to the place where the carts are set out for collection. Residents will be added to and removed from the Assist List as the need arises. Some assist customers will be allowed to set Trash out in bags for collection due to their inability to maneuver a City cart.

2. SUBCONTRACTORS

The Contractor shall not be permitted to subcontract, assign or delegate any of the services to be provided by Contractor under this Agreement without the City's express written consent, which permission shall not be unreasonably withheld, and provided that at no time during the term of this Agreement shall Contractor subcontract more than ten percent (10%) of the Work (such determination to be made on the basis of the Contract Price for the applicable Contract Year). The City requires that all Subcontractors possess the same qualification, experience, bonding and

insurance as the City requires of Contractor. In the event that the City approves of any such subcontracting, assignment of delegation, Contractor shall remain solely responsible for managing, directing and paying the Subcontractors. The City shall have no obligation whatsoever to such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing its obligations under this Agreement.

3. HIRING OF EXISTING PERSONNEL

Contractor shall use its best efforts to hire current employees of Red River Waste Solutions LP ("Red River"), provided they meet Contractor's employment requirements. The City shall coordinate a meeting for any interested current Red River employees where the process by which current Red River employees may apply for positions with Contractor will be detailed. Attendance at said meeting will be required of the Contractor, a representative of the City, and a representative of Red River. Interviews with employees will be held outside of their normal working hours as to not disrupt their current collection duties. All efforts will be made by City and Contractor to avoid any interruption of Collection Services during the period in which collection services transition from Red River to Contractor.

4. [INTENTIONALLY OMITTED]

5. GUARANTY

If any (a) Contractor [] [TBD]

6. TERM

The initial term of this Agreement shall be for a period of eight (8) years, beginning July 1, 2022 and ending on June 30, 2030 (the "Initial Term"). The City shall retain the option to extend the term of this Agreement for an additional two (2) year period, commencing at the end of the Initial Term. The City shall provide written notice to Contractor of its election to extend the Agreement no later than one hundred eighty (180) days prior to the expiration of the Initial Term. In the event that the solid waste contract procurement laws then in effect in the State of Indiana allow for negotiation of contract terms and extensions, the City reserves the right to negotiate these term limits and services.

7. MISSED COLLECTIONS

The City shall deliver an email to the Contractor each day listing all missed collections reported to the City 311 call center. The presumption shall be that all missed collections reported to the City are accurate and the Contractor shall bear the burden of disproving a missed collection. The Contractor shall, by 5:00 p.m. the following day, collect such missed collection. Missed collections reported to the Contractor on Friday must be collected by 5:00 p.m. on Saturday. In the event a resident reports a missed collection online by the appropriate means to the City after the City's normal operating hours, the City will forward such emails to the Contractor, and the Contractor shall collect the corresponding missed collection by 5:00 p.m. the following day, provided such emails are delivered to the City at or prior to 11:59 p.m. on Friday. Any misses from the previous

week reported to the City 311 call center or by the appropriate online means after 11:59 p.m. on Friday and 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. Contractor is further required to provide the City with a daily written report (the "Daily Miss Report") detailing the status of all missed collections reported to Contractor the previous day (or, in the case of the Daily Miss Report to be delivered to the City on Mondays, after 11:59 p.m. on Friday and before 10:00 a.m. on Monday)

The City's reporting requirements contained in this Section 7 may be accomplished by an alternative method of communication in the event the City's 311 call center undergoes technological advances or changes, including, but not limited to, advances that permit direct integration of the City's 311 system with the Contractor's internal routing systems. Contractor's obligation to deliver a Daily Miss Report will not be altered by any changes to the method by which missed collections are reported to Contractor.

8. PERFORMANCE REQUIREMENTS

A. Fines. Contractor shall be subject to fines, at the discretion of the City, in the event of the following:

1. Contractor shall be deemed to have failed to provide Collection Services when it fails on any collection day to collect and remove Trash and/or Recycling from any dwelling unit or collection stop on or along Contractor's route for that collection day if the Trash and/or Recycling was correctly and timely placed or presented for collection. Contractor's failure to correct such missed collection of Trash and/or Recycling by 5:00 p.m. the following day as specified in Section 7 above shall constitute a "Miss." The corresponding fine will be \$100 per Miss.
2. Failure of Contractor to submit a Daily Miss Report. Fines shall be \$50 per day.
3. In the event Contractor fails to collect and remove Trash and/or Recycling from a dwelling unit on their scheduled collection day three (3) or more times within any three (3) month period, Contractor shall be subject to a fine by the City in the amount of \$50 per dwelling unit not collected.
4. Failure to maintain vehicles in a reasonably clean and safe working condition. Fines shall be \$25 per vehicle per occurrence.
5. Contractor must at all times maintain a minimum daily completion rate of 97% on a rolling six (6) months average for collections on the scheduled collection date for Trash collections, and a minimum daily completion rate of 97% on a rolling six (6) month average for collections on the scheduled collection date for Recycling collections¹. If Contractor does not maintain the 97% completion rate for Trash or Recycling collections for any rolling

¹ NTD: 97% is under further review by the City.

six (6) month period, the Contractor may be fined (i) 5% of the aggregate monthly invoice for both Trash and Recycling for the first violation, and (ii) 10% of monthly invoice for both Trash and Recycling for each additional violation. In the event of a violation under this Section 8(A)(4), Contractor shall have thirty (30) days to reestablish a completion rate of at least 97% on a rolling six (6) month average for each of Trash and Recycling collections. Contractor's failure to reestablish a completion rate for both Trash and Recycling collections of at least 97% on a rolling six (6) month average following this thirty (30) day period shall constitute an additional violation. In any event, Contractor can only be deemed to be in violation of this Section 8(A)(5) once every thirty (30) days.

