

**From:** Edward Rapier <erapier@kenner.la.us>  
**Sent:** Thu, 06 Feb 2020 10:02:50 -0600  
**To:** "ebeck@torres-law.com" <ebeck@torres-law.com>  
**CC:** Ben Zahn <bzahn@kenner.la.us>, Deborah Foshee <dfoshee@kenner.la.us>, Leigh Roussel <lroussel@kenner.la.us>, Nick Nicolosi <nicolosi626@gmail.com>, Eric Mund <emund@kenner.la.us>  
**Subject:** Proposed contract  
**Attachments:**  
· Solid Waste Collection Contract version 1 dated 02062020.docx (173 kb)

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Erica:

Attached is a draft of the proposed contract. This is not written in stone and is subject to change, as it has not been reviewed by all parties here in Kenner, but this lets you get started on your review. I still have to check internal references.

Let me know if you have any questions.

**Edward S. Rapier, Jr.**

City Attorney

City of Kenner

Office of the City Attorney

1801 Williams Blvd., Bldg. C, 3<sup>rd</sup> Floor

Kenner, Louisiana 70062

Telephone: 504-468-4080

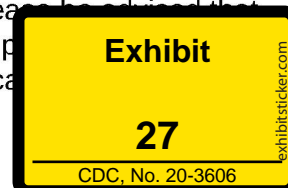
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CITY OF KENNER  
PUBLIC INFORMATION NOTICE

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immediately notify the City of Kenner by e-mail at [internalaudit@kenner.la.us](mailto:internalaudit@kenner.la.us) and delete this e-mail. If this communication was printed, please destroy all printed copies. Please be aware this e-mail and any replies to it may be PUBLIC RECORDS subject to disclosure. Thank you for your cooperation in this matter.

**CONTRACT**  
**BY AND BETWEEN**  
**CITY OF KENNER**  
**AND**  
**IV Waste, LLC.**

**BE IT KNOWN AND REMEMBERED** that this Contract is made and entered into by and between **City of Kenner** (hereinafter referred to as "City" or "Kenner"), a local governmental subdivision of the State of Louisiana, represented herein by E. Ben Zahn, III, Mayor, acting pursuant to authorization granted by the Charter of the City of Kenner and City of Kenner Ordinance No. \_\_\_\_\_, and **IV Waste, LLC.** (hereinafter referred to as "Contractor"), a limited liability company organized under the laws of the State of Louisiana, represented herein by \_\_\_\_\_, \_\_\_\_\_, duly authorized to act pursuant to a \_\_\_\_\_, to-wit:

**WITNESSETH**

**WHEREAS**, City is a local governmental subdivision of the State of Louisiana chartered pursuant to Article XIV, Section 40 of the Constitution of the State of Louisiana of 1920; and,

**WHEREAS**, Article VI, Section 4 of the Constitution of the State of Louisiana of 1974 provides that every home rule charter or plan of government existing or adopted when this constitution is adopted shall remain in effect, and that except as inconsistent with this constitution, each local governmental subdivision which has adopted such a home rule charter or plan of government shall retain the powers, functions, and duties in effect when this constitution is adopted; and,

**WHEREAS**, Section 1.04 of the Charter of the City of Kenner provides that City possesses, expressly or impliedly, all right, power and authority to adopt and enforce local police, sanitary and similar regulations, and to do and perform all other acts pertaining to its local affairs, property and government, which are necessary, proper or desirable in the legitimate exercise of its corporate powers and municipal functions in promoting the general welfare of its inhabitants; and,

**WHEREAS**, pursuant to said powers and in accordance with La. R.S. 33:4169.1(A)(3), City desires to enter into a time contract with Contractor for the collection and transportation of garbage or trash within the corporate limits of City for a period of ten (10) years; and,

**WHEREAS**, City and Contractor also desire to establish the terms for certain supplementary services that City may obtain from Contractor through the issuance of a written notice to proceed to Contractor, including: the collection, processing, and marketing of Recyclable Materials within the corporate limits of the City as well as the

operation of a Drop-off Site; and,

**WHEREAS**, the Council of the City of Kenner, acting as the governing authority of City, adopted Ordinance No. \_\_\_\_\_, which approved this Contract.

**NOW, THEREFORE**, in and for consideration of the foregoing, and the mutual covenants and agreements herein contained, City and Contractor hereby agree as follows:

**SECTION 1 – DEFINED TERMS**

*Bag*: Plastic sack designed to store Garbage, Yard Waste, or other Refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a bag and its contents shall not exceed thirty-five (35) pounds.

*Bulk Waste*: Large items of refuse including Yard Waste, furniture, automobile parts, Passenger Tires, toys, Construction Debris, and other material with weights or volumes greater than those accommodated by Roll-out Containers. Bulk Waste does not include debris resulting from all contractors such as roofing, tree service, new home construction, home repair and remodeling, demolition, vacant land or land clearing.

*City*: City of Kenner, Louisiana.

*Collection*: The Curbside collection of Solid Waste and/or Recyclable Materials from Residential Units and Small Business Unit.

*Collection Routes*: Areas of collection within City. Each Collection Route has a specified day of the week upon which the Contractor is allowed material pick-up within the boundaries of the route.

*Commercial Refuse*: All refuse generated by an occupant of a Small Business Unit.

*Commingled Recyclable Materials*: multiple unsorted Recyclable Materials.

*Commodity*: Material that can be sold in a spot or future market for processing and use or re-use. Each commodity shall retain its own identity and be kept separate and be treated separately for purposes of this Contract.

*Commodity Buyer*: A buyer or processor of Recyclable Materials as selected by Contractor pursuant to this Contract.

*Construction Debris*: Waste building materials resulting from construction, remodeling, repair, and demolition, including concrete, wood, sheetrock, metal, carpet, pipe, flooring, roofing materials, and discarded furnishings. Construction Debris shall not include the above materials that are: (1) placed Curbside by a residential or commercial

construction contractor; (2) generated from new construction or the demolition of a residence or residential establishment or a portion thereof, wherein such work requires a building permit; or (3) result from construction work on any commercial establishment.

*Container:* A roll-off box, compactor, dumpster, above-ground storage tank or 55-gallon drum used for disposal of Solid Waste, Tires, or Recyclable Materials.

*Contract Documents:* This Contract, including any referenced Exhibits; Performance Bond(s); Affidavits; and any Amendments to the foregoing documents as agreed to in writing and duly signed by City and Contractor.

*Contractor:* IV Waste, LLC.

*Council:* The Council of the City of Kenner, the governing authority of the City of Kenner.

*Curbside:* Area between the property line and the curb or ditch as may be the case.

*Disposal Site:* A Solid Waste depository properly licensed and permitted by all applicable regulatory agencies, including the Louisiana Department of Environmental Quality, to accept waste.

*Disabled Person:* An occupant of a Residential Unit who is disabled to the extent that he or she is incapable of placing Solid Waste contained in the Contractor-issued Roll-out Cart and/or Recyclable Materials contained in the Contractor-issued Bin, within the Designate Residential Collection Location for curbside collection by Contractor.

*Dead Animals:* Animals or portions thereof that have died from any cause, except those killed for human use. Large livestock such as horses, cattle and sheep are excluded.

*Drop-off Site:* A fixed location where Solid Waste and Recyclable Materials may be dropped off for transfer to a Disposal Site, Transfer Station or Processing Facility as specified in Section 4.B of this Contract.

*Dumpster:* A Refuse collection receptacle of not less than one (1) cubic yard in volume equipped with attachments for lifting into a refuse collection vehicle, primarily used for storage between collections by a non-residential enterprise.

*Garbage:* Any and all accumulation of waste resulting from the preparation, processing, consumption, handling, packing, canning, storage, transportation, decay, or decomposition of animal or vegetable matter, including all putrescible or easily decomposable waste, animal, or vegetable matter which is likely to attract flies and/or rodents.

*Grit Container:* A container typically emptied two or more times per week as required,

located at the City's wastewater plant. Grit Containers are suitable to hold particles or granules of sand or other small, coarse impurities remnant of wastewater processing.

*Hazardous Waste:* Any chemical, compound, mixture, substance or article which is designated by the United States Environmental Protection Agency or the appropriate agency of the State to be "hazardous" as that term is defined pursuant to Federal, State or City laws and regulations. Residential solid waste normally contains some Hazardous Wastes; however, household wastes are exempt from federal and state Hazardous Waste regulations and may be disposed of with household Solid Waste.

*Manual Recyclable Material Collection:* Curbside collection of Recyclable Materials from Service Units, employing a standard collection truck, and requiring one (1) truck driver and a minimum of one (1) laborer to manually empty contents of Bin(s) into the truck.

*Missed Collection:* The failure of the Contractor to provide Solid Waste or Recyclable Materials Collection service within the Collection Route during the collection hours on the day scheduled for said Collection.

*Monthly Reports:* Those reports that Contractor is required to generate on a monthly basis in accordance with the terms of this Contract. Monthly reports shall be submitted within ten (10) days following the end of each month.

*Motor Vehicle:* An automobile, motorcycle, truck, trailer, motor home, or tractor, in combination, or any other vehicle operated on the roads of the City used to transport persons or property, and propelled by gasoline, diesel, or electrical power. Bicycles and mopeds are excluded.

*Passenger Tire:* Any tire designed for use on an automobile, motorcycle, or utility truck or service vehicle with an average weight per unit of forty (40) pounds or less.

*Process(ing):* A method or technique, including recycling, recovering, compacting (but not including compacting which occurs solely within a transportation vehicle), composting, incinerating, shredding, bailing, recovering resources, pyrolyzing, or any other method or technique designed to change the physical, chemical, or biological character or composition of a solid waste to render it safer for transport; or a method to reduce it in volume; or a method which renders amenable for recovery, storage, reshipment or resale.

*Processing Facility:* The facility where Recyclable Materials are stored, processed and shipped by Contractor or its subcontractors to end markets where they will be further used or reused; also referred to as a Materials Recovery Facility ("MRF").

