

PROFESSIONAL SERVICES AGREEMENT**BY AND BETWEEN****THE CITY OF NEW ORLEANS****AND****IV WASTE, L.L.C.****RFP NO. 3185****CURBSIDE COLLECTION – AREA 1**

THIS PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”) and IV Waste, L.L.C., represented by Sidney D. Torres IV, President (the “**Contractor**”). The City and the Contractor may sometimes each be referred to as a “**Party**,” and collectively, as the “**Parties**.” The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS, on June 22, 2023, the City issued Request for Proposals No. 3185, followed by Addendum No. 1 on July 10, 2023 and Addendum No. 2 on July 31, 2023, seeking proposals from qualified contractors to provide solid waste and recyclable material collection services to residential and small business service locations in Service Area 1 (collectively, the “**RFP**”), which is attached separately and fully incorporated herein as **Exhibit “A”**;

WHEREAS, the Contractor submitted a technical proposal dated August 11, 2023 (“**Technical Proposal**”), and a cost proposal dated August 11, 2023 (“**Cost Proposal**”), both of which are attached separately and fully incorporated herein as **Exhibit “B”** and **Exhibit “C”** respectively; and

WHEREAS, the City selected the Contractor to provide solid waste and recyclable material collection services to residential and small business service locations in Service Area 1 pursuant to the RFP.

NOW THEREFORE, the City and the Contractor agree as follows:

ARTICLE I - THE CONTRACTOR'S OBLIGATIONS

A. Services. The Contractor will, in accordance with the schedule approved by the City:

1. Perform all services and obligations as set forth in any the following documents that are attached separately and incorporated fully into this Agreement:

- a.** RFP;
- b.** Technical Proposal; and
- c.** Cost Proposal (except as otherwise set forth hereinunder).

2. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Contractor as set forth in this Agreement;

3. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, all at no additional compensation;

4. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;

5. Perform all requirements set forth in La. R.S. 38:2192, including, without limitation, the payment of any associated costs, and submit a copy of any recorded documents to the City within 30 days after the approval of the associated plan change or amendment; and

6. Cooperate with the City and any person performing work for the City.

B. Standards. The Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with any and all applicable professional standards.

C. Compliance with Laws. The Contractor, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws, regulations, and ordinances.

D. Schedule. The Contractor, and any person performing work on its behalf, will comply with Section 7 of Attachment "A" to the RFP – *Plan of Operation*, including, but not limited to, Section 7.1 of Attachment "A" to the RFP – *Collection Routes and Schedules*.

E. Invoices.

1. The Contractor, and any person performing work on its behalf, will comply with Section 9.10 of RFP – *Direct Deposit Electronic Payment Program*, Section 10 of Attachment "A" to the RFP – *Invoicing*.

2. The Contractor must submit invoices monthly (unless agreed otherwise between the Parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information:

- a. Name of Contractor;
- b. Date of Invoice;
- c. Invoice Number;
- d. Contract or BRASS Number issued by the City (*i.e.*, K#);
- e. Name of the City Department to be invoiced (*i.e.*, Sanitation);
- f. Description of the Services completed; and
- g. FEMA or HUD Project Number (*i.e.*, PW#), if applicable.

3. Invoices will be processed in accordance with Article III Section B of the Agreement.

4. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.

5. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

F. Records and Reporting.

1. The Contractor shall submit all reports and maintain and manage all records as provided for in Section 11 of Attachment "A" to the RFP – *Reporting* and Section 12 of Attachment "A" to the RFP – *Records Management*, respectively.

2. The Contractor will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of 3 years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any disputes relating to the Agreement. If this Agreement is terminated for any reason, the Contractor will deliver to the City all plans and records of work compiled through the date of termination, and the Contractor shall implement an orderly return of the City's data in a CSV or another mutually agreeable format at a time agreed to by the Parties.

3. The Contractor will identify any reporting requirements, including the frequency, methods, and contents.

4. The Contractor is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

G. Audit and Inspection.

1. The Contractor will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Contractor, its employees, agents, assigns, successors, and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available in Louisiana, the Contractor will make the documents available at a time and location that is convenient for the City.