To account for initial startup implementation, the City will allow a moratorium of the fines listed in Sections 8(A)(3) and (A)(5) for the six (6) month period from July 1, 2022 to December 31, 2022.

- B. Default. The City may declare, at its election, a default in the event of: (i) failure of Contractor to provide the Performance Bond (both the initial Performance Bond and the renewals for each Contract Year) as required by Section 13 below when due, after five (5) days' written notice; (ii) failure of Contractor to provide insurance as required hereunder, when due, after five (5) days' written notice; (iii) any voluntary or involuntary filing by or against Contractor for bankruptcy protection, insolvency or similar proceeding, or if Contractor consents to the appointment of, or taking of possession by, a receiver (or similar official) of Contractor's operating assets or any substantial part of Contractor's property, or if Contractor shall make any general assignment for the benefit of Contractor's creditors; (iv) failure of Contractor to make any payments owing to the City under the Agreement within thirty (30) days after written notice; (v) failure of Contractor to perform any other material covenant, condition or obligation under the Agreement unless Contractor shall materially cure or remedy such failure within thirty (30) days' of receipt of written notice from the City specifying in detail the nature of such default; (vi) Contractor incurring fines under Section 8(A) of this Agreement three (3) times or more in any six (6) month period or five (5) times or more in any twelve (12) month period² (each of items (i) through (vi) above, an "Event of Default").
- C. Right to Perform. The City reserves the right to perform or cause to be performed all obligations of Contractor under this Agreement in the event that Contractor does not perform the Agreement in a satisfactory and timely manner.
- D. Termination. Following an Event of Default, the City may, at its option, elect to terminate this Agreement by delivering to the Contractor a written notice of default detailing the City's intention to terminate this Agreement. Contractor shall then have twenty (20) business days to provide the City with a detailed plan to cure such default to the City's satisfaction. City shall then review the plan and notify

² NTD: Pending City review.

Contractor whether or not such plan has been approved. If the Contractor's plan for cure is approved, Contractor shall commence cure efforts. However, in the event the plan for cure is denied in the City's reasonable discretion, Contractor fails to timely deliver a plan for cure, or Contractor fails to timely commence or complete cure efforts following approval of the plan for cure, the City shall be entitled to terminate this Agreement effective immediately upon delivery of notice to such effect to Contractor. Upon termination of this Agreement, the City shall be entitled to reimbursement under the Performance Bond for all damages, costs or expenses incurred by City in securing alternate Collection Services acceptable to City.

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are at any time during the Term of this Agreement insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then City shall have the right to terminate this Agreement without penalty by giving written notice to Contractor documenting the lack of funding, in which instance, unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. The City agrees that it will make its best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the term of this Agreement sufficient funds to meet its obligations hereunder in full.

- E. Temporary Possession of Contractor's Equipment³. Following an Event of Default, which is not cured by Contractor as provided above, the City shall have the right to rent or lease the Equipment from the Contractor for the purpose of collecting, transporting and processing materials which Contractor is obligated to collect, transport and process pursuant to this agreement for a period not-to-exceed six (6) months. If the City exercises its rights under this Section, the City shall pay the Contractor the reasonable rental value of the Equipment and shall maintain the Equipment in good working order consistent with the condition of the Equipment at the time the City took control under this Section 8. The City's right to use the Equipment shall further be as is set forth in the Equipment Use, License and Lease Agreement attached as Exhibit E (the "Equipment Lease Agreement"). Contractor shall cause its Equipment lender and/or lessor to expressly consent to the foregoing as a condition to the City being obligated under this Agreement. Contractor will provide City with a Consent, Non-Disturbance and Attornment Agreement executed by any lienholder on the Equipment.
- F. Force Majeure. In the event of a Force Majeure event, the Contractor shall immediately notify the City in writing of such event and Contractor shall provide a proposed changed route and schedule. Subject to the City's agreement (in its reasonable discretion) that the underlying event qualifies as a Force Majeure event, the City shall reach agreement with the Contractor as to a changed route and schedule. To the extent not made impossible by the Force Majeure event, Contractor shall, at its sole expense, make every effort to inform the public as to

³ NTD: Need waiver of Contractor's lender/lessor at time of signing.

the changed schedule and when regular service may be expected to resume. The City shall not be liable to the Contractor, or to any third party, due to a Force Majeure event preventing the Contractor from performing under this Agreement. The Contractor shall not be compensated under this Agreement during any period of time in which a Force Majeure event prevents the Contractor's performance of the services for ten (10) or more working days. During a Force Majeure or major storm event, the Contractor shall receive additional compensation, at a mutually agreeable fee, if the City directs the Contractor to perform increased collection and transportation services which exceed those regularly provided under this Agreement.

9. CONTRACT PRICE

The contract price ("Contract Price") shall be for the collection and transportation of residential Trash and Recycling set out by residents for disposal and/or processing to the designated facility by the City as described below. Contract Price includes all overhead, profit, and any Federal, State, and local environmental fees, fuel surcharges, and any other fees.

The City will be invoiced by the total number of occupied dwelling units on a monthly basis. Single-family dwellings are counted as one (1) unit. Multi-family dwellings are counted as two (2) units since they are charged a double rate whether they have two (2), three (3), or four (4) units in them. For billing to mobile home parks, the City takes 90% of total available lots to figure the number of occupied units to bill. The City will provide the Contractor with documentation from its utility billing department by the 10th of each month. The Contract Price effective July 1, 2022 shall be as follows:

Trash and Recycling Collection	\$10.75 per unit per month
Additional Trash Cart	\$1.50 per additional cart per month

Contract Pricing shall be adjusted annually as stated in Section 10 below. For the avoidance of doubt, Contractor shall be required to provide Collection Services to all additional dwelling units within the Services Territory as needed throughout the term of this Agreement. The City will continue to notify Contractor of any such additional dwelling units or small businesses requiring service.