*Recyclable Materials:* Raw or processed material that can be recovered from a waste stream for further use or reuse, including but not limited to: paper products, including

newspapers, magazines, catalogues, phone books and cardboard; metal food and beverage cans/containers; plastics and other Commodities as more specifically defined in Section 4.A.4 of this Contract.

*Recycling:* The process of extracting useful and reusable Recyclable Materials from waste materials, and placing those Recyclable Materials in a production process to reuse them to reduce the use of raw or virgin materials.

*Recycling Cart:* A quality receptacle constructed of plastic, metal or fiberglass with a capacity of thirty-six (36) gallons and having a tight fitting lid capable of preventing entrance into the container by vectors with a minimum 10-year warranty for use under normal.

*Refuse:* Includes Garbage, Rubbish, ashes, animal and vegetable waste from animal quarters, and all other waste matter, except sewage, from any public or private establishment, institution, or residence.

*Regulatory Changes:* Changes in laws or regulations including enactment of new laws or regulations and permit changes affecting the Contractor or Disposal Site which occur on or after the date of this Contract; and changes in the enforcement or interpretation of present or future laws or regulations including permits affecting the disposal facility which occur on or after the date of this Contract.

*Residential Refuse:* All refuse generated by an occupant of a Residential Unit.

*Residential Units:* Single family and multi-family residential dwelling structures or household units in which active water service is supplied thereto and a minimal fee is being charged.

*Residual:* Material not suitable for recycling that is remaining after Recyclable Materials are processed for market.

*Roll-out Cart:* A quality receptacle constructed of plastic, metal or fiberglass with a capacity of not less than 90 or more than 96 gallons and having a tight fitting lid capable of preventing entrance into the container by vectors with a minimum 10-year warranty for use under normal conditions.

*Rubbish:* Residential and Commercial Garbage, Trash, Litter, Yard Waste and Construction Debris generated at a Residential Unit or Small Business Unit.

*Scrap Metal:* A recycling industry term for discarded metal suitable for recycling, such as parts of vehicles and building supplies.

*Side Door Service:* The movement by Contractor of Roll-out Cart(s) and Bin(s) from the side of the Residential Unit to the curb for Solid Waste and/or Recyclable Materials

collection, and the return by Contractor of said Roll-out Cart(s) and Bin(s) to the side of the Residential Unit.

*Semi-Automated Curbside Collection:* Curbside collection of Solid Waste from Residential Units and Small Business Units utilizing a semi-automated equipped vehicle. Employs a standard or specialized collection truck specially fitted with a hydraulic tilt to grab, lift, and tilt standardized Roll-out Cart. The hydraulic lift is required to dump the contents of Roll-out Cart into the truck and afterwards place the Roll-out Cart back on the ground. A laborer is required to manually retrieve the Roll-out Cart and place them at the truck to attach them to the tilting mechanism. Once the Roll-out Cart is emptied into the truck, the laborer is then required to place the Roll-out Cart back in its original position.

*Service Unit:* A Residential Unit or Small Business Unit for which Solid Waste and Recyclable Materials Collection is provided by Contractor pursuant to this Contract.

*Service/Work:* The service or work to be performed by Contractor under the terms of this Contract.

*Small Business Units:* Businesses which do not have Dumpsters or compactors and participate in City's program for Curbside Collection (on the normal days of collection) of Solid Waste and Recyclable Materials collection, using Contractor-issued Roll-out Cart(s) or typical residential containers or bags and/or Contractor issued Bin(s). This category does not include businesses serviced by a private Solid Waste collector. Includes occupied and unoccupied units, but does not include vacant lots.

*Solid Waste:* Any useless, unwanted or discarded solid material with insufficient liquid content to be free-flowing, that results from domestic, industrial, commercial, agricultural, governmental or community operations which require proper storage, collection, transportation, and disposal to prevent environmental pollution inimical to public health, safety and welfare. Solid waste does not include abandoned or junked vehicles, sewage, sewage treatment residue, earth or material used to fill land in accordance with construction codes, mining residue, slag, and dissolved or suspended solids in industrial wastewater effluents which are not acceptable for disposal in regular sewage treatment systems. Solid waste does not include potentially infectious biomedical or hazardous wastes from commercial establishments.

*State:* State of Louisiana.

*Tire:* A continuous or pneumatic rubber covering encircling the wheel of a motor vehicle.

*Transfer Station:* A facility designed for the temporary storage of Solid Waste or Recyclable Materials, as the case may be, which is fully permitted by the State of Louisiana Department of Environmental Quality.



*Truck Tire:* Any tire designated for use on heavy-duty trucks or related equipment including but not limited to trailers, semi-trailers, truck-tractors and semi-trailer combinations, or other service vehicle with an average weight of 40 to 250 lbs.

*Tire Processing:* Any method that alters the whole waste Tires so that they are no longer whole, such as cutting, slicing, chopping, shredding and producing a tire fragment no larger than fifty percent (50%) of the original dimensions of the tire.

*Tire Recycling:* Any process by which whole waste Tires, processed Tires or residuals are reused or returned to beneficial use in the form of products, raw materials or as fuel source.

*Uncontainerized Bulky Waste:* Large or heavy waste as defined in Bulky Waste that have not been deposited in a container for curbside collection including limited sizes, weights or amounts of the following: large tree limbs and wood waste neatly stacked or tied with diameter less than two (2) feet and cut to lengths no greater than 75 pounds; Construction Debris, tree trunks not exceeding 75 pounds.

*Waste Receptacle:* A container provided by resident or business owners which may range in capacity from 20 to 35 gallons.

*Waste Tire Collection:* Removing waste tires from where they have been placed and transporting those same tires to the designated processing/disposal site. Small Business Units engaged in the retail of passenger and/or truck tires are excluded from Waste Tire Collection.

*White Goods:* Inoperative and discarded refrigerators, ranges, water heaters, freezers, washers or any other similar large domestic appliances.

*Yard Waste:* All waste wood, wood products, Christmas trees, tree trimmings, grass cuttings, dead plants, weeds, leaves, dead trees or branches thereof, chips, shavings, sawdust and straw.

## **SECTION 2 – TERM**

This Contract shall commence in on the date of the initial Notice to Proceed issued by the City and shall terminate ten (10) years thereafter, pursuant to LSA R.S. 33:4169.1 *et seq.*

## **SECTION 3 - SCOPE OF SERVICES**

### **3.A SOLID WASTE COLLECTION**

### **3.A.1 Curbside Collection**

Contractor shall provide bi-weekly Curbside Collection of Solid Waste from Residential Units and Small Business Units within the territorial limits of City, in accordance with the pertinent provisions contained in Section 9 ½ of the Code of Ordinances of City. Contractor shall provide Residential Units and Small Business Units with Collection of containerized Solid Wastes on the first and second collection days of each week, and once weekly, on a designated collection day, Collection of Bulk Waste and Construction Debris. Additionally, Contractor shall provide Dead Animal removal, and separate seasonal collections of Christmas trees.

#### **3.A.1.1 Collection Procedure / Minimum Route Resources**

Collection shall be performed utilizing a collection truck designed to work with the Contractor-furnished Roll-out Cart. Roll-out Carts and privately provided Waste Receptacles used for overflow shall be thoroughly emptied and left at the proper point of collection. Contractors shall not litter premises in the process of making collections. Contractor shall clean up any materials spilled or blown during the course of pickup and/or hauling operations. All Solid Waste hauled by Contractor shall be so contained or enclosed that leaking, spilling or blowing is prevented. All collection vehicles shall be water-tight.

#### **3.A.1.2 Commingling of Refuse Prohibited; Exception**

Refuse collected from Service Units shall not be commingled with any other Refuse collected by Contractor. Material collected from Dumpsters and Containers furnished to City by Contractor may be commingled with private material, provided this commingling does not cause the Contractor to violate any other provision of this Contract or affect an additional cost to City. Upon request, Contractor must furnish evidence in a form acceptable to City that City bears no cost of the collection or disposal of privately collected Refuse.

### **3.A.2 Provision and Replacement of Roll-out Carts**

**Residential Units.** Contractor shall provide Resident Units with one (1) 96-gallon cart per service unit. The Residents may purchase the use of a second cart for a \$65.00 one-time fee as long as the Contractor remains the Contractor with the Parish. The cart will remain the Contractor's property at the end of the contract.

**Small Business Units.** Contractor shall provide Small Business Units with up to four (4) 96-gallon carts. Small Business Unit owners may purchase up to three additional carts at a cost of \$65.00 for each cart. The \$65.00 per additional cart fee is a one-time fee as long as the Contractor remains the Contractor with the Parish. The cart will remain the Contractor's property at the end of the contract.

All Roll-out Carts furnished after the commencement date of this Contract shall be uniform in appearance and shall be black in color.

**Stolen Carts:** If any cart or carts are stolen or vandalized, the residents will be Charge \$65.00 per replacement Cart. The cart will remain the contractor's property at the end of the contract.

### **3.A.3 Collection of Bulky Waste, Construction Debris, and Special Items**

#### **3.A.3.1 Bulky Waste and Construction Debris**

Contractor shall provide Curbside Collection of Bulky Waste and Construction Debris once per week, on a designated collection day. Uncontainerized Bulky Waste and Construction Debris shall be neatly stacked or securely tied in bundles and shall not exceed four (4) feet in length, two (2) feet in diameter, and 75 pounds in weight for each item. Curbside Collection of Bulky Waste and Construction Debris requiring Boom Truck collection shall not exceed six (6) feet in length and 400 pounds in weight. All waste concrete 6-inches by 6-inches and smaller shall be containerized. Waste concrete larger than 6-inches by 6-inches shall not weigh more than seventy-five (75) pounds.