2. The Contractor will abide by all provisions of City Code Section 2-1120, including, but not limited to, City Code Section 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

H. Insurance.

1. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor's scope of work under the Agreement. If the Contractor maintains broader coverage and/or higher limits than

the minimums shown below, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City:

a. Minimum Requirements:

- i. Worker's Compensation & Employers Liability Insurance: in compliance with the Louisiana Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000.
- ii. Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.
- iii. Automobile Liability Insurance with a combined single limit of liability of not less than \$1,000,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.
- iv. Contractors' Pollution Liability - Contractor shall maintain Contractors' Pollution Liability Insurance (or equivalent coverage) applicable to the work being performed with limits of not less than \$1,000,000 per occurrence or claim / \$2,000,000 policy aggregate, covering losses caused by pollution conditions that arise from the operations of the Contractor.
- v. Coverage shall include but not be limited to Fines, Penalties, Punitive Damages and Clean-up cost.
- vi. Important: Contractors shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage.
- vii. The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations.
- viii. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractors obligations and/or Scope of Work. Contractor shall be responsible for any losses, expenses, damages, claims and/or suits of any kind which exceed the Contractors limits of liability that arise from the performance of work under the Agreement.

b. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

- i. Additional Insured Status. The Contractor and all Subcontractors

(where applicable) will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this agreement, General liability insurance coverage can be provided in the form of an endorsement to the Contractors insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the Sub-contractor liability shall be covered by the Contractor. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to (User Department Mailing Address), with a copy forwarded to Risk Management Division, 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

The Additional Insured box shall be marked "Y" or Commercial General Liability coverage. The Subrogation Waiver Box must be marked "Y" for Workers Compensation/Employers Liability and Property.

- ii. Primary Coverage. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non- contributing to the Contractor's coverage.
- iii. Claims Made Policies. If applicable, the retroactive date must be shown and must be before the date of the contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase "extended reporting" coverage for minimum of 3 years after the termination of this Agreement.
- iv. Waiver of Subrogation. **The Contractor and its insurers agree to waive any right of subrogation** which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this Agreement.
- v. Notice of Cancellation. Each insurance policy required above, except for Professional Liability, shall not be canceled, expire, or altered except without prior notice to the City of no less than 30 days.
- vi. Acceptability of Insurers. Insurance is to be placed with **insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A:VII**, unless otherwise acceptable to the City.

2. The Contractor will provide the City's Risk Manager at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112- Ref.: **IV Waste, L.L.C.**) the following documents, within 10 calendar days of the City's request:

a. Copies of all policies of insurance, including all policies, forms, and endorsements.

3. Without notice from the City, the Contractor will:

a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;

b. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and

c. Notify the City's Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

4. Special Risks or Circumstances: The City of New Orleans shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances.

I. Indemnity.

1. **In General.** To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life, injury, or damage to persons or property arising from or relating to any act, conduct, misconduct, or omission, or the operations of the Contractor, its agents, subcontractors, employees, or independent contractors, while engaged in or in connection with the discharge or performance of any work under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement.

2. **Limitation.** The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

3. **Independent Duty.** The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for any costs incurred in the defense of any and all claims that actually or potentially fall within this indemnity, even if: (i) the allegations are or may be groundless, false, or fraudulent; or (ii) the Contractor is ultimately absolved from liability. If the City chooses to represent its own interests in any such action, its representation must not prejudice the Contractor's right to control the defense of the claim and negotiate its settlement or compromise), and the City must reasonably cooperate with the Contractor to facilitate the settlement or defense of the claim.

4. **Expenses.** Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorneys' fees, lay and expert witness fees, court costs, and any similar expenses, incurred by the City in enforcing this indemnity.

J. Performance and Payment Bonds and Certificates.

1. At the Contractor's expense, the Contractor shall maintain payment and performance bonds acceptable to the City during the Agreement.

2. Pursuant to Section 6-308(6) of the Home Rule Charter of the City of New Orleans, the Contractor shall purchase, furnish, and maintain an annual payment and performance bond, each in the amount of one hundred percent (100%) of the Agreement price to secure the faithful performance of all Contractor's obligations strictly according to the specifications of this Agreement and any Purchase Orders (if applicable) confirmed hereunder. All bonds shall be executed by qualified sureties and provided in a form and manner acceptable by the City, except as provided otherwise by applicable laws or regulations.

3. If the Surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project or the services are located, or if the Surety on any bond furnished by the Contractor ceases to meet the requirements of Section K(4) and/or Section K(5) below, the Contractor shall within twenty (20) days thereafter substitute another bond or Surety, both of which shall comply the provisions of Section J(2).

4. The Contractor's failure to provide and maintain such bonds in force as required above shall constitute a material breach of the Agreement and, at the City's option, occasion an immediate termination thereof, including all applicable costs incurred as a result of immediate termination.

5. If circumstances do not warrant an opportunity to cure, or in the event the Contractor fails to timely cure a default after Notice, the City will give Notice to the Contractor, with a copy to the Contractor's Surety, of the Department's determination that the Contractor is in default for any cause specified in the RFP and/or the Agreement and/or direct the Surety to complete the Service/Work. Such Notice removes the Contractor's right to proceed with the Service/Work and suspends payments to the Contractor. Within thirty (30) days of receipt of such Notification, the Surety shall present to the City either a plan to assume performance of the Agreement and procure completion of the Service/Work or provide the City in writing with a reasonable response for the Contractor's default. A response that fails to procure completion of the Service/Work shall not release the Surety of its obligations under the performance bond as provided in the following paragraph.