10. CONTRACT ESCALATION

The Contract Price will be adjusted annually during the Initial Term of this Agreement and during any extensions thereto, effective on July 1 of each Contract Year, commencing July 1, 2023, using the Consumer Price Index for All Urban Consumers ("CPI-U") expenditure category - Water and sewer and trash collection services, as published by the U.S. Department of Labor, Bureau of Statistics. In the event that the U.S. Department of Labor, Bureau of Statistics, ceases to publish said CPI-U, the parties shall substitute another equally authoritative measure of the changes in the purchasing power of the U.S. dollar to carry out the intention of this Section 10. The per unit rate shall be adjusted by the unadjusted percent change from July 1 of the previous year to July 1 of the current year.

There will be no ceiling on the adjustment. The floor on the adjustment shall be three percent (3%) per year.

For the purposes of this Agreement, diesel fuel prices will be based on the monthly average cost per gallon of diesel fuel reported by the Energy Information Administration Department of Energy Index (www.eia.doe.gov) (hereinafter referred to as the "Index"). In the event diesel fuel prices increase 25% or more over a 12-month period, (July 1 to June 30 of each calendar year), the City will meet and agree to negotiate in good faith with Contractor on a price adjustment.⁴

11. ASSIGNMENT

Contractor shall not delegate or assign any of its obligations, rights or interests hereunder, or any part thereof, whether by sale, merger, acquisition or otherwise, of the Contractor's assets or equity without the express written consent of the City, which shall not be unreasonably withheld.

12. COMPLIANCE WITH LAWS-PERMITS

Contractor shall procure, at its own expense, and keep current, all permits, licenses, and bonds necessary for the conduct and completion of its obligations hereunder and/or as 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 its obligations hereunder.

13. PERFORMANCE BOND⁵

Contractor shall execute and deliver a Performance Bond to the City in an amount equal to one hundred percent (100%) of the annual Contract Price as security for the faithful performance and payment of all Contractor's obligations under this Agreement. The Performance Bond amount for each succeeding Contract Year shall be the proposed amount for such Contract Year and shall be renewed by the Contractor and maintained throughout the entire Initial Term of the Agreement and any extensions thereto.

All Performance Bonds shall be in the forms prescribed by the Bidding Documents, and which shall be executed by such Surety(ies) as are acceptable in the sole discretion of the City, which:

- A. are licensed to conduct business in the State of Indiana, and
- B. are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on the Audit Staff Bureau of Accounts, U.S. Treasury Department."

All Performance Bonds signed by an agent must be accompanied by a certified copy of the authority to act. The Performance Bond shall provide that a modification, omission, or addition to the terms and conditions of the Agreement or specifications; a defect in the Contract; or a defect in the proceedings preliminary to the letting and awarding of the Agreement does not discharge

⁴ NTD: Discuss establishing a formula.

⁵ NTD: Pending review by Faegre Drinker bond specialist.

the Surety. If the Surety on any Performance Bond furnished by Contractor is declared bankrupt, or becomes insolvent, or its right to do business is terminated in Indiana, Contractor shall within ten (10) days thereafter substitute another Performance Bond and Surety, both of which must be acceptable to the City.

The Performance Bond shall be provided initially by May ____, 2022, and renewed annually. Commencing December 31, 2022, and on or prior to December 31 of each year thereafter, the Performance Bond for the following Contract Year shall be delivered to the City. The Performance Bond shall be sent to the following address:

City of Fort Wayne Public Works Department
Attn: Director of Public Works
Citizens Square
200 E. Berry Street, Suite 210
Fort Wayne, IN 46802

with a copy to:

City of Fort Wayne
Attn: City Attorney
Citizens Square
200 E. Berry Street, Suite 430
Fort Wayne, IN 46802

14. OWNERSHIP OF TRASH AND RECYCLING

[Contractor shall maintain ownership of all Trash once it has been deposited into Contractor's vehicle]⁶ and until the Trash is taken to the disposal facility designated by the City. Ownership of the Trash shall then transfer to that designated disposal facility.

The City shall maintain ownership of all Recycling from the time it has been deposited into the Contractor's vehicle and until the Recycling is taken to a MRF designated by the City. Ownership of the Recycling shall then transfer to the designated MRF.

15. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City and its officials, departments, divisions, representatives, agents, boards, commissions and employees (each a "Releasee" and together "Releasees") from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage or expense of whatsoever kind and nature, which the City may suffer or incur by reason of (i) bodily injury, including death, to any person or persons, (ii) damage to or destruction of any real or personal property, including the loss of use resulting therefrom, (iii) environmental liability, or (iv) liability associated with the violation of any federal, state or local laws, rules or regulations, arising out of the Contractor's negligence or willful misconduct in the performance of the Work, or which the City may sustain or incur in connection with any litigation, investigation,

⁶ NTD: Subject to further review by City.

or other expenditures incident thereto, including any suit instituted by the City to enforce the Contractor's obligations under this Section 15, whether due in whole or in part to any act, omission, or negligence of the City or any of the City's representatives, agents or employees and whether it is alleged that the City, the City's representatives, agents or employees in any way contributed to the alleged act, omission or negligence and whether it is alleged that the City is liable to any person or entity by reason of a non-delegable duty. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein. Contractor acknowledges that the City shall not provide such indemnification to Contractor.