Every effort shall be made by Contractor to pick-up the Bulky Waste and Construction Debris in one collection. Bulky Waste and Construction Debris is not limited in quantity per Residential Unit. Contractor shall make every effort to collect said waste on the once per week designated collection day. If Contractor fails to collect the Bulky Waste and Construction Debris on the once per week designated collection day and is so notified by the resident of City, Contractor shall make such collections within twenty-four (24) hours of notification, failing which liquidated damages shall be assessed as stated in Section 5.13

#### **3.A.3.2 White Goods and Passenger Tires**

Contractor shall provide Curbside Collection of White Goods and Passenger Tires for all Collection Routes at least once per week.

Contractor shall be responsible for the proper disposal or recycling of White Goods.

Contractor shall secure all permits and licenses that may be required for the Collection of Passenger Tires. Contractor shall deliver all collected Passenger Tires to a licensed tire collection center for further processing. All transportation, storage and hauling of the Passenger Tires shall be performed in a safe and efficient manner in accordance with all applicable local, state, and federal laws and regulations.

Contractor shall make every effort to collect the White Goods and Passenger Tires on

the scheduled collection day. If Contractor fails to collect White Goods and Passenger Tires on the scheduled collection day and is so notified by a Service Unit or by City, Contractor shall make such collection within twenty-four (24) hours of such notification. Contractor's failure shall result in liquidated damages being assessed as specified in Section 5.13

### **3.A.3.3 Special Collection of Christmas Trees**

The City shall designate a week in January for the special collection of Christmas trees. Only natural Christmas trees are acceptable for collection under the Christmas tree recycling program. Contractor will not collect any tree with tinsel, ornaments, flocking or stands for this program. The trees will be delivered to a site specified by City for inclusion in the Jefferson Parish Christmas Tree Recycling Program. Any trees put out for Collection outside the designated time frame or otherwise not meeting the requirements for Collection will be collected as Bulky Waste under the regular Curbside Collection requirements. There will be no additional charge to City by Contractor for participation in the program.

### **3.A.3.4 Dead Animals**

Contractor shall remove all Dead Animals as encountered or as requested by City or by residents from public roads, public rights-of-way as well as those located on public property, or Curbside. Contractor must remove such animals no later than twenty-four (24) hours, exclusive of Sundays, following receipt of the request by Contractor.

### **3.A.4 Additional Collection Services**

#### **3.A.4.1 Additional Waste Collection Services**

Contractor shall provide additional Solid Waste removal services as required by City in order to ensure efficiency of governmental operations. The special event waste Collection shall include Collection and/or removal of Solid Waste from Mardi Gras, promiscuous dumping and/or special events. Contractor shall furnish all labor, equipment, fuel, insurance and all else incidental to complete the Service/Work. The cost for such service shall be as set forth below, for a collection vehicle, driver, a minimum of two (2) laborers, and all else incidental. For the purpose of this section, each rear loader or equivalent as provided in Section 3.A.4.3, boom truck, and loose garbage collection vehicle (dump truck or similar) constitutes a separate "truck" to which the hourly rates applies.

City shall authorize Contractor in writing to undertake the additional waste Collection or removal services. The Service/Work shall be initiated only upon receipt of a written work order from the Director of the Department of Public Works which shall include the scope of work and an estimate of the maximum fee that can be charged for the work.

**3.A.4.2 Additional Waste Services Rates**

<b>Special Waste Collection</b> due to special events (e.g. Mardi Gras, etc.). Cost per hour includes driver, laborers, truck collection vehicle, fuel and all incidentals.	\$225.00 per hour, per truck
<b>Special Collection of Bagged Organic Matter</b> due to Disaster. Includes cost of driver and all laborers, equipment, fuel, and all other incidentals.	\$61.17 per ton

**3.B Collections at City Facilities**

**3.B.1 Solid Waste Collections**

Contractor shall provide front-loader and roll-off container service for City-owned, leased, or operated buildings, yards, and playgrounds.

City retains the right to determine how many dumpsters and containers are necessary to service each location, and the Contractor will provide these multi-cubic yard dumpsters and containers according to the rates established in this Contract. The dumpsters and containers shall meet all applicable laws and regulations.

<b>LOCATION</b>	<b>ADDRESS</b>	<b>SIZE</b>	<b>COLLECTION</b>
Muss Bertolino Playground	620 W. Esplanade Ave.	One (1) 8-yard dumpster	Semi-weekly
Wentwood Playground	200 Loyola Ave.	One (1) 8-yard dumpster	Semi-weekly
Butch Duhe Playground	2700 Tenth St.	One (1) 8-yard dumpster	Semi-weekly
Lincoln Manor Playground	3100 Tifton St.	One (1) 8-yard dumpster	Semi-weekly
Greenlawn Playground	3323 Arkansas Ave.	One (1) 8-yard dumpster	Semi-weekly
Susan Park Playground	2900 Gadsden Ave.	One (1) 8-yard dumpster	Semi-weekly

Woodlake Playground	#15 W. Esplanade Ave.	One (1) 8-yard dumpster	Semi-weekly
North Kenner Park	2128 38 <sup>th</sup> St.	One (1) 8-yard dumpster	Semi-weekly
Old Theater	325 Minor St.	One (1) 2-yard front-load dumpster	Semi-weekly
Rivertown Theater	325 Minor St.	One (1) 6-yard front-load dumpster	Semi-weekly
Food Bank	315 Worth St.	One (1) 8-yard dumpster	Mon-Wed-Fri
Office of Motor Vehicles	421 Williams Blvd.	One (1) 6-yard dumpster	Semi-weekly
Kenner City Park	3800 Loyola Dr.	One (1) 20-yard open top container	Semi-weekly
Department of Public Works	1610 Rev. Richard Wilson Dr.	Two (2) 30-yard open-top container	Mon-Wed-Fri
Waste Water	1 W. 30 <sup>th</sup> St.	Two (2) 4-yard front-load dumpsters	Mon-Wed-Fri
Waste Water	1 W. 30 <sup>th</sup> St.	One (1) 20-yard roll-off container	Semi-weekly
Waste Water	1 W. 30 <sup>th</sup> St.	One (1) 30-yard roll-off container	Semi-weekly

#### SECTION 4 – SUPPLEMENTARY SERVICES

Contractor shall, within twenty-four hours following Contractor’s receipt of a written notice from City to proceed with one or more supplementary services, commence performance of the supplementary service(s) so requested.

## **4.A RECYCLING**

### **4.A.1 General Description of Services/Work**

Contractor shall provide Single Stream Curbside Collection of Commingled Recyclable Materials from Residential Units and Small Business Units once weekly, in accordance with a City-approved schedule, and Contractor shall process, and thereafter market all Recyclable Materials. The quantity of Recyclable Materials from Service Units is unlimited for each collection day.

### **4.A.2 Single Stream Curbside Collection Services**

Contractor shall provide Single Stream Manual Curbside Collection of Commingled Recyclable Materials from Residential Units and Small Business Units within City, and process, and thereafter market all Recyclable Materials. Within sixty (60) days of receipt of notification from City, Contractor shall provide Bins to every Service Unit.

Contractor shall then, on the Initial Collection Date, begin once-weekly Single Stream Curbside Collection of Commingled Recyclable Materials service to Service Units. Collection of Commingled Recyclable Materials shall occur on the second collection day for each Collection Route.

### **4.A.3 Purchase, Distribution and Replacement of Recycle Bins**

Contractor shall be solely responsible for the purchasing, storage, and distribution of Bins to Residential Units and Small Business Units within City, which Bins for the purposes of this Contract shall have a capacity of fifty (50) gallon. Each Bin shall be marked with the words "City of Kenner" and/or the City logo and a City-approved recycling logo. All Bins shall be covered by a full and non-prorated warranty for the length of the contract term. All Roll-out Carts furnished after the commencement date of this Contract shall be uniform in appearance and shall be blue in color.

**Residential Units.** Contractor shall provide Resident Units with one (1) fifty (50) gallon cart per service unit. The Residents may purchase the use of a second cart for a \$\_\_\_\_\_ one-time fee as long as the Contractor remains the Contractor with the Parish. The cart will remain the Contractor's property at the end of the contract.

**Small Business Units.** Contractor shall provide Small Business Units with up to two (2) fifty (50) gallon carts. Small Business Unit owners may purchase up to three additional carts at a cost of \$\_\_\_\_\_ for each cart. The \$\_\_\_\_\_ per additional cart fee is a one-time fee as long as the Contractor remains the Contractor with the Parish. The cart will remain the Contractor's property at the end of the contract.

**Stolen Carts:** If any cart or carts are stolen or vandalized, the residents will be Charge

\$\_\_\_\_\_ per replacement Cart. The cart will remain the contractor's property at the end of the contract.

#### **4.A.4 Accepted Recyclable Materials**

Recyclable Materials for the purposes of this Contract shall be defined to include but not be limited to the following:

1. Newspapers and Inserts
2. Magazines
3. Catalogs
4. Junk Mail, Marketing/Advertising Mailers and Envelopes (no product samples; envelope labels and windows are acceptable).
5. Home Office Paper (sticky notes, manila envelopes, file folders, and paper ream wrappers are acceptable.)
6. Paper bags
7. Boxboard (thin cardboard like cereal boxes, shoe boxes, soda cartons, etc.)
8. Phone Books
9. Holiday and greeting cards
10. Dark-colored envelopes and folders
11. Shredded paper (in plastic bags)
12. Aluminum cans, such as soda cans
13. Steel food cans, such as soup cans and tuna cans
14. Aluminum foil
15. Plastic Bottles (#1 through #7)
16. Corrugated cardboard

City and Contractor acknowledge and agree that the forgoing list of Recyclable Materials is not intended to be exhaustive in nature and may be expanded or modified in writing by mutual agreement of the parties subject to City's approval at any time during the Term.

Contractor acknowledges and agrees that if a Drop-off Site is established by City pursuant to this contract, then the Drop-off Site shall accept all Recyclable Materials collected in accordance with the Curbside program, and that hours of operation are minimum requirements, which may be expanded or modified in writing by mutual agreement of the parties subject to City's approval. Contractor shall provide Recycling Containers (such as roll-off containers) at the approved Drop-off Site for the collection of Recyclable Materials convenient for use by residents of City. Said Recycling Containers shall be of such height and size that City residents can readily deposit the Recyclable Materials without the aid of a ladder or hoisting of the Recyclable Materials above average shoulder height.