6. If no completion plan is timely presented by the Surety, or at any time if immediate action must be taken in the public interest or to protect the safety of the public or workers, the City will take prosecution of the Service/Work out of the hands of the Contractor or Surety, may appropriate or use the materials and/or vehicles and/or equipment to complete the Services/Work, or may enter into an agreement for completion of the Agreement or use other methods as required for completion of the Agreement in an acceptable manner. The Surety shall then be responsible for payment to the City of the cost of completion of the Service/Work and liquidated damages

assessed by the City up to the total amount of the bond. If the Surety has not timely completed the Service/Work and a court of competent jurisdiction has determined that the Surety has unreasonably refused to take over the Service/Work set forth in the Agreement, the Surety shall be responsible for the payment of any liquidated damages for any delay in completion of the Service/Work as specified in the Agreement and any reasonable attorney's fees and court costs incurred by the City in collection of payments.

K. Surety.

1. Philadelphia Indemnity Insurance Company (the "Surety") intervenes in this Agreement and binds itself as surety for:

- a. The faithful performance of all work required of the Contractor by this Agreement in the full sum of **\$17,752,319** for the first year of this Agreement, provided, however that the Parties acknowledge and agree that the sum of the annual performance bond required by this Agreement may increase in accordance with the terms and conditions set forth herein and the Contractor agrees to provide the City with an updated performance bond no later than the anniversary of the Effective Date of this Agreement; and
- b. The full payment by the Contractor of all payments to be made by the Contractor under this Agreement in the full sum of **\$17,752,319** for the first year of this Agreement, provided, however that the Parties acknowledge and agree that the sum of the annual payment bond required by this Agreement may increase in accordance with the terms and conditions set forth herein and the Contractor agrees to provide the City with an updated payment bond no later than the anniversary of the Effective Date of this Agreement.

Each of these bonds is to be considered separate and distinct, and no payment made by the Surety under either bond shall in any way reduce the obligations of the Surety under the other.

2. Acknowledgement of the Agreement. The Surety represents and warrants that it has fully read and understands the terms of this Agreement, including all incorporated documents.

3. Survival and Validity of Bonds. The Surety's bonds shall remain in full force and effect, and shall survive the termination of this Agreement, but shall be become null and void if the Contractor:

- i. Well and faithfully performs all and singular the obligations assumed by the Contractor in this Agreement;
- ii. Promptly pays all wages of laborers, workmen, and mechanics to be employed by the Contractor for all work done or labor performed by the Contractor or by any subcontractors; or furnished to subcontractors, and used in the construction, erection, alteration, performance, or repairs of the work required by the Agreement;
- iii. Promptly pays for all materials or supplies furnished to the Contractor, or by any subcontractor, or to any subcontractor, and used in, or for use in machines used in, the construction, erection, alteration, performance, or repair of the work required by the Agreement;

- iv. Fully secures and protects the City, its legal successors and representatives, from all loss or expense of any kind, including premises, including all costs of Court and attorneys' fees, made necessary or arising from the failure, refusal, or neglect of the Contractor to comply with all of the obligations assumed by it; and
- v. Promptly delivers all the work required by the Agreement to the City, free from any and all claims, liens, and expenses. The obligations of the Surety will not be affected in any way by any modifications, omissions, or additions in or to the terms of this Agreement, the plans or specifications, or in the manner and mode of payment.

4. The Contractor's Surety shall obligate itself to all terms and covenants of the Agreement covering the services to be performed thereunder. The City reserves the right to order additional services or to make changes by altering, adding to, or deducting from the services requested under the conditions and in the manner herein described without notice to the Contractor's Surety and without in any manner affecting the liability of the bondsman or releasing it from any of its obligations thereunder.

5. The Surety of the Contractor shall be and does hereby declare and acknowledge itself by acceptance to be bound to the City as guarantor jointly and in solido with the Contractor for fulfillment of the foregoing, including but not limited to any provisions for actual or liquidated damages.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

A. The Contractor represents and warrants to the City that:

- 1. The Contractor, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;
- 2. The Contractor has and will maintain the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;
- 3. The Contractor is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Contractor, its employees, or its subcontractors in the performance of this Agreement;
- 4. The Contractor is not under any obligation to any other person that is inconsistent or in conflict with this Agreement, or that could prevent, limit, or impair the Contractor's performance of this Agreement;
- 5. The Contractor has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;
- 6. The Contractor is not in breach of any federal, state, or local statute, regulation, or code applicable to the Contractor or its operations;

7. The Contractor has read and fully understands this Agreement, and is executing this Agreement willingly and voluntarily; and

8. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of execution of this Agreement by the Contractor, and the execution of this Agreement by the Contractor's representative constitutes a sworn statement, under penalty of perjury, by the Contractor as to the truth of the foregoing representations and warranties.