Contractor shall not be obligated to indemnify the City for claims arising solely from the gross negligence of the City. In the event of a claim by the City for indemnification hereunder, the City shall give Contractor prompt notice of the same. Upon acceptance of responsibility for indemnification hereunder, Contractor shall be entitled to manage and direct its defense of the claim, provided Contractor acknowledges and agrees that the City shall have no liability for costs of any defense or the ultimate settlement. Any final settlement proposed shall be subject to the consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. The City shall at all times be kept fully apprised of all matters and information relating to the resolution of the claim and shall be entitled to retention of its own legal counsel.

It is the intent of the parties hereto that the Contractor shall indemnify the City under this indemnification clause to the fullest extent permitted by law, including indemnity for the sole negligence of the City. If, however, the indemnity herein for injury or damage caused by the sole negligence of the City is found to be contrary to law, it is the intent of the Contractor and the City that this agreement of indemnity shall in all other respects be and remain effective and binding on the parties hereto. Contractor agrees to be held alone responsible for all injuries to persons and for all damages to the property of the City or others, caused by or resulting from the negligence of Contractor, its employees, agents or Subcontractors during the progress of, or connected with the performance of the Work, whether within the limits or scope of the Work or otherwise. This indemnification shall survive the expiration or termination of this Agreement. By entering into this Agreement, the parties do not waive any immunity provided by law.

16. NONLIABILITY

The City shall not be liable for any damage or injuries to the property of Contractor, including but not limited to the Equipment, 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 or any other matter related to this Agreement by Contractor or any activity and/or incidence that is incidental thereto.

17. DAMAGES

- A. Following an Event of Default which is not cured by Contractor as provided in this Agreement, upon the occurrence of a default, the Contractor shall be liable to the City for any damages the City sustains by virtue of the Contractor's breach, and any reasonable costs the City incurs enforcing or attempting to enforce this Agreement, including reasonable attorneys' fees. The City may cause to be

withheld any payment(s) to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City from the Contractor is determined by law or equity, provided the City promptly pursues said determination. It is expressly understood that the Contractor will remain liable for the above damages and costs the City sustains in excess of any setoffs.

B. It is the intent of the parties to ensure that the Contractor provides high quality Collection Services to the City. To that end, the Contractor shall provide services in accordance with this Agreement and within the time limits set forth in this Agreement. The City and the Contractor agree that Contractor's failure to perform in accordance with this Agreement causes the City to incur damages which will be difficult, if not impossible, to calculate; and for that reason, the City and the Contractor agree that the following amounts are reasonable estimates of such damages and shall constitute liquidated damages, and not penalties. Therefore, if the Contractor fails to perform in accordance with this Agreement except in the case of a Force Majeure event, the City, without waiving other remedies it may have under this Agreement, and without reducing Contractor's obligations to provide quality service, may deduct from any amount otherwise payable to the Contractor the amounts in accordance with the following:

1. Failure of employees to conduct themselves in appropriate manner and failure to treat customers in a polite and courteous manner.

\$50 per incident.
2. Commingling Trash with Recycling or other inappropriate materials.

\$500 per incident, plus Contractor shall separate the commingled waste as needed.
3. Failure to clean spillage of Trash, Recycling or other items or materials (but specifically excluding hydraulic fluid, oil, fuel or other type of fluid leak or spill from a vehicle, of which the failure to properly address is discussed in Section 38 below) on the day Contractor receives notice of such spillage.

\$200 per incident, plus Contractor shall pay the cost of cleanup and any resulting damage.
4. Commingling and delivering to the disposal facility waste materials collected pursuant to this Agreement commingled with waste materials collected by Contractor outside of this Agreement, regardless of whether collected inside or outside Contractor's Service Area.

\$2,500 for each truckload.

5. Failure to comply with any other term or provision of this Agreement after notice from the City is provided.

\$100 per incident or \$100 per day of continued non-compliance.

6. Willful neglect of and/or damage to City carts.

Carts damages or destroyed by Contractor shall be replaced by Contractor at cost.

The City and Contractor agree to work together in good faith to provide and share information relevant to both parties to address missed collections in a timely and efficient manner to minimize fines and improve customer service.

18. ATTORNEYS' FEES

Contractor shall be liable to the City for attorneys' fees and court costs incurred by City in connection with the collection or attempt to collect any damages arising from the negligent or wrongful act or omission of Contractor, or from Contractor's failure to fulfill any provisions or obligations provided in this Agreement.

19. INSURANCE

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

The Contractor shall at all times during the Agreement 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 15 above. The Contractor shall not commence Work under the Agreement until it has obtained all insurance required and such insurance has been approved by the City; nor shall the Contractor allow any Subcontractor, if any, to commence Work on 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, in its sole discretion, 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 this Agreement, the Contractor shall carry the following types of insurance and such insurance shall be maintained during the life of the Agreement in at least the limits specified below:

<u>COVERAGES</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(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 Agreement and any renewal period.	Statutory coverage as required by Indiana Law
(b) Comprehensive General Liability Insurance, including property damage and personal injury coverage	\$2,000,000 per occurrence/ \$5,000,000 aggregate combined single limit
(c) Excess Commercial General Liability Insurance	\$5,000,000 aggregate
(d) Comprehensive Automobile Liability Insurance with respect to both personal injury and property damage	\$2,000,000 per occurrence combined single limit
(e) Products Liability Insurance	\$1,000,000 per occurrence
(f) Completed Operations Liability Insurance	\$1,000,000 per occurrence
(g) Environmental Impairment Liability Insurance 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.	\$10,000,000 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 Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date.

The City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decision or the claims history of the industry as well as of the Contractor. The City shall be required to provide prior notice of ninety (90) days.