#### **4.A.5 Collection Requirements**



Collection in the context of the Service/Work shall include the following:

- A. Contractor shall collect Recyclable Materials placed Curbside at Residential Units and Small Business Units in designated Bins in a Commingled Collection fashion.
- B. Materials not designated as Recyclable Materials shall not be collected from Service Units by Contractor in conjunction with the Contract. In the event that materials not designated as recyclable are placed in the Bin, Contractor shall leave those items in the Bin along with a printed notification of an explanation as to why the item(s) were not collected.
- C. Contractor shall deliver all Collected Recyclable Materials to the designated Transfer Station or Processing Facility, whichever is applicable.
- D. Contractor shall weigh each load of collected Recyclable Materials at delivery to the Transfer Station or Processing Facility, whichever is the initial delivery point for Curbside Collection trucks. All collected Recyclable Materials shall be weighed each Collection day to determine the total amount collected by each vehicle daily.

#### **4.A.6. Collection of Recyclable Materials at City Facility**

City may, at its option, provide one (1) twenty (20) cubic yard roll-off Container for Recyclable Materials located at City's Department of Public Works. Recyclable Materials placed in the Container shall be collected by Contractor once weekly. Collection of Recyclable Materials from said location shall be performed by Contractor at no additional cost to City.

Contractor shall provide City with Bins for use at City facilities. City shall provide Contractor with the number of Bins that shall be initially provided. Additional bins may be requested by City to accommodate City needs. All Bins provided to City shall be at no cost to City.

#### **4.A.7 Collection Equipment Requirements**

In order to provide the Service/Work under this Contract, Contractor shall provide a sufficient number of vehicles for regular Collection services.

Subject to the conditions contained in Section 5.7, Contractor shall provide a minimum of one (1) model year 2019 or newer tandem rear axle truck with a twenty (20) cubic yard rear load body for Recyclable Materials Collection. In addition to the foregoing, and subject to the conditions contained in Section 5.7., Contractor shall provide one (1) backup vehicle to ensure that the Service/Work shall be performed in a safe and

efficient manner, and to ensure adherence to Collection Routes and schedules. Contractor shall provide specification data on each truck. Substitute collection vehicles shall comply with the same requirements.

All vehicles dedicated for Recyclable Materials Collection under this Contract shall be used exclusively for Curbside Collection of Recyclable Materials in City.

All vehicles that Contractor shall use in the Service/Work, including vehicles used for transfer of Recyclable Materials, under this Contract shall be marked with numbers that are unique for each vehicle, and shall differ from the numbers assigned to vehicles used by Contractor in adjacent municipalities and parishes for Solid Waste and Recyclable Materials Collection in City.

#### **4.A.8 Informational, Promotional, and Educational Material**

As part of the Service/Work, Contractor shall develop a Public Awareness Program. All informational, promotional, and educational material developed by Contractor for the Public Awareness Campaign shall be submitted to City for a reasonable written approval of materials and content prior to dissemination or publication. Approved materials described under this Section shall be distributed to Service Units in City, which shall include but not be limited to fact sheets containing pertinent information including defined Collection Routes, Collection schedule, proposed Collection Route or Collection schedule changes, and information on the preparation and type of Recyclable Materials to be collected, which shall be printed on 8-1/2" x 11", single color recycled paper. Written materials shall be made available and distributed in a means reasonably approved by City.

In addition to the foregoing, Contractor shall also print and distribute notices to Service Units that place materials not designated for Recycle Bins in their Bins with a specific explanation of why the materials were not collected by Contractor.

Contractor shall conduct a minimum of four (4) recycling public educational events per year which shall include but not be limited to booths at festivals, promotional events, and presentations to civic organizations, schools, business groups, senior citizen groups, or other interest groups as requested by City. Such recycling public educational events shall include preparation of presentation materials including slides and graphics, printed handouts, and provision of temporary recycling Bins at events.

At no time shall Contractor print or distribute information, promotional, or educational material which has not been approved by City.

During the Term, Contractor shall publish advertisements once quarterly in *The New Orleans Advocate* sized not less than one-fourth (1/4) of the newspaper page, listing Collection Routes and schedule, Recyclable Materials accepted, along with other pertinent information concerning City's recycling program.

In addition to the foregoing, Contractor shall maintain a website to inform the public on the details of City's recycling program. The website shall promote City's recycling initiatives and provide information to residents regarding Collection Routes and schedule as well as acceptable Recyclable Materials. The website shall also provide means to accept complaints and respond to questions.

#### **4.A.9 Processing Facility and Transfer Station**

Contractor must process all Recyclable Materials collected under this Contract in a commercially reasonable, timely manner, sufficient to produce Recyclable Materials meeting market demands. Contractor shall transport all collected Recyclable Materials to a Transfer Station and/or Processing Facility (MRF) which shall be operated by Contractor or such third party subcontractor under contract with Contractor. Said Processing Facility must at all times meet all requirements of federal, state and local laws and regulations.

Contractor warrants that all Recyclable Materials collected in City shall be transported to Contractor's Transfer Station for Processing, compaction and bailing for transport via other vehicles to a Single Stream recycling facility approved by City. If during the term of this Contract, a Processing Facility should become operational within City, then City may require that Contractor utilize such a facility, provided that the facility change does not cause Contractor to incur additional costs.

Any changes to this process, or processing facility and/or transfer station shall be submitted to City for City's written approval prior to its use. The Processing Facility and the Transfer Station must at all times meet all requirements of federal, state and local laws and regulations.

#### **4.A.10 Weighing of Collected Recyclable Materials**

Contractor's City-approved Transfer Station and Processing Facility shall be equipped with accurate scales for the weighing of all Recyclable Materials entering and leaving the site.

Contractor shall provide City with the weighing procedures utilized to ensure that all Recyclable Materials transported to, from, and stored at the Processing Facility are accurately accounted for. The procedure details shall, at a minimum, describe and define the weighing and record keeping processed for the following materials:

- Collected Recyclable Materials delivered to the Processing Facility after Collection;
- Individual types or classes of Recyclable Materials removed from the Processing Facility for marketing;
- Any non-marketable Recyclable Materials collected and culled; and

- Residual daily weighing and recordation of collected Recyclable Materials as required under this Contract.

Not less than one (1) time per year during the Term, the scales shall be calibrated, tested and certified by Contractor in accordance with applicable federal, state and local laws and regulations and manufacture's specifications and recommendations. The manufacturer's specifications and recommendations for scale(s) shall be included in the submitted to City.

#### **4.A.11 Marketing of Recyclables**

Contractor shall be solely responsible for marketing and transporting all collected and processed Recyclable Materials under this Contract to market, which shall include but not be limited to obtaining market agreements that define the product specifications, pricing and transport of Recyclable Materials to the select markets. Contractor shall retain all revenues generated from the sale of Recyclable Materials Collection and Processing under this Contract.

#### **4.A.12 Invoice Certification**

Contractor shall provide City with monthly invoices, which shall contain written certification that all Recyclable Materials collected and processed under this Contract have been marketed and sold to firm(s) that incorporate those Recycled Materials into secondary or final markets that comply with State law regarding "Recycling", including but not limited to the Louisiana Solid Waste Recycling and Reduction Law (Act No. 185). In such event that Contractor subcontracts the Recyclable Materials processing of the Service/Work, any and all agreements with subcontractors shall meet the foregoing mandates regarding compliance with State law regarding "Recycling", including but not limited to the Louisiana Solid Waste Recycling and Reduction Law (La. R.S. 30:4211 *et seq.*). All such contracts shall be provided to City prior to the Initial Collection Date.

Notwithstanding anything contained in the Contract Documents to the contrary, Contractor acknowledges and agrees that it shall give priority to markets wherein the processed materials collected through its program are used to replace corresponding virgin raw materials in the manufacturing process.

#### **4.A.13 Collection, Processing and Marketing Services Records**

In addition to other records specified in these Contract Documents, Contractor shall be responsible for maintaining information and records related to the performance of Recyclable Materials Collection processing and marketing under this Contract in accordance with the following listed requirements:

- Information and records shall be accurate and adequately based to determine participation rates and weekly set out rates for all Residential

Units for each Collection Route, weight of Solid Waste diverted from the River Birch Type I & II Subtitle D Landfill through Curbside Collection, and other information required by City to meet the requirements of the Louisiana Department of Environmental Quality (LDEQ) or City's needs. Contractor's records shall be kept current and in a format readily available for review by City upon twenty-four (24) hours written request.

- Contractor shall furnish computerized and hard copy monthly annual reports to City. Monthly reports shall be delivered by the 10<sup>th</sup> day following each calendar month's end. Annual reports shall be delivered by the 15<sup>th</sup> of January following the end of each year of each year of the Term.

Monthly Report for Recycling Program Shall Include:

- Total pounds of Recyclable Materials collected by route.
- Total number of Residential Units with Bins set out Curbside and number of Residential Units with no Bins set out, by route.
- Number of Bins requested and number of Bins provided, with indication as to whether it is a replacement or new request Bin.
- Residential Unit non-compliance with Recyclable Materials requirements. Contractor shall provide full address for each non-compliant Residential Unit where Contractor left a notice of improper materials in Curbside Recyclable Materials Bins, indicating the improper material.
- Summary of tonnages including: Gross weight of all truck loads, tare weight of each vehicle, and calculated net weight by Recyclable Materials.
- Summary of tonnages of Recyclable Materials rejected.
- Average price received each month for each Commodity marketed.
- List of every market company (broker) sold in that monthly period.
- Summary of complaints and resolutions of complaints received during the month.
- Other data as may be reasonably requested by City.