B. Convicted Felon Statement. The Contractor complies with City Code Section 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

C. Non-Solicitation Statement. The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

D. Employee Verification. The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination and may further result in the Contractor being ineligible for any public contract for a period of three years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City an affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

E. The Contractor acknowledges that the City is relying on these representations and warranties and Contractor's expertise, skill, and knowledge and that the Contractor's obligations and liabilities will not be diminished by reason of any approval by the City.

ARTICLE III - THE CITY'S OBLIGATIONS

A. Administration. In addition to the obligations outlined in the RFP, the City will:

1. Administer this Agreement through the City's Department of Sanitation (the "Department");

2. Provide the Contractor any documents mutually identified as reasonable and necessary for the Contractor's performance of any work required under this Agreement; and

3. Provide reasonable access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor.

B. Payment. The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

1. The City's obligation to pay is contingent upon the Contractor's: (a) submission of complete and accurate invoices; and (b) satisfactory performance of the services and conditions required by this Agreement;

2. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;

3. The City may set-off any amounts due to the Contractor with any amounts deemed by the City to be owed to the City by the Contractor pursuant this Agreement; and

4. All compensation owed to the Contractor under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.

5. The City is not obligated, under any circumstances, to pay for any work performed or costs incurred by the Contractor that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to any unauthorized change order within the scope of the Agreement; are for services performed on days on which services were suspended due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.

6. If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

7. Unless otherwise agreed by the City, payment terms are NET 30 days upon providing the goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City's supplier portal.

ARTICLE IV - COMPENSATION

A. Rate of Compensation.

1. The City will pay the Contractor in accordance with the "Cost(s)" set forth in the Contractor's Cost Proposal dated August 11, 2023, except as otherwise provided for in this Article and subject to the terms, adjustments, and limitations contained in Section 9 – *Liquidated Damages* of Attachment "A" to the RFP, Section 13 – *Eligible Locations/Service Locations* of Attachment "A" to the RFP, and Section 15 – *Service Fees* of Attachment "A" to the RFP.

Service	Frequency	Disposal Location	Cost
Curbside Solid Waste Collection (Solid Waste, Bulky Waste, White Goods, E-Waste, Waste Tires, Dead Animals, Christmas Trees)	Once Weekly	River Birch Landfill	\$17.87 Per Eligible Location /Month
Curbside Solid Waste Collection (Solid Waste, Bulky Waste, White Goods, E-Waste, Waste Tires, Dead Animals, Christmas Trees)	Twice Weekly	River Birch Landfill	\$23.93 Per Eligible Location /Month
Curbside Recyclable Materials Collection (Including Collection, Transport, Processing, and Marketing)	Once Weekly	Contractor Provided MRF	\$5.10 Per Eligible Location/Month
Curbside Recyclable Materials Collection (Including Collection, and Transport). City Responsible for Processing and Marketing.	Once Weekly	City Provided MRF	\$3.57 Per Eligible Location/Month
Supplemental Vehicle: Garbage Truck (Automated) (1 operator and 1 laborer)	City Designated	City Designated	\$250.00 Per Hour
Supplemental Vehicle: Garbage Truck (Semi-Automated) (1 operator and 2 laborers)	City Designated	City Designated	\$320.00 Per Hour
Supplemental Vehicle: Boom Truck (1 operator and 1 laborer)	City Designated	City Designated	\$250.00 Per Hour
Supplemental Vehicle: Stake Body Truck (1 operator and 1 laborer)	City Designated	City Designated	\$250.00 Per Hour
Emergency Collection	City Designated	City Designated	\$250.00 Per Ton

2. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

3. The stated compensation is inclusive, and includes no additional amounts for, the Contractor's costs, including, without limitation, all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, records retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The City will not consider or be obligated to pay or reimburse

the Contractor any other charges or fees, and the Contractor will not be entitled to any additional compensation or reimbursement, except as otherwise specifically provided in the Agreement.

4. During the term of this Agreement, there will be no adjustment in the service fees due to increases or decreases in disposal quantities, recycling quantities, labor rates, fuel costs, transportation costs, changes in laws, rules, regulations, or ordinances or for any other reason except as provided by the Consumer Price Index ("CPI") adjusted annually by the City. Service fees for curbside Solid Waste and Recyclable Materials collections payable to Contractor shall be adjusted annually to reflect changes in the cost of doing business, as measured by fluctuation in the Consumer Price Index for All URBAN Consumers (CPI-U): U. S. City Average, Garbage and Trash Collections Expenditure Category, as published by the U. S. Department of Labor, Bureau of Labor Statistics. The first adjustment shall become effective in the first full month following the anniversary date of the Effective Date of this Agreement, using the CPI-U figures provided for the preceding year, and thereafter on an annual basis. For each adjustment, the service fees of Contractor shall be increased by a percentage amount equal to the net percentage change in the CPI-U. In no instance shall the service fees of the Contractor be decreased. Subsequent years of this Agreement shall be adjusted annually based upon the net percentage change for the preceding year. Contractor shall submit its annual price change in writing to the Director of Sanitation within thirty (30) days of this Agreement anniversary date. Contractor shall provide fully calculated adjustments for service fees available through this sub-section, including any updated cost table in the same form as the table in this sub-section. Proof of the validity of the request for service fee adjustment shall be the responsibility of the Contractor to, at a minimum, provide certified documentation including the CPI-U report for the correct period.