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 Subsidiaries as an additional insured and a certificate holder, and include thirty (30) days' advance notification to the City of cancellation or non-renewal, except for Workers' Compensation and Excess/Umbrella coverages, of which thirty (30) days' advance notice will be provided by Contractor. All certificates of insurance shall be sent to the following address:

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

Failure on the part of the Contractor to comply with the insurance requirements shall not relieve him/her of the liability under such requirements. For purpose of this Agreement, 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. The Contractor shall furnish to the City, prior to thirty (30) days of the beginning of the Agreement, certificates of insurance evidencing all the foregoing insurance requirements, as applicable. Failure to do so is cause for termination of the Agreement.

20. CONTRACTOR'S RESPONSIBILITY⁷

- A. 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 this Agreement. Contractor shall be solely responsible for the means, methods, techniques and procedures of Trash disposal. Contractor shall be responsible to see that the finished Work complies accurately with the intent of this Agreement.

GFL shall have a field supervisor assigned to the City. The field supervisor shall have duties related to the efficient pick up of refuse in the Service Territory. The supervisor shall familiarize themselves with all of the collection routes and shall make daily checks to ensure that the pickups are occurring as scheduled. Whenever, in the reasonable opinion of the City, a field supervisor's performance of their

⁷ NTD: See Contractor Bid Document for details on supervision.

duties is unsatisfactory or contributes to the failure of Contractor to adequately perform its duties and obligations under this Agreement, Contractor shall, upon written complaint from the City, remove and replace said supervisor and shall not return the employee to perform services related to this Agreement without the prior consent of the City.

- B. 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 Agreement. The Contractor must employ only neat, orderly, courteous, unimpaired, competent and efficient employees and shall remove any employee who neglects to obey or carry out his/her instructions. The Contractor shall prohibit drinking of alcoholic beverages or the consumption or smoking of any controlled substances by its employees while on duty or in the course of performing their duties under this Agreement.
- C. 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.
- D. Safety and Protection. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions, and be solely responsible, 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 including City employees and Collection Contractors hired by the City. Contractor shall comply with all applicable local, state and federal laws, rules, regulations and guidelines concerning the safety of persons.

21. DISPUTES

The City and Contractor agree to first use the following process to resolve disputes about issues related to the performance of this Agreement. If an issue arises requiring resolution, either party shall initiate a dispute resolution process by notifying the other party and scheduling a meeting. The meeting shall serve as a fact-finding opportunity to identify the issue, clarify the problem, review the applicable Agreement provisions relating to the issue, discuss alternative remedies, and agree upon a means of dispute resolution. The parties shall make a good faith effort to complete the agreed-upon tasks within fifteen (15) days of the initial dispute resolution meeting or specify an alternative schedule and deadline for resolving the issue. Negotiation of a dispute shall not be grounds for the Contractor to abandon the performance of the terms of this Agreement.

During the existence of a dispute, Contractor shall carry on all Work required under this Agreement and maintain its collection schedule. No Work shall be delayed or postponed pending resolution of any disputes except as Contractor and City may otherwise expressly agree in writing. Should Contractor fail to continue to perform its responsibilities during the existence of a dispute, any additional costs incurred by City or Contractor as a result of such failure shall be borne by Contractor, and Contractor shall make no claim against the City for such costs. The City is entitled to withhold payments on disputed items pending resolution of the dispute.

22. NONDISCRIMINATION

In compliance with federal law and Ind. Code §5-16-6-1, and Ind. Code §22-9-1-10, Contractor hereby agrees:

- A. That in the hiring of employees for the performance of Work under this Agreement or any subcontract hereunder, no Contractor or Subcontractor shall by reason of race, age, religion, color, sex, national origin, ancestry, national origin, handicap, disability, or disabled veteran status, 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.
- B. 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 Agreement on account of race, age, religion, color, sex, national origin, ancestry, or handicap.
- C. That the Agreement 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 22.

23. CITY OF FORT WAYNE ALCOHOL AND DRUG POLICY

The City of Fort Wayne has in place an Alcohol and Drug Policy that also applies to any Contractors doing business with the City. A copy of this policy is available for inspection at <http://www.cityoffortwayne.org/purchasing-home.html>. The Successful Contractor will be furnished a copy of said policy, and, as a condition of being awarded the Contract, the Successful Contractor shall execute an acknowledgment of receipt of said policy and agree to be bound by those provisions of the policy that may be applicable. A copy of this form will be retained by the Risk Management Department of the City of Fort Wayne. Any Contractor Drug Policy must comply in all pertinent areas with City of Fort Wayne Drug Policy.

24. INDEPENDENT CONTRACTOR RELATIONSHIP

City and Contractor are and shall remain as independent Contractors with respect to each other. The persons provided by Contractor to perform the Work shall be Contractor's employees and

shall be under the sole and exclusive direction and control of Contractor. They shall not be considered employees of the City for any purpose. Contractor shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions, and payment of wages with respect to such persons. Contractor shall also be responsible for payment of taxes, including federal, state and municipal taxes chargeable or assessed with respect to its employees, such as Social Security, unemployment, Workers' Compensation, disability insurance, and federal and state withholding. Contractor shall also be responsible for providing such reasonable accommodations, including auxiliary aids and services, as may be required under the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq., so as to enable any disabled person furnished by Contractor to perform the essential functions of the job. Contractor agrees to defend, indemnify, and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained by reason of Contractor's failure to comply with this paragraph.

25. WAIVER

No action, inaction, delay, waiver of fines or failure of the City to exercise any right or remedy shall constitute a waiver of any right or remedy provided to this City under this Agreement or available by law.