Annual Report for Recycling Program Shall Include:

- Summary in graph and numerical form of the monthly data.
- A graph of yearly tonnages for each year over the duration of the Contract.
- Comparison of yearly tonnage revenue totals broken down by Recyclable Materials type for the length of the Contract.
- A graph of percentage of Recyclable Materials revenues received.
- Other data as may be reasonably requested by City.

**4.B DROP-OFF SITE**

**4.B.1 Operation of Drop-Off Site**

City may, at its discretion, establish a Drop-off Site to provide residents of City with a location to dispose of Bulky Waste, Construction Debris, White Goods, Scrap Metal, and Recyclable Materials. This service shall be free of charge to residents of City. The purpose of the Drop-off Site is to provide residents of City with a convenient location to deposit certain Solid Waste and Recyclable Materials so as to avoid unlawful dumping throughout City. Only Solid Waste and Recyclable Materials generated by Service Units are eligible for deposit at this site.

Contractor shall provide all the necessary equipment, labor and materials to operate the Drop-off Site. City shall provide the land or location of the site. Contractor shall provide full-time attendant(s), roll-off Containers, compactors, Dumpsters, and other incidentals necessary to effectively operate the sites. Should additional containers or equipment be required, Contractor shall provide them at no additional charge to City.

Contractor shall not use the Drop-off Site for any purpose other than as set forth above. Contractor shall not use the Drop-off Site for the following reasons: storage of equipment, materials or supplies - except as incidental to the operation of the Drop-off Site for their intended purpose. Contractor shall not use or allow the use of the Drop-off Site for the construction, repair, maintenance or demolition of waste Containers, Dumpsters, equipment, automobiles or trucks.

#### **4.B.2 Hauling and Disposal Requirements**

Contractor shall be solely responsible for all costs associated with the Collection, removal, and hauling of all Solid Waste and Recyclable Materials collected at the Drop-off Site. Contractor shall be solely responsible for ensuring that adequate Containers are provided during the periods when full Containers are being hauled to the disposal facility.

Contractor shall be solely responsible to service each Container on an as-needed basis. All Recyclable Materials, including White Goods, and Scrap Metal, shall not be delivered to the City-designated landfill. The cost for the operation of the Drop-off Site is included in the monthly per unit cost for supplementary services.

#### **4.B.3 Acceptance Procedures**

Contractor must check the driver's license or current water bill of every person at the Drop-off Site prior to acceptance of waste material. Only residents of City are allowed to dispose of Solid Waste at the sites. Contractor shall not permit Solid Waste or Recyclable Materials generated from sources other than Service Units to be deposited at the Drop-off Site.

#### **4.B.4 Record Keeping**

Contractor shall maintain detailed records on the quantities of Solid Waste brought to the Drop-off Site, as well as the total amounts of Solid Waste from each Drop-off Site that is delivered to the landfill. Records shall include, at a minimum, the hauling date, time, type of materials by weight or volume (Bulky Waste, Construction Debris, White Goods, other Scrap Metals, etc.), gate logs and other reasonable requests for information by City. Contractor shall also maintain a separate detailed record for the following users: (1) Small Business Units; and (2) Residential Units.

Contractor is solely responsible for maintaining a user log of residents delivering accepted materials. Said user log must contain the name of the resident, date, address, driver's license number, license plate number, type of material and estimated quantity.

#### Monthly Report for Drop-off Site

A Monthly Report on the operation of the Drop-off Site shall be submitted within ten (10) days following the end of each month. Contractor is solely responsible for maintaining detailed records of the daily operation of the Drop-off Site. Along with Contractor's monthly invoice, Contractor shall submit a separate Monthly Report for the Drop-off Site, providing the following detailed information on waste and Recyclable Materials accepted by category: (1) Small Business Units; and (2) Residential Units:

- Copies of all Drop-off Site logs;
- Number, size and times each Container was hauled;
- Quantity of Solid Waste disposed of (cubic yards and tons);
- Quantity (weight) of White Goods/Scrap Metal;
- Quantity (number of pounds) of Recyclable Materials.
- Description of any problem or unusual occurrences;

City reserves the right to request additional reports concerning the Drop-off Site.

#### **4.B.5 Material Accepted at Site**

The materials accepted at the Drop-off Site include White Goods, Scrap Metal, Bulky Waste, Recyclable Materials, and Construction Debris.

City reserves the right to require Contractor to provide additional Solid Waste Collection services, as authorized in writing by City, at the Drop-off Site as deemed necessary by City in order to ensure efficiency of governmental operations. These additional services may include extraordinary debris Collection due to natural or man-made disaster or other related services. These additional services shall be performed at the Contract price.

#### **4.B.6 Equipment Requirements**

Contractor must provide and service roll-off Containers, Dumpsters and compactors for

the collection of accepted materials specified in Section 4.B.5. Said Containers shall be watertight standard containers typically used to store and haul bulk waste material with a minimum capacity of thirty (30) cubic yards.

A minimum of one (1) roll-off Containers shall be available for Residential and Commercial Solid Waste at all times. A minimum of one (1) roll-off Container shall be available for Recyclable Materials at all times. The total number of roll-off Containers provided by Contractor shall be dictated by the volume of waste received. If a roll-off Container is full, Contractor shall place a similar empty Container onsite prior to removing the full Container. Contractor is required to replace a full Container within four (4) hours of becoming full. At no time during operating hours shall a site have less than the required number of Containers empty and ready to receive waste. Contractor shall be assessed liquidated damages in accordance with Section 5.13 for failure to maintain sufficient Containers at the site.

#### **4.B.7 Manpower Requirements**

Contractor must provide not less than one (1) competent workman on-site at all times during working hours.

The employees must be capable of screening incoming waste, maintaining logs, and notifying Contractor when servicing and maintenance is required. The employees shall also be responsible for general policing, clean-up and security. The employees will be responsible for securing all Containers in the evening at closing time, as well as opening the site in the morning. All workmen onsite shall at all times wear uniforms designated by Contractor and approved by City.

#### **4.B.8 Site Maintenance**

Contractor must maintain the Drop-off Site in a clean, orderly, and safe manner. It shall be the responsibility of Contractor to collect on a continuous basis any accepted materials specified in Sec. 4.B.5, litter and debris around the sites, as well as any spillage that may occur around the Containers. City shall be responsible for maintaining all gates and fences around the sites in good and working order. Contractor is responsible for securing the facility during non-operation hours. Litter pickup shall include the exterior of the facility fence and the approach drive, if applicable. City shall be responsible for mowing grass within the site and immediately along the outside perimeter of the fence, if applicable. Contractor is responsible for compliance with all applicable local, state, and federal regulations. Contractor shall comply with the provisions of the Spill Prevention, Control and Countermeasures (SPCC) Plan and Storm Water Pollution Prevention Plan (SWPPP), as applicable.

#### **4.B.9 Site Improvements**

City shall provide and pay all fees and monthly bills for utility services. City shall provide



sanitary toilet facilities for the workmen at the Drop-off Site. These facilities may be provided by portable toilet facilities. City is solely responsible for all costs associated with any improvements to the Drop-off Site.

Upon termination of this Contract, Contractor shall ensure that the site is safe and secure, and that all Contractor supplied equipment and Containers are removed from the premises. Any modifications to the site by Contractor which would result in a negative impact on the value of the Drop-off Site or would be a dangerous or hazardous condition must be corrected prior to abandoning the Drop-off Site.

#### **4.B.10      Signage**

Contractor shall post a sign no smaller than four feet high by eight feet wide (4' x 8') at the Drop-off Site. The sign shall contain the following information:

- "TRASH AND RECYCLABLE MATERIALS DROP-OFF SITE"
- Days and hours of operation
- List of materials accepted
- Contractor name and phone number

The sign shall be placed in clear view at the entrance of each facility and shall be mounted a minimum distance of four feet (4') off the ground. Contractor shall routinely check to ensure that the sign is clean, visible, and up-to-date. Maintenance of the sign is the responsibility of Contractor.

### **SECTION 5. – GENERAL CONDITIONS FOR COLLECTION OPERATIONS FOR SOLID WASTE AND CURBSIDE RECYCLABLE MATERIALS COLLECTION SERVICES**

#### **5.1      Collection Equipment Conversion Schedule**

At the beginning of this contract, Contractor shall provide new rear-load garbage trucks utilized to perform the Service/Work. During the Term, and in accordance with applicable industry standards regarding the useful life of Solid Waste Collection vehicles, rear-load garbage trucks utilized to perform the Service/Work shall be replaced with new vehicles. Should another technology become available that will maintain or improve the expected service level obligations, new replacement vehicles may differ from current models, with the reasonable approval of City, said approval not to be unreasonably withheld, conditioned, or delayed.

#### **5.2      Holidays**

Contractor may observe the following holidays:

- New Year's Day
- Martin Luther King, Jr. Day
- Mardi Gras Day
- Good Friday
- Labor Day
- Memorial Day
- Independence Day
- Thanksgiving Day
- Christmas Day

For the purposes of Solid Waste Collection and Curbside Recycling Collection, Contractor may observe any or all of the above mentioned holidays by suspension of Collection service on such holiday(s); however, such Collection suspension in observance of a holiday in no manner relieves Contractor of its obligation to provide semi-weekly Collection service. Contractor shall request any of the foregoing holidays by written notice to City not less than thirty (30) days prior to the desired holiday. Said request shall contain proposed alternate dates for Collection services for those routes affected by said holiday in order to comply with the semi-weekly Collection service defined herein.

For any holiday to be observed, Contractor shall publish at its sole cost and expense any changes in Collection schedules due to observance of said holiday in *The New Orleans Advocate* not less than two (2) times during the week immediately preceding the holiday. The second newspaper notification of changes in the Collection schedule due to the pending holiday shall be published no less than twenty-four (24) hours prior to the observed holiday. Any and all notices referenced in this paragraph shall be pre-approved by Kenner prior to publication.