B. Maximum Amount. The maximum aggregate amount payable by the City under this Agreement is \$166,320,471.

C. Pending Cart Requests. As per Section 2.9 of Attachment "A" to the RFP - *Purchase, Distribution, Replacement of Curbside Solid Waste Collection Carts*, reasonably promptly following the Effective Date of the Agreement, the City will provide Contractor with a list of all pending cart requests from the previous contract. Upon the Contractor's fulfillment of the pending cart requests, the Contractor will submit invoices to the City in accordance with the terms and conditions of the Agreement. The Parties acknowledge and agree that the Contractor will procure and then deliver the new carts to each address while removing and disposing of any and all damaged cart(s) for the cost not to exceed: **\$105 per cart/address**.

D. Cost Recovery. In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations."

ARTICLE V - DURATION AND TERMINATION

A. Duration/Term. The services to be provided under the terms of this Contract shall begin upon execution of Contract and shall end no later than seven (7) years after. It is understood and acknowledged by all signers to this Contract that work described under these terms is to be accomplished during the time period specified herein.

B. Extension. This Agreement may be extended at the option of the City, provided that funds are allocated by the City Council and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the City for zero (0) additional one-year terms.

C. Termination for Convenience.

1. During the first three (3) years of this Agreement, the City may terminate this Agreement at any time by giving the Contractor at least sixty (60) days' written notice before the date of termination, provided, however, that in the event of a termination for convenience, the City shall pay to the Contractor the then straight line depreciated value of the vehicles and equipment, which are solely dedicated to performance of the Contractor's obligations under this Agreement. All carts purchased by the Contractor at the City's direction in fulfillment of Article IV Section C above will be paid for by the City to the Contractor at the actual costs as shown by receipted bills and actual cost records at such points of delivery as designated. In no event will the City be liable for, or responsible for paying the Contractor for: any destroyed, stolen, or damaged vehicles, equipment, or carts; unliquidated advance or other payments to third parties under this Agreement; any payments, costs, fees, expenses, or other charges not supported by bills and actual cost records; or any vehicles, equipment, or carts that are sold or retained by the Contractor. In addition, the City will deduct from any termination payment any liquidated claim the City has against the Contractor under this Agreement, provided, however the Contractor shall be entitled to contest, in good faith, the accuracy and validity of any such deduction, for which the Contractor does hereby reserve its rights. The City shall make said payment to the Contractor Net 30 upon receipt of Contractor's invoice itemizing all such charges (all of the foregoing referred to herein as the "City's Termination For Convenience Payment Obligation").

2. After the first three (3) years of this Agreement, the City may terminate this Agreement at any time by giving the Contractor at least thirty (30) days' written notice before the date of termination at no additional cost to the City.

D. Termination for Non-Appropriation. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice; and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

E. Termination for Cause. The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes, without limitation, any failure to perform any obligation, abide by any condition of this Agreement, or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code Section 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging Party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date the original written notice of termination for cause was sent to the challenging Party; no further notice required, provided however, that the City shall pay the City's Termination For Convenience Payment Obligation under Article V Section (C) shall apply.

F. Suspension. Notwithstanding the article on Force Majeure, the City may suspend this Agreement for cause at any time and for any reason by giving 2 business days' written notice to

the Contractor. The Contractor will resume work upon 5 business days' written notice from the City.

ARTICLE VI – DECLARED DISASTER

A. Declaration. During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of services. Said services may need to be rendered on a continual basis (24 hours per day/7 days per week) during the declaration of an emergency.

B. Task Order. Notification and Personnel. Prior to or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

C. Purchase Order. Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional need for services, or may issue a modified purchase order if changes are made to the initial purchase order.

D. Timely Documentation. The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

ARTICLE VII - PERFORMANCE MEASURES

A. Factors. The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. Failure to Perform. If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting Contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting Contractor.

ARTICLE VIII – LIVING WAGES

A. Definitions. Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

B. Compliance. To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code (“**Living Wage**”);
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

C. Living Wage. In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. \$13.25 per hour for any work performed on or before December 31, 2022;
2. \$15.00 per hour for any work performed on or before December 31, 2023;
- and
3. \$15.00 per hour plus any adjustment provided in subsection D below for any work performed during calendar year 2024 or thereafter.