26. CONFLICT OF INTEREST

Contractor certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees which will participate in any way in the performance of the Contractor's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City of Fort Wayne or any of its departments, divisions, agencies, officers, directors or agents. Contractor must annually submit a Vendor Disclosure Form provided by the City.

27. EMPLOYER CERTIFICATION

In accordance with I.C. § 22-5-1.7, Contractor understands and agrees to enroll and verify work eligibility status of all newly hired employees of the Contractor through E-Verify program or any other system of legal residence verification as approved by the United States Department of Homeland Security or the department of homeland security. Contractor further understands that they are not required to verify work eligibility of status of newly hired employees of the Contractor through the E-Verify program if the E-Verify program no longer exists. Contractor certifies that they do not knowingly employ any unauthorized aliens.

28. APPLICABLE LAW

If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected. This Agreement shall be governed by the laws of the state of Indiana and shall be subject to the exclusive jurisdiction of the state and federal courts in Allen County, Indiana.

Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, or ordinances, and all provisions required thereby, in performing Work pursuant to this Agreement. Such laws, rules, regulations, ordinances, and provisions include, but are not limited to, those

concerning the collection, transportation, and disposal of Trash and Recycling. Other laws include the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988, which are incorporated by reference herein. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the City and Contractor to determine whether the provisions of the Agreement require formal modification.

Without limiting the foregoing, by executing this Agreement, Contractor certifies that it does not engage in investment activities in Iran, as more particularly described in I.C. § 5-22-16.5. Contractor shall provide immediate written notice to the City if at any time during the term of this Agreement, Contractor learns that its certifications herein are/were erroneous or if Contractor is debarred, suspended proposed for debarment, has been included on a list or received notice of intent to be included on a list created pursuant to I.C. § 5-22-16.5, declared ineligible, voluntarily excluded from or becomes ineligible for participation in any federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.⁸

29. ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understanding, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof.

30. AMENDMENTS IN WRITING

No agreement hereafter made shall be effective to modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the modification or discharge is sought.

31. HEADINGS

The paragraph headings are for convenience only and are not intended to affect the interpretation of the provisions hereof.

32. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors and assigns. No part of this Agreement may be transferred or assigned by Contractor, whether by merger, sale, operation of law or otherwise, without the express written consent of the City, which consent may be withheld at City's sole and absolute discretion.

33. HOLIDAYS

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 customers between the holiday and the following Saturday. For example, if a holiday falls on a Monday, Monday Collection Services shall be performed on Tuesday, Tuesday Collection Services shall be performed on Wednesday, etc. with

⁸ NTD: Evaluating whether it is necessary to expand to federal/OFAC lists as well.

Friday collections being done on Saturday, at which point, Collection Services shall return to the normal collection schedule.

On holiday weeks, the Disposal Facility and MRF will be open from 6:00 a.m. to 6:00 p.m., on Saturday. Below are holidays that will be observed:

New Year's Day
Martin Luther King Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

34. DISPOSAL AND PROCESSING LOCATIONS

Contractor shall deliver all collected Trash and Recycling to the Disposal Site, Transfer Station, or MRF that the City has contracted with for Disposal or Processing. The City pays for disposal and processing separately through existing contracts. For years 2022 – 2024, the Trash Disposal Facility will be the Republic Services Landfill located at 6231 MacBeth Road. Recycling shall be taken to Republic Services MRF located at 2509 E. Pontiac Street. The City is currently in contract with Republic at these facilities until December 31, 2024. In the event the City acquires a different location for disposal and/or processing, the facility will be located within a radius of ten (10) miles of the Center Point of the City. Exhibit F displays the center point of the City with the ten (10) mile radius.

Contractor must follow designated truck routes as required by City ordinance from collection areas within the City to the Trash Disposal Facility or Processing Facility. Exhibit G provides the City truck routes.

35. EQUIPMENT SPECIFICATIONS

Contractor may use any model year vehicle to complete the Work as required by the Agreement for the initial startup. Within 12 months after the initiation date of the Initial Term, Contractor must not use any vehicles with a model year greater than eight (8) years old throughout the Initial Term of the Agreement without written authorization from the City. During any extensions to the Initial Term, this model year stipulation will be increased to ten (10) years.

Contractor vehicles shall be licensed and registered 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 Agreement in strict accordance with its terms. Contractor shall have available a spare vehicle percentage of fifteen percent (15%) of its fleet used for this Agreement. The Contractor must provide a written plan to the City which adequately

ensures that the Contractor will be in full compliance with this requirement within 12 months after the start of the Agreement Term. All collection vehicles shall be leak proof and manage the collection process without fallout, blowout, or other loss 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 City's 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.

Where alley collection is required, Contractor shall not operate equipment in the alleys which causes damage to public or private property. 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 two (2) 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.

Each collection vehicle, including spares, shall be provided with some form of stop verification technology in order to track the vehicle's progress on route and confirm collections have been completed. Contractor shall provide the City with data upon request and the City reserves the right to come to the Contractor's facility to monitor/view the tracking system.

The tracking/verification system shall provide data in a standard recognized format that enables the City to view and sort data in the reports electronically. The system shall be able to track each time the vehicle services a cart at a specific address when emptying a cart. Upon the City's request, Contractor shall provide information/databases of when a collection vehicle is at a specific address and if the Contractor collected Trash and or Recycling from that address. Reports shall include the date and time of collection.

36. COLLECTION VEHICLE MAINTENANCE SPECIFICATIONS

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.