### **5.3 Collection Times/Hours of Operation for Service/Work**

Curbside Collection of Solid Waste and Recyclable Materials shall not commence before 5:00 a.m. or continue after 8:00 p.m. Exceptions to Collection hours shall be approved in writing by City. Penalties may be assessed against Contractor for Collections commencing prior to 5:00 a.m. and occurring after 8:00 p.m.

### **5.4 Location of Collection**

Contractor shall collect all Solid Waste and Recyclable Materials placed Curbside for Collection at each Service Unit. Contractor shall provide Side Door Service to Disabled Person(s), wherein Contractor shall move Roll-out Cart(s) and Bin(s) from the side of a Residential Unit to the curb for Solid Waste and/or Recyclable Materials Collection and return the Cart(s) and Bin(s) to the side of the Residential Unit. Contractor shall identify Service Units requiring Side Door Service by placing a sticker bearing the International Symbol of Access on the Contractor-issued Roll-out Cart(s) and Bin(s).

In the event that construction work is being performed on the right-of-way, Carts containing Solid Waste and/or Bins containing Recyclable Materials shall be placed as close as practical to a Curbside access point to facilitate Collection.

Contractor acknowledges and agrees that Solid Waste in Carts and Recyclable Materials in Bins must be collected in front of any vacant lots. In such instances and for the purposes of this Contract, such Solid Waste and Recyclable Materials shall be assumed to have been placed out for collection by the Service Unit whose property is closest to such a vacant lot and this is not considered an additional unit in calculating the number of units to be billed. Such Solid Waste does not include Solid Waste generated from the clearing of vacant lots.

### **5.5 Advertising Requirements – Routes and Days of Collection**

Contractor shall publish, at Contractor's expense, at least once per year and prior to the implementation of any Collection Route changes, a map of the approved Collection Route in *The New Orleans Advocate*. Contractor shall submit an electronic map of the Collection Route to the City prior to the approved changes going into effect. The published map shall be of such size and clarity to show all pertinent information including the Contractor's name, office location, and telephone number. The actual routes need not be shown, but the areas picked up on various days must be clearly defined.

In the week prior to the effective date of the Contract, Contractor shall advertise daily for one week in *The New Orleans Advocate* the Collection schedule (map), phone number(s), advice on how to properly contain Recyclable Materials and Solid Waste, include collection of Bulky Waste, Construction Debris, Yard Waste, White Goods, Tires and other collection services; a list of accepted Recyclable Materials, and other pertinent information.

All special promotions, advertisements and information released by Contractor shall be at Contractor's expense and shall be approved by City in writing prior to publication or release.

### **5.6 Resumption of Services Following a Disaster Event**

Contractor shall provide City with the names and contact information, including office telephone numbers and mobile telephone numbers, for emergency contact persons that may be utilized in the event that local facilities and points of contact are unavailable or inaccessible.

In the event of an emergency, storm, disaster, special event, or extraordinary situation occurring in the area, City may grant Contractor reasonable variance from regular schedules and routes. As soon as practicable thereafter, Contractor shall advise City of the estimated time required before regular schedules and routes can be resumed. In

the case of a major storm or other emergency event, City may require Contractor to perform services beyond the scope of normal operations. For services pre-approved by the City, Contractor shall be paid for such services at the rates specified in Section 3.A.4.3. Under no circumstances shall City be responsible for any additional costs related to Contractor's performance of services rendered pursuant to this Contract.

### **5.7 Collection Equipment Requirements for Service/Work**

In order to provide Service/Work under this Contract, Contractor shall provide a sufficient number of vehicles for regular Collection services.

All of Contractor's vehicles and other associated equipment used in the performance of the Service/Work shall be kept in good condition and repair, clean in appearance and in a sanitary condition compliant with industry standards, all of which shall be subject to City's inspection and approval. Equipment failures/malfunctions shall be repaired promptly. In the event that equipment failures/malfunctions cannot be promptly repaired, sufficient substitute equipment shall be procured through rental or purchase in order to comply with Collection Schedules in the provision of the Service/Work. All vehicles shall be manufactured in conformity with ANSI standards. All vehicles shall be dedicated for and used exclusively for Curbside Collection of Solid Waste and Recyclable Materials in the City. Contractor shall be solely responsible for all costs of operating and maintaining its equipment.

Each vehicle shall have clearly visible on all four (4) sides the Contractor's truck number, and on two (2) sides the Contractor's telephone number. All vehicles used in performing the Service/Work shall have clearly visible on all four (4) sides the Contractor designated truck number which individual digits shall be not less than twelve (12) inches by six (6) inches in size, and which shall not be readily removable and shall be preceded by the letter "K" of the foregoing size/dimension. In no event shall the numerical designation for each vehicle be the same digits assigned to a backup vehicle, which shall be assigned and bear a unique number for identification.

All Contractor vehicles performing the Service/Work under this Contract shall be titled, registered, and licensed in the State of Louisiana, and shall comply with the regulations and licensing requirements of the Louisiana Department of Transportation and Development and Louisiana Department of Environmental Quality regulations and licensing requirements, as well as with all applicable local ordinances governing weight and size limits for street travel. Contractor shall provide specification data on each truck. Substitute collection vehicles shall comply with the same requirements specified above.

### **5.8 Personnel Requirements for Service/Work**

Contractor, including Contractor's officers, agents, and anyone acting or claiming to act on behalf of Contractor, shall at no time identify themselves or in any way present

themselves as being employees or agents of City.

City reserves the right to request removal and Contractor shall comply with said removal request of any Contractor's employee who violates any provision hereof; who violates any applicable OSHA or DOT regulations; or who is wanton, negligent, or discourteous in the performance of the Service/Work underlying this Contract.

## **5.9 Missed Collections**

Contractor shall provide a telephone number during collection hours (including Saturdays) to accommodate requests for efficient removal of Recyclable Materials and Solid Waste, including Garbage, Trash, Yard Waste, Bulky Waste, Construction Debris, White Goods, Tires and other waste. The phone number is for use in notifying Contractor of a missed collection. The telephone number shall be announced to the public through appropriate measures and advertisements.

Every effort shall be made by Contractor to pick-up Recyclable Materials and Solid Waste, including Garbage Trash, Yard Waste, Bulky Waste Construction Debris, White Goods, Tires and other waste on the designated, scheduled Collection day. If Contractor fails to collect Recyclable Materials and Solid Waste, including Garbage, Trash, Yard Waste, Bulky Waste, Construction Debris, White Goods, Tires and other waste on the designated, scheduled day, and is so notified by the Service Unit and/or City, Contractor shall make such Collections within twenty-four (24) hours of notification, failing which liquidated damages shall be assessed in accordance with Section 5.13.

Failure by Contractor to properly collect Solid Waste and Recyclable Materials from a Service Unit on the designated Collection day shall constitute a Breach of this Contract which shall subject Contractor to liquidated damages as set forth in Section 5.13.

## **5.10 Complaint Resolution**

Contractor shall provide a public information, complaint intake and resolution system, along with other customer related services. This system shall include a telephone line manned by Contractor during the Collection hours, including Saturdays, to handle questions regarding Solid Waste and Recyclable Materials Collection schedules, Drop-off Sites, quantities, size limitations, acceptable materials, and services provided. Contractor shall maintain an office in the New Orleans-Metairie-Kenner Metropolitan Area through which Contractor may be contacted. Persons with adequate authority and ability to maintain a proper level of service and to immediately respond to complaints and problems shall staff such office(s).

Local telephone numbers and mobile numbers of key personnel shall be available to City's Director of Public Works and City officials on a 24-hour, 7 days/week basis.

Contractor shall accept complaint calls and service requests directly from Service Units via telephone as well as service requests received from City staff via telephone, facsimile, e-mail or other means.

Contractor shall take any and all steps necessary to resolve the complaint within twenty-four (24) hours after receipt of the complaint. City shall provide Contractor a list of complaints received by City each day prior to 4:30 p.m. Alternatively, Contractor may request this list from City each day either by e-mail, facsimile, or telephone.

Contractor shall provide City, within twenty-four (24) hours of notification by City or Residential Unit, a full explanation of the disposition of any complaint involving a claim of damage to private property as the result of actions of Contractor's employees or agents.

Failure to timely resolve any complaint shall be considered a breach of this Contract and for the purpose of computing damages under the provisions of this Section, City may after twenty-four (24) hours written notice, cure such breach, and thereafter deduct such costs to cure said breach from any payment due to or become due to Contractor.

#### **5.11 Ownership of Refuse**

Ownership of Recyclable Materials, Garbage, Trash, Bulky Wastes, Dead Animals, Litter, Tires, and other Solid Waste collected pursuant to this Contract shall pass to Contractor when placed in Contractor's vehicle, when removed by Contractor from a Bin, Roll-out Cart, Container, or Dumpster, or when removed by Contractor from Customer's premises, whichever occurs first.

#### **5.12 Records of Collection**

It is the responsibility of Contractor to keep daily records of the weights/volumes collected. At a minimum, Contractor's records must include date, equipment number, equipment type, vehicle departure and arrival times, and quantities collected. Contractor will track Cart replacement and repair by address.

#### **5.13 Liquidated (Stipulated) Damages**

Contractor is responsible for compliance with applicable federal, state, and local laws, ordinances, and regulations in connection with the Service/Work. Contractor shall be responsible for all fines and penalties resulting from operations under this Contract. If a fine or penalty is assessed by federal or state agencies, Contractor shall pay the amount of the fine to the federal or state agency and an equal amount of this fine to the City as agreed upon liquidated damages under this Contract.