D. Adjusted Living Wage. In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024 using the Consumer Price Index figures provided for the preceding year, and thereafter on an annual basis.

E. Subcontract Requirements. As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“**Article**”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

F. Reporting. On or before January 31st and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development
Living Wage - Compliance
1340 Poydras Street – Suite 1800
New Orleans, Louisiana 70112

G. Compliance Monitoring. Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor

will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. Remedies. If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

ARTICLE IX - DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM

A. In General. The Contractor agrees to abide by the City Code Sections 70-456, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("**OSD**") oversees the DBE Program and assigns a DBE Compliance Officer ("**DBECO**") to ensure compliance.

B. Monitoring. To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Contractor's use of DBE subcontractors/suppliers ("**DBE Entities**") through the following actions:

1. Job site visits;
2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
3. Routine audits of contract payments to all subcontractors;
4. Reviewing of records and reports; and/or
5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Contractor or DBE Entities.

C. Cooperation. The Contractor shall:

1. Designate an individual as the "DBE Liaison" who will monitor the Contractor's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - a. The Contractor shall provide the DBECO with copies of said contracts within 30 days from the date this Agreement is fully executed between the City and the Contractor.

- b. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
- 3. Establish and maintain the following records for review upon request by the OSD:
 - a. Copies of written contracts with DBE Entities and purchase orders;
 - b. Documentation of payments and other transactions with DBE Entities;
 - c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;
 - d. Any other records required by the OSD.
 - e. The Contractor is required to maintain such records for 3 years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.
- 4. Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.
 - a. The Contractor shall submit the initial report outlining DBE participation within 30 days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.
 - b. Reports are required even when no activity has occurred in a monthly period.
 - c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
 - d. The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee, and amount of transfer to verify payment information as indicated on the form.
- 5. Conform to the established percentage as approved by the OSD.
 - a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
 - b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
 - c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

D. Post-Award Modification. The OSD may grant a post-award modification request if:

- a. For a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or
- b. The Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

ARTICLE X - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state, and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. Incorporation into Subcontracts. The Contractor will incorporate the terms and

conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

D. Termination for Breach. The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE XI - INDEPENDENT CONTRACTOR

A. Independent Contractor Status. The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors, or agents to be an employee, partner, or agent of the City.

B. Exclusion of Worker's Compensation Coverage. The City will not be liable to the Contractor, as an independent contractor as defined in La. R.S. 23:1021(7), for any benefits or coverage as provided by the Worker's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Contractor will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Contractor, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(12)(E), and neither the Contractor nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage is being hereby expressly waived and excluded by the parties, because: (a) the Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and (c) the Contractor has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. Waiver of Benefits. The Contractor, as an independent contractor, will not receive from the City any sick or annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE XII – FORCE MAJEURE

A. Event. An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended.

C. Effect.

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:

- a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
- b. Terminate this Agreement, either immediately or after one or more periods of suspension for Cause, effective on notice to the Contractor and without any further compensation due, provided, however that nothing contained in this Section shall limit the City's ability to Terminate for Convenience or Cause, or limit any other rights or obligations belonging to the Parties, including, but not limited to those set forth above in Article V Section (C) and Article V Section (E).

2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE XIII - NOTICE

A. In General. Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested, as follows:

1. To the City:

Matt Torri, Director, Department of Sanitation
City of New Orleans
1300 Perdido Street, Suite 1W30
New Orleans, LA 70112

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

2. To the Contractor:

Sidney D. Torres, IV, President
IV Waste, LLC
730 South Pierce Street
New Orleans, LA 70119

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. Notification of Change. Each Party is responsible for notifying the other in writing, that references this Agreement, of any changes in its address(es) set forth above.

ARTICLE XIV - ADDITIONAL PROVISIONS

A. Amendment. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. Assignment.

1. Neither a Contractor nor subcontractor may assign or transfer its rights, duties, or obligations under this Agreement without the prior written consent of the City, which consent must be approved by a resolution of the City Council.

2. A transfer requiring the prior written consent of the City, as described in the preceding subsection, shall occur upon a change in ownership of the Contractor or subcontractor. A "change in ownership" shall occur on the date that any one person, or more than one person acting as a group, acquires, directly or indirectly, an aggregate ownership interest in the Contractor or subcontractor that exceeds 50% of the fair market value of the Contractor or subcontractor or 50% of the total voting power of the Contractor or subcontractor. The foregoing shall not apply to the acquisition of additional ownership interests by a person whose ownership interest in the Contractor or subcontractor exceeds 50% of the fair market value of the Contractor or subcontractor or 50% of the total voting power of the contractor or subcontractor as of the effective date of the Agreement.