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 (the "Manual") that incorporates all manufacturer's maintenance requirements and schedules for every collection vehicle used to perform the duties required by this Agreement. 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. The 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. Recordkeeping Requirements. Contractor shall establish a chain of responsibility to ensure compliance with all DOT requirements and all manufacturer's specifications and maintenance schedules. Contractor is accountable for tracking work order labor, parts issues, consumables, costs per vehicle, component warranties, road calls and driver reported defects. All logs and maintenance records shall be retained throughout the Term of the Agreement 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 follows 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 Agreement Term.

37. VEHICLE APPEARANCE

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 Trash or Recycling 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 Trash, Recycling and/or leaking of fluid. No vehicles shall be willfully overloaded.

Contractor shall maintain all equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times. Vehicles used in the collection under the Agreement 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.

38. SPILL MANAGEMENT

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 Trash 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 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 fine of \$1,000.00 per occurrence.

39. ANNEXATIONS

Contractor will be responsible for the collection of Trash and Recycling from all qualifying units of any areas that are annexed by the City during the Agreement Term. At this time, no areas are scheduled to be annexed. In addition to annexed areas, the Contractor is responsible for servicing all new homes built that qualify for City services.

40. COMMUNITY INVOLVEMENT

Contractor shall be required to have a representative available when asked to attend neighborhood partnership meetings, Trash Advisory Board meetings, and various community events when necessary to promote programs and discuss any collection issues. Contractor shall provide a public outreach plan annually at the start of each Contract Year, which includes an estimated budget amount that the Contractor will contribute along with what is expected of the City.

41. 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 shall then provide information on the status of each miss by 8:00 p.m. the following day.
- B. Complaints. The City will email collection complaints to the Contractor daily. It will be the Contractor's responsibility to provide in writing information on how each complaint was addressed so that future problems do not occur. The City will need this information within 48 hours of notifying the Contractor.
- C. Property Damage. The Contractor will have twenty-four (24) hours to respond to any property damage claims given to the Contractor via email by the City. Once the Contractor has accepted responsibility for the damage, the damage must be repaired within thirty (30) business days of acceptance of the claim. For property damage taking place in the fall and winter months that involves planting grass seed, Contractor must have the damage repaired and plant seed by May 15th the following

spring. If the property damage is not repaired within thirty (30) business days, the City will hire a company to repair the damaged property. The Contractor will be charged the cost of the repair plus an additional fifty percent (50%) 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.
- E. Accounting. Contractor shall maintain proper accounting records for the scope of all Work related to this Agreement and provide an accounting of all charges and expenditures as may be necessary for audit purposes. All such records shall be subject to inspection and examination by the City's representatives during reasonable business hours during the term of this Agreement and for a period of three (3) years following the expiration of the term of this Agreement. Copies of such records shall be furnished at no cost to the City upon request thereof.

42. PAYMENT

The City will be invoiced, in arrears, by the total number of occupied households. The occupied household and additional Trash cart information will be given to the Contractor by the City on a monthly basis. Contractor shall invoice the City by the 10th of every month. Invoices shall include total occupied Single-Family Dwellings, Multi-Family Dwellings, and additional Trash carts being serviced by the Contractor. The City will deduct any penalties and make payment to the Contractor within thirty (30) days of receipt of the properly completed invoice.

43. STAFFING

The Contractor must give a detailed description of the number of route supervisors, drivers, rear load collection techs, and customer service representatives, and all other employees that they will have dedicated to provide the Work. 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 at all times while operating Contractor's vehicles maintain in effect a valid Commercial Driver's License and/or such other proper driver or operator's license that satisfies all state and federal requirements for the applicable vehicle operated by such driver.

Contractor shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection under the Agreement. Contractor shall train its employees in collection to identify, and not collect Hazardous Waste. Contractor shall be solely responsible for the safety of its employees at all times and shall provide all equipment necessary to ensure their safety and take all necessary precautions to ensure public safety.

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 Agreement, 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. 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. Contractor must have at least one (1) supervisor available daily for such services.

All employees of the Contractor performing Work under the Agreement shall be uniformed showing their association with the Contractor while operating in the field.

Any calls the Contractor receives concerning misses, property damages, or complaints 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.

44. CONFIDENTIALITY

Subject to all public records requests, Contractor understands that the information provided to it or obtained from the City during the performance of its services is confidential and may not, without prior written consent of the City, be disclosed to a person not in the City's employ except to employees or agents of Contractor who have a need to know in order to provide the services. Further, Contractor's work product generated during the performance of this Agreement is confidential to the City. The failure to comply in all material respects with this section shall be considered a material breach of this Agreement. The obligations of this section shall survive the termination of this Agreement and shall be applicable to the full extent permissible under statutes governing access to public records. Confidential information shall not include information that: (a) was known by Contractor at the time it was received; (b) is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than Contractor; (c) is made known to Contractor by a third person who does not impose any obligation of confidence on Contractor with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena, or court order whereupon Contractor shall provide notice to the City prior to such disclosure; or (e) information that is independently developed by Contractor without references to the confidential information.

[Remainder intentionally blank. Signature page follows.]

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

[GFL ENVIRONMENTAL, INC.]

By: _____

Printed: _____

Title: _____

CITY OF FORT WAYNE, INDIANA

By: _____

Thomas C. Henry, Mayor

CITY OF FORT WAYNE, INDIANA

BY: Its Board of Public Works

By: _____

Shan Gunawardena, Chair

By: _____

Kumar Menon, Member

By: _____

Chris Guerrero, Member

EXHIBIT A
SERVICE TERRITORY

EXHIBIT B

MAP OF CURRENT COLLECTION DAYS
FOR TRASH AND RECYCLING COLLECTION SERVICES

EXHIBIT C

LOCATION OF EXISTING RECYCLING RECEPTACLES

EXHIBIT D

LOCATION AND FREQUENCY
OF COLLECTION FOR THE CITY FACILITIES

EXHIBIT E
EQUIPMENT LEASE AGREEMENT

EXHIBIT F

CENTER POINT OF CITY WITH THE TEN (10) MILE RADIUS

EXHIBIT G

TRUCK ROUTES TO TRASH DISPOSAL FACILITY
OR PROCESSING FACILITY

APPENDIX A

DEFINED TERMS

The following defined terms shall apply to the entire Agreement:

ASSIST LIST – A senior and disabled list maintained by the Trash Department for elderly and disabled persons requiring assistance for collection of Trash and/or Recyclable Materials, as defined in Section 1(F).