The following is a list of additional liquidated damages that may be assessed against Contractor by City for violations of the terms of this Contract:

<b>VIOLATION</b>	<b>LIQUIDATED DAMAGES</b>
Unauthorized collections near or in residential areas prior to 5:00 a.m. or after 8:00 p.m., or on a Sunday without permission of the City.	\$500.00 per truck, per violation
Failure to collect waste from residential or small commercial unit within the same business day of the notification by resident or Parish of missed collection day.	\$500.00 per unit missed per day
Failure to collect Bulky Waste and/or Construction Debris from a Service Unit within twenty-four hours of notification from either the Service Unit or City of a missed Collection.	\$500.00 per day
Failure to remove Dead Animals within twenty-four (24) hours of notification from either a Service Unit or City.	\$500.00 per day, per unit
Failure to collect White Goods within twenty-four (24) hours of a notification from either the Service Unit or City of a missed Collection pick-up.	\$500.00 per day
Repetition of the above penalties more than three (3) times in a six (6) month period at the same location.	\$500.00 per unit missed, per day
Failure to replace Roll-out Carts up-right with lid closed after first notification of violation from City or Service Unit.	\$500.00 per day
Failure to provide a replacement Roll-out Cart or a Roll-out Cart for an added unit within three (3) working days from notification.	\$500.00 per day
Failure to supply the City with a written report of resolution of complaints within one (1) week of Contractor receiving written complaints from the City.	\$500.00 per occurrence
Failure to supply the City within five (5) working days with copies of correspondence, reports, documentation, etc. to or from the state or federal government.	\$500.00 per day
Failure to timely submit required monthly and annual reports as provided in this Contract	\$500.00 per day
Failure to remedy deficiencies at a Drop-off Site noted by City or Louisiana Department of Environmental Quality within twenty-four (24) hours of notification.	\$1,000.00 per occurrence
Failure to collect on a partial street, street or neighborhood from residential or small commercial	\$1,500.00 per day per violation

unit on its schedule day.	
Failure to secure, prevent and clean-up any leakage of fluids or littering of materials from any vehicles or from dumpsters within the same business day of the notification by resident of City.	\$500.00 per occurrence
Failure to provide and maintain sufficient Containers, roll-off boxes, Dumpsters and/or compactors empty and ready to receive waste at Drop-off Site.	\$500.00 per day, per occurrence

All liquidated damages shall be deducted from the monthly payment due to the Contractor.

**5.14. Exceptions**

**5.14.1 Construction Contractor Waste**

Contractor shall not be required to collect large trees, scrap metal or large lumber Refuse placed at the curb by a construction contractor. Such activity may be reported as illegal dumping. Contractor may, however, separately contract with the producer or owner of such items for the Collection and disposal of same. The Collection and disposal of such items is expressly excluded from this Contract. Upon request, Contractor shall furnish evidence in a form acceptable to City that City bears no cost for the Collection or disposal of any waste collected and disposed of pursuant to contract(s) between Contractor and third-parties.

**5.14.2 Hazardous Waste**

The Collection of Hazardous Waste is expressly excluded from the Service/Work.

**5.14.3 Impassible Roadways**

Contractor shall not be required to collect Solid Waste or Recyclable Materials from a Service Unit if a road becomes impassable and causes the Service Unit(s) to be inaccessible. Contractor shall notify City of any such occurrence, and shall collect waste at the nearest public roadway or at the point of closure. Regular service shall resume immediately after the access is restored.

**5.14.4 Private Roadways and Driveways**

Except whenever performing Side-Door Service, Contractor shall not be required to enter private roads or driveways. However, the owner of a Residential Unit may arrange for such service directly with Contractor. Any additional cost that may be associated with the provision of such service is expressly excluded from this Contract, and is considered a private matter between the Service Unit and Contractor. Contractor



shall notify City of such an arrangement and shall submit to City a certificate or letter of indemnification satisfactory to City from the owner(s) of the Service Unit prior to commencing such service.

## **5.15 Disposal**

### **5.15.1 Solid Waste**

Solid Waste collected for disposal by Contractor shall be transported to landfill sites operated by River Birch, LLC. Solid Waste, excluding Recyclable Materials collected pursuant to Section 4.A. and Refuse eligible for deposit in a Construction and Demolition Debris Landfill, shall be deposited in the River Birch Type I & II Subtitle D Landfill. Contractor shall segregate and transport Refuse eligible for disposal at a Construction and Demolition Debris Landfill to the River Birch, LLC Highway 90 Type III Construction and Demolition Debris Landfill. Contractor shall not be charged a disposal fee at the site for waste collected from Service Units through Curbside Collection or for waste collected at the Drop-off Site pursuant to this Contract.

In the event that City designates another facility for receipt of Solid Waste, Contractor shall bring the Solid Waste to the designated facility. If this occurs, City will make cost and payment arrangements for disposal of Solid Waste collected from Service Units with any other facility. City will pay facility directly for disposal. If the new site results in a five (5) percent or greater increase in total mileage transportation distance, an outside party will be retained by City to verify the change and to determine a per unit cost increase or decrease attributable to the distance change. For that analysis, a per-unit cost will be added or subtracted to the per-unit cost charged to City.

All Residuals of Recyclable Materials collected by Contractor shall be disposed of at a state permitted disposal facility at Contractor's expense. Contractor shall provide City with the name of the disposal facility where Residuals are disposed.

### **5.15.2 Tires**

Passenger Tires collected shall be delivered to City or to an active registered waste tire collection site for further processing under the State of Louisiana Waste Tire Program.

### **5.15.3 White Goods**

Contractor shall certify that White Goods are free of refrigerants before they are deposited at the disposal/recycling facility. The facility may store White Goods in a unit separate from other Solid Wastes. The facility chosen shall maintain a log of dates and volumes of White Goods removed from the facility.

### **5.15.4 Disposal Record Keeping**

It is the responsibility of Solid Waste Contractor to keep daily records of the weights/volumes disposed of under this Contract in a licensed landfill or recycling facility.

## **SECTION 6 – PAYMENTS TO CONTRACTOR**

### **6.1 Service Fees for Collection Services**

For the Service/Work, City shall pay Contractor for the Service/Work performed on and subsequent to the Initial Collection Date, the sum of TWELVE AND 32/100 DOLLARS (\$12.32) per Service Unit per month, which shall be inclusive of all labor, equipment, materials, collection, hauling, operation, incidentals, overhead, shipping costs, taxes, expenses, and costs of any nature or kind whatsoever, in the rendering of the Service/Work.

During the term of this Contract, there shall be no adjustment in the service fees due to increases or decreases in disposal, quantities, recycling quantities, labor rates, fuel costs, transportation costs, disposal rates for residuals, changes in laws, rules, regulations or ordinances, or for any other reason except as provided in Section 6.2.

If, at the written request of City, Contractor is directed to transport Solid Waste to an alternate facility, the compensation to Contractor shall be adjusted, increased or decreased, to reflect the change in transportation costs.

### **6.2 Escalation and De-escalation**

The service fees payable to Contractor shall be adjusted upward or downward annually to reflect changes in the cost of doing business using the then most recently published Consumer Price Index, All Urban Consumer, All Items (CPI-U) U.S. City Average published by the U.S. Department of Labor, Bureau of Labor Statistics. The initial adjustment shall occur on July 1, 2016, and then annually each July 1 thereafter. For each adjustment, the service fees of Contractor shall be increased or decreased by a percentage amount equal to the net percentage change in the CPI-U or five (5) percent per annum, whichever is less. Subsequent years of the Contract shall be adjusted annually based upon the net percentage change for the preceding year.

### **6.3 Supplementary Services**

In the event that City issues a notice to Contractor to proceed with one or more of the supplementary services specified in Section 4, then the following provisions shall apply:

#### **6.3.1 Effective Date for Supplementary Services**

Each of the modifications resulting from the activation of the supplementary services by

City shall be effective on the Initial Collection Date specified by City in City's written notice to Contractor to proceed with the supplementary services.

**6.3.2 Additional Service Unit Fee**

City shall pay to Contractor the additional sum of \$1.00 per Service Unit per month if City issues a notice to Contractor to proceed with one or more of the Supplementary Services prior to the fifth (5<sup>th</sup>) anniversary of the commencement of the Contract term.

Should City issue a notice to Contractor to proceed with the supplementary services on or after the fifth (5<sup>th</sup>) anniversary of the commencement of the Contract term, then the sum specified in paragraph 1 of this subsection shall be adjusted by any increase in the Index now known as "United States Bureau of Labor Statistics, Consumer Price Index, for All Urban Consumers" (hereinafter referred to as the "Index") from the month preceding the commencement of the Contract term. Such adjustment shall be accomplished by multiplying the aforementioned sum by a fraction, the numerator of which shall be the most recently published monthly Index preceding the first day of the effective date (as set forth in Section 6.4.1), the denominator of which fraction shall be the corresponding monthly Index for the month immediately preceding the commencement of the Contract term. The adjustment shall then be added to the \$1.00 per Service Unit per month sum set forth in paragraph 1 of this Section 6.3.2.

**6.4 Container/Dumpster Service**

The furnishing of Containers and/or Dumpsters and the associated Collection of Refuse by Contractor at City-owned facilities shall be invoiced to City in accordance with the following fee schedule:

Service Description	Cost
Service 8-yard Dumpsters on a bi-weekly basis. Service includes provision of Dumpster as well as Collection, transportation, and disposal of Refuse at a licensed landfill.	\$_____ per pull, per unit
Service 8-yard Dumpsters on a three times per week basis (Monday, Wednesday, Friday). Service includes provision of Dumpster as well as Collection, transportation, and disposal of Refuse at a licensed landfill.	\$_____ per pull, per unit
Service 6-yard Dumpsters on a bi-weekly basis. Service includes provision of Dumpster as well as Collection, transportation, and disposal of Refuse at a licensed landfill.	\$_____ per pull, per unit
Service 2-yard Dumpster on a bi-weekly basis. Service includes provision of Dumpster as well as Collection, transportation, and disposal of Refuse at a licensed landfill.	\$_____ per pull, per unit
Service 20-yard open Container on an as needed basis.	\$_____ per pull, per

Service includes provision of Container as well as Collection, transportation, and disposal of Refuse at a licensed landfill.	unit
Service 30-yard open Containers on an as three times per week basis (Monday, Wednesday, Friday). Service includes provision of Container as well as Collection, transportation, and disposal of Refuse at a licensed landfill.	\$_____ per pull, per unit
Service 4-yard grit and screening Dumpsters on a three (3) times per week basis (Monday, Wednesday, Friday). Service includes provision of Dumpster as well as Collection, transportation, and disposal of Refuse at a licensed landfill.	\$_____ per cubic yard
Service 20-yard grit and screening Container on an as needed basis. Service includes provision of Container as well as Collection, transportation, and disposal of Refuse at a licensed landfill.	\$_____ per pull, per unit
Service 30-yard Solid Waste Container on an as needed basis. Service includes provision of Container as well as Collection, transportation, and disposal of Refuse at a licensed landfill.	\$_____ per pull, per unit

**6.6 Billings to City**

Contractor shall bill City for services rendered within ten (10) days following the end of the month, and City shall render payment to Contractor no later than thirty (30) days following City’s receipt of the billing. Such billing and payment shall be based on the price rates and schedules as set forth in this Contract.