3. The intent of this Section is for there to be City Council approval of any alienation of the *ownership interest* in the Contractor's business (or 50% of the total voting power). The reference to "fair market value" does not relate to the Contractor's assets and/or interest in non-City contracts.

C. Choice of Law. This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

D. Compliance with City's Hiring Requirements – Ban the Box. The Contractor agrees

to adhere to the City's hiring requirements contained in City Code Section 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirement is necessary. Failure to maintain compliance with the City's hiring requirements through the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow the Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to the Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and remaining provisions of the Agreement will remain in full force and effect. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all sub-contractors to comply with those provisions.

E. Conflicting Interests. To ensure that the Contractor's efforts do not conflict with the City's interests, and in recognition of the Contractor's obligations to the City, subject to the exception below, the Contractor agrees, represents, and warrants that it will not utilize its vehicles, equipment and personnel which are solely dedicated to performance of the Contractor's obligations under this Agreement to fulfill any offer of other employment, and Contractor acknowledges that a breach of this representation and warranty would materially undermine the Contractor's assurances regarding dedicated contract personnel, equipment types, and equipment quantities as set forth in the RFP. Notwithstanding the foregoing, it is agreed that Contractor may, in limited circumstances, occasionally utilize its vehicles, equipment and personnel which are solely dedicated to performance of the Contractor's obligations under this Agreement for other employment in the event a truck breaks down or personnel are unavailable to service other employment, provided that such utilization is limited in time and scope and does not materially affect Contractor's performance under this Agreement; and Contractor may occasionally utilize its vehicles, equipment and personnel which are solely dedicated to performance of the Contractor's obligations under other employment agreements, in fulfillment of Contractor's obligations under this Agreement, in the event a truck breaks down or personnel are unavailable to provide service in fulfillment of Contractor's obligations under this Agreement, provided that such utilization is limited in time and scope and does not materially affect Contractor's performance under this Agreement.

F. Construction of Agreement. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

G. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

H. Exhibits. The following exhibits will be attached separately and are fully incorporated into this Agreement:

1. RFP – Exhibit “A”
2. Technical Proposal – Exhibit “B”
3. Cost Proposal – Exhibit “C”
4. Power of Attorney – Exhibit “D”

I. Jurisdiction. The Contractor consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Contractor.

J. Limitations of the City’s Obligations. The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

K. No Third-Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

L. Non-Exclusivity. This Agreement is non-exclusive, and the Contractor may provide services to other clients, subject to the Contractor’s representation and warranty of no conflicting interests with the performance of this Agreement as set forth in Section E above and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

M. Non-Waiver. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party’s right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

N. Order of Documents. In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; the RFP - Exhibit “A”; Technical Proposal - Exhibit “B”; Cost Proposal - Exhibit “C”; and Power of Attorney – Exhibit “D”.

O. Ownership Interest Disclosure. The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an “ownership interest” shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after 30 days’ written notice to the Contractor, take such action as may be necessary

to cause the suspension of any further payments until such the required affidavits are submitted.

P. Ownership of Records. Upon final payment, all data collected and all products of work prepared, created or modified by Contractor in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding the Contractor's personnel and administrative records and any tools, systems, and information used by the Contractor to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Contractor's consent and for no additional consideration to the Contractor.

Q. Prohibition of Financial Interest in Agreement. No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

R. Prohibition on Political Activity. None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

S. Remedies Cumulative. No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

T. Severability. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

U. Subcontractor Reporting. The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within 30 days of retaining that

subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

V. Survival of Certain Provisions. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

W. Terms Binding. The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

ARTICLE XV – COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

ARTICLE XVI - ELECTRONIC SIGNATURE AND DELIVERY

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached (including documents attached separately) to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a Party until such Party has delivered or caused to be delivered a manually signed copy of this Agreement.

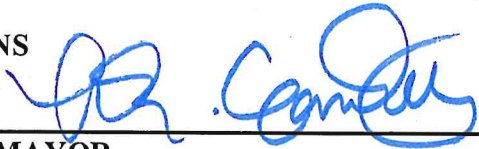
[SIGNATURES CONTAINED ON NEXT PAGE]

**[EXHIBITS ATTACHED SEPARATELY BECAUSE THE EXHIBITS ARE TOO
VOLUMINOUS. EXHIBITS SHALL HAVE THE SAME EFFECT AS IF THEY
WERE ATTACHED HERETO]**

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

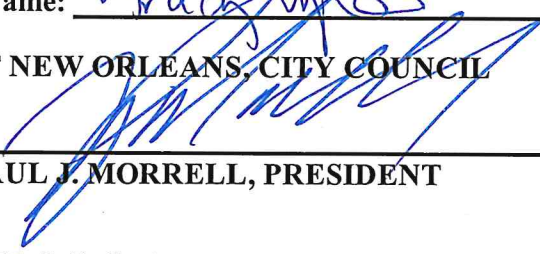
BY: 
LATOYA CANTRELL, MAYOR

Executed on this 29th of January, 2023⁴

FORM AND LEGALITY APPROVED:
Law Department

By: 
Printed Name: Tracy Taylor

CITY OF NEW ORLEANS, CITY COUNCIL

BY: 
JEAN PAUL J. MORRELL, PRESIDENT

IV WASTE, L.L.C.