CITY – Refers to the City of Fort Wayne, Indiana, and its Board of Public Works. Geographically, the term City refers to the City of Fort Wayne, Indiana, and any geographical area annexed thereto effective during the Term of this Agreement.

COLLECTION SERVICES – The collection, transportation, disposal and processing of Trash and/or Recycling (as context dictates) along collection routes in the Service Territory.

CONTRACT PRICE – Contract Price shall have the definition contained in Section 9.

CONTRACT SECURITY – A Performance Bond in amount(s) and on terms as required by the City to secure performance of the Contractor under the Contract.

CONTRACT YEAR – Each successive period from July 1 through June 30 of the following calendar year, throughout the Initial Term of this Agreement and extensions thereto. The first Contract Year shall commence on July 1, 2022, and end on June 30, 2023.

DAILY MISS REPORT – Daily miss report shall have the meaning set forth in Section 7 of this Agreement.

DISPOSAL – Legally authorized deposit of waste, Trash, yard waste materials under contract with the receiving site and in accordance with all laws, regulations and rules of the Disposal Site or any governmental agency.

DISPOSAL SITE – A properly licensed depository for the processing or final Disposal of Trash, 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.

EQUIPMENT – Equipment shall mean all of the trucks, equipment and facility stock used or useful by Contractor in serving the Fort Wayne market.

EQUIPMENT LEASE AGREEMENT – Equipment Lease Agreement shall have the meaning set forth in Section 8(E) herein and further attached as Exhibit E hereto.

E-VERIFY PROGRAM – An electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s.403(a), as amended, operated by the United States Department of Homeland Security or other

federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99- 603). *As added by P.L. 111-2011, SEC. 16 and included in IC 22-5-1.*

FORCE MAJEURE - an event (i) physically located or occurring in the Service Territory and having a direct, material and adverse effect on the Contractor's performance of the obligations and duties under this Agreement; and (ii) which prevents the Contractor from fulfilling its duties and obligations under the Agreement, so long as such event is not caused by the Contractor; is not the result of negligence or lack of reasonable diligence by Contractor; is not reasonably within Contractor's control and not reasonably foreseeable or, even if foreseeable, cannot be avoided. Force Majeure includes the following events: act of civil or military authority, war, riot, government-mandated state of emergency, pandemic, fire, explosion, tornado, or flood requiring evacuation of an applicable portion of the Service Territory.

GARBAGE – Animal or vegetable waste resulting from the handling, preparation, cooking, serving or consumption of food and including food containers.

GUARANTOR – The party that guarantees the performance and payment obligations of a Contractor, specifically, _____.

HAZARDOUS WASTE – [Definition to be provided.]

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

ISSUING OFFICE – The City of Fort Wayne Board of Public Works located in Suite 210, Citizens Square at 200 E. Berry Street, Fort Wayne, Indiana.

MISS – A Miss shall have the definition contained in Section 8(A)(1).

MRF – Material Recovery Facility where recyclable materials are taken by a hauler to be processed.

PERFORMANCE BOND – Bond from a Surety that guarantees compensation to the City in the event that it must assume all or any portion of the obligations and/or duties of the Contractor in order to continue the service as defined by the terms of this Agreement.

RECYCLING – Those materials collected separately from Trash to be recycled at a MRF, including, but not limited to, glass (clear, green, and amber), polyethylene terephthalate (PET) and high-density polyethylene (HDPE) plastics, aluminum and steel beverage cans, steel food cans, and paper products. City reserves the right to expand the scope of Recycling.

SERVICE TERRITORY – Service Territory shall be defined as the area set forth on Exhibit A, attached to this Agreement.

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

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

TRASH – Discarded waste materials of all types in a solid or semi-liquid state, including animal or vegetable waste resulting from the handling, preparation, cooking, serving or consumption of food and including food containers, solid waste consisting of combustible and non-combustible materials, yard waste and garden wastes, but specifically excluding hazardous waste, freon-containing appliances, infectious wastes, tires, and remodel debris over 60 pounds.

TON – A load of 2,000 pounds.

TRANSFER STATION – A Trash storage facility at which Trash is transferred from collection vehicles to haulage vehicles for transportation to a landfill or other final disposal facility.

WORK – Collection Services and all other duties or obligations to be performed by Contractor pursuant to this Agreement.



CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

Date: April 26, 2022

To: Member of the Fort Wayne City Council

From: Matt Gratz, Solid Waste Manager

Re: Solid Waste Collection Contract

The Solid Waste Department is seeking approval of the Solid Waste and Recycling Collection Contract with GFL Environmental, Inc. The contract price is \$10.75 per dwelling unit for trash and recycling collection. These rates are subject to annual contract escalations. The contract escalation is the same escalation that is used for the Landfill Disposal contract that was approved in December of 2020.

We currently have 83,400 households. The estimated cost of garbage collection 2022-2023 is \$11,100,000. This amount is expected to increase annually given the increasing number of households and the expected contract escalations.

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

Thank you,

Matt Gratz
Solid Waste Manager

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