Contractor’s monthly invoices shall contain the contract number, service period covered, a description of the Service/Work provided, the total number of Residential Units and Small Business Units receiving Curbside Collection and the per unit cost for each of the aforementioned. Any additional waste services provided in Sec. 3.A.4.3 shall be billed separately and shall include the hourly rate or per unit cost and the number of hours worked or units collected/disposed. Invoices submitted without the referenced documentation will not be approved for payment until such time as the required information is provided.

In the event that City directs Contractor to perform the supplementary services specified in Section 4, then Contractor shall submit Monthly Reports with each month’s billing, as follows: (1) a Monthly Report of Recycling Activities as detailed in Section 4.A.13; (2) a Monthly Report of Drop-off Site Activities as detailed in Section 4.B.4 and (in the event that City establishes a Drop-off Site). The accuracy of the information contained in the two (2) Monthly Reports shall be attested to by Contractor. The format of said reports and topical content shall be subject to reasonable modification by City.

**6.7 Unit Counts**

City and Contractor mutually agree that the initial number of Service Units receiving Solid Waste and Recyclable Materials collection is established at 22,000. However, one year after the execution of this contract, a revised count of Residential and Small Commercial Units shall be made by the Contractor and the City to determine a monthly agreed upon count. The revised count shall be conducted as follows: The City will submit a list of all addresses in the City with water meters. Contractor will use this list to physically review the addresses of Residential Units and Small Commercial Units. Contractor will affix a bar code to the cart for each address and scan all carts at Residential and Small Commercial Units. The Contractor shall then submit its count, which will be subject to verification and review by the City. The parties will then mutually agree in writing to the count to be used for future billing. The City may accept this count or request a count performed by both the City and the Contractor using the process described above. The count shall then be mutually agreed to in writing by the City and the Contractor, prior to charges being assessed by virtue of such a count.

From time to time, City may notify Contractor to begin service at new locations or to discontinue service at specified locations. Such notification shall be in writing. Upon notification, Contractor shall provide/discontinue collection service on the next regular collection day for that route or adjacent area if not on a designated route. Contractor will update the unit count for submission to City.

## **SECTION 7 – BREACH OF SERVICE / TERMINATION**

### **7.1 Breach of Service**

This Subsection shall be subject to the provisions of Section 8.41 (“Force Majeure”).

- A. In addition to the assessment of liquidated damages as defined in Section 5.13, the imposition of which shall not be construed as a waiver of any legal remedies that City may have as to any subsequent breach of service, in the event that Contractor fails to provide the Curbside Solid Waste and Recyclable Materials Collection Service/Work defined in this Contract for a period in excess of two (2) consecutive, scheduled, working days, City may take the following actions:

Employ such means as it may deem advisable and appropriate to continue Service/Work until such matter is resolved and City is again able to carry out its operations under this Contract.

Deduct any and all operating expenses incurred by City from any money then due or to become due to Contractor.

- B. If Contractor is unable, for any cause, to resume performance of the Service/Work by the end of the third day, City shall have the option to terminate

this Contract effective upon the receipt by Contractor of City's termination notice in accordance with the notice provisions contained in Section 8.17 of this Contract. In such event, all liability of City to Contractor under this Contract shall cease, except for those provisions which expressly survive the expiration or earlier terminating of this Contract, and City shall be free to negotiate with other vendors for the operations of said Curbside Solid Waste and Recyclable Materials Collection Service/Work and/or the actions provided below for default and breach of contract. Such actions shall not release Contractor of its liability to City for such breach of contract. This paragraph shall apply, notwithstanding the provisions of paragraph C, below, which provides for ten (10) day notice.

- C. All terms, conditions and specifications of the Contract Documents are considered material, and failure to perform any part of the Service/Work as defined herein shall be considered a breach of this Contract. Upon receipt of written notice of said breach, Contractor shall have ten (10) days measured from receipt of said written notice to cure said breach. In such event that Contractor fails to cure said breach within ten (10) days, Kenner may, at its option, terminate this Contract effective upon written notice received by Contractor.

## **7.2 Termination**

This Contract may be terminated for the following reasons, to wit:

- A. By City, if Contractor should file for bankruptcy, or Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of Contractor's insolvency;
- B. By City should Contractor persistently refuse or fail (except in cases for which extension of time is provided) to supply enough properly skilled service/workmen or proper materials and equipment, or if Contractor should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or otherwise be guilty of a substantial violation of any provision of this Contract;
- C. By City should Contractor fail, subject to Force Majeure or delays in approval occasioned by City, to commence the Collection Service/Work on or before the Initial Collection Date. Before this Contract is terminated hereunder, Contractor and its surety will first be notified in writing by City of the conditions which make termination of this Contract imminent. Contractor and its surety shall have ten (10) days from the receipt of the notice hereunder to correct such conditions. Absent such correction and cure, City may declare this Contract terminated and notify Contractor and its surety accordingly, said termination to be effective retroactive to the date of the original notice of termination.
- D. By Contractor should City fail to pay Contractor as specified herein after notice,

and the passage of thirty (30) days from receipt of said failure, without cure by City, or for any other breach by City of its obligations under this Contract after notice, and the passage of forty-five (45) days from receipt of said notice of failure, without cure by City. For non-monetary defaults by City, if default is of such a nature that more than forty-five (45) days shall be required to cure such default, then Contractor agrees to grant City such reasonable additional cure time to cure said non-monetary default.

- E. Only after the third year of this Contract, by City upon one-hundred eighty (180) days written notice. Upon the effective date of said one-hundred eighty (180) day notice of termination, Contractor shall immediately discontinue all Service/Work. City may thereafter assume the Service/Work in any lawful manner.

In the event this Contract is terminated under the provisions of paragraphs (a) – (e) above, Contractor shall be entitled to compensation for services performed prior to the effective date of such termination. Neither party shall be relieved of liability and or responsibility to the other party for damages sustained by the non-breaching party by virtue of any breach of the Contract by the breaching party.

Upon early termination of this Contract, City shall be relieved of its obligations under this Contract except for payment of Services/Work already performed up to and including the date of termination, and Contractor shall be relieved of its obligations to perform the Service/Work defined herein.

### **7.3 Appropriation Dependency**

The continuation of this Contract is contingent upon the appropriation of funds by City. If the Council for the City of Kenner (hereinafter referred to as "Council") fails to appropriate sufficient monies to provide for the continuation of this Contract, the Contract shall terminate on the last day of the fiscal year for which funds were appropriated. Such termination shall be without penalty or expense to City except for payments which have been earned prior to the termination date. Termination of this Contract by City under the provisions of this section shall not constitute an event of default. The decision to fund or not fund this Contract for the next fiscal year will be made by the Council in its unfettered discretion based upon what the Council believes to be in the best interests of City. The Council may in its discretion opt not to fund this Contract for a subsequent fiscal year or years for any reason.

## **SECTION 8. General Conditions**

### **8.1 Non-Exclusivity**

Contractor acknowledges and agrees that pursuant to the requirements of La. R.S. § 33:4169.1, the rights and obligations conferred and contained herein shall be non-exclusive in nature, and City makes no representations or warranties to the contrary.

City reserves the right to contract with other parties for any and all of the Work/Services contained herein.

## **8.2 No Guarantee of Quantities**

City does not guarantee that items listed in the Service/Work provisions of this Contract will comprise a complete program. Contractor shall provide all materials, labor and equipment, whether specified or not, to provide Service/Work.

City makes no guarantee as to the quantity of unit counts, Solid Waste or Recyclable Materials or Collection.

## **8.3 Independent Contractor**

Contractor shall render the services required under this Contract as an independent contractor and not an agent of City.

City hereby engages Contractor as an independent contractor to render services to and/or on behalf of City and Contractor hereby accepts such engagement, effective upon execution of this Contract. It is understood and agreed by the parties hereto that Contractor is entering into this Contract in the capacity of an independent contractor and that nothing contained in this Contract is intended to be construed as creating any other relationship between City and Contractor. Accordingly, Contractor acknowledges and agrees that City shall not:

- (a) withhold federal or state income taxes;
- (b) withhold federal social security tax (FICA)
- (c) pay federal or state unemployment taxes for the account of Contractor
- (d) pay worker's compensation insurance premiums for coverage of Contractor

Contractor agrees to be responsible for and to pay all applicable federal income taxes, federal social security tax (or self-employment tax in lieu thereof) and any other applicable federal or state unemployment taxes.

Contractor agrees to indemnify and hold City harmless from any and all federal and/or state income tax liability, including taxes, interest, and penalties resulting from City's treatment of Contractor as an independent contractor. Contractor further agrees to reimburse City for any and all reasonable costs it incurs, including, but not limited to, accounting fees and legal fees, in defending itself against such liability.

## **8.4 Warranties**

Contractor warrants and guarantees to City that all Work and Services will be of good quality, responsive, and in accordance with the requirements of the Contract



Documents; any federal, state or local licenses; permits, and applicable regulations and laws. All unsatisfactory, faulty, or defective work or services, and all work or services not conforming to the requirements of the Contract, applicable regulations, and laws