BY: _____
SIDNEY D. TORRES IV, PRESIDENT

TAX I.D.

PHILADELPHIA INDEMNITY INSURANCE COMPANY

BY: _____

PRINT NAME: _____

PRINT TITLE: _____

[EXHIBIT(S) "A-D" ATTACHED SEPARATELY]

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: _____
LATOYA CANTRELL, MAYOR

Executed on this _____ of _____, 2023.

FORM AND LEGALITY APPROVED:
Law Department

By: _____

Printed Name: _____

CITY OF NEW ORLEANS, CITY COUNCIL

BY: _____
JEAN PAUL J. MORRELL, PRESIDENT

IV WASTE, L.L.C.

BY: _____
SIDNEY D. TORRES IV, PRESIDENT

TAX I.D. _____

PHILADELPHIA INDEMNITY INSURANCE COMPANY

BY: _____

PRINT NAME: Mary Catherine Turner

PRINT TITLE: Attorney-in-Fact

[EXHIBIT(S) "A-D" ATTACHED SEPARATELY]

Annually Renewable Performance Bond

Bond Number: PB12142801139

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That we, IV Waste, LLC.,
(hereinafter called the Principal), as Principal, and Philadelphia Indemnity Insurance Company, duly organized under the
laws of the State of PA, (hereinafter called the Surety), as Surety, are held and firmly bound unto
City of New Orleans, (hereinafter called the Oblige), in the
sum of *** (\$) Dollars, for the payment of which sum well and truly to be made, we, the said
Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns.
*** Seventeen Million Seven Hundred Fifty-Two Thousand Three Hundred Nineteen And No/100 (\$17,752,319.00)
WHEREAS, said Principal has entered into a written Contract with said Oblige, dated , for
RFP No. 3185, Curbside Collection - Area 1, in accordance with the terms and conditions of said Contract,
which is hereby referred to and made a part hereof as if fully set forth herein:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bounden Principal
shall well and truly keep, do and perform each and every, all and singular, the matters and things in said contract set
forth and specified to be by said Principal kept, done and performed, at the times and in the manner in said contract
specified, or shall pay over, make good and reimburse to the above named Oblige, all loss and damage which said
Oblige may sustain by reason of failure or default on the part of said Principal so to do, then this obligation shall be
null and void; otherwise shall remain in full force and effect.

FURTHERMORE, Notwithstanding the provisions of the Contract, the term of this bond shall apply from
April 1, 20 24, until March 31, 20 25, and may be extended by the Surety by
Continuation Certificate. However, neither non-renewal by the Surety, nor the failure or inability of the Principal to
file a replacement bond in the event of non-renewal, shall itself constitute a loss to the obligee recoverable under this
bond or any renewal or continuation thereof. The liability of the Surety under this bond and all continuation certificates
issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this bond
or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto. In no event shall
Surety's aggregate liability exceed the penal sum of this bond.

NO SUIT, ACTION OR PROCEEDING by the Oblige to recover on this bond shall be sustained unless the same be
commenced within two (2) years following the date on which Principal ceased work on said Contract.

Signed and sealed this day of ,

IV Waste, LLC.

(fill in Principal's name)

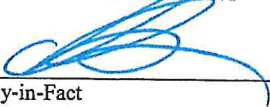
Principal

By: 

Philadelphia Indemnity Insurance Company

NAME OF SURETY COMPANY

Surety

By: 

Attorney-in-Fact

Mary Catherine Turner

PHILADELPHIA INDEMNITY INSURANCE COMPANY

One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint Garrett Turner, Mary Catherine Turner, Meghann Catherine Turner & Ronald T. Turner of Surety Bond Brokers of LA, Inc., its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$100,000,000.00

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14th of November, 2016.

RESOLVED:

That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

FURTHER
RESOLVED:

That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 5TH DAY OF MARCH, 2021.

(Seal)



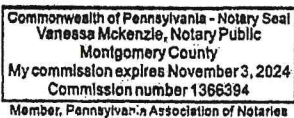
John Glomb

John Glomb, President & CEO
Philadelphia Indemnity Insurance Company

On this 5th day of March, 2021 before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.

Notary Public:

Vanessa McKenzie



residing at:

Bala Cynwyd, PA

My commission expires:

November 3, 2024

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 5th day March, 2021 are true and correct and are still in full force and effect. I do further certify that John Glomb, who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this _____ day of _____, _____



Edward Sayago

Edward Sayago, Corporate Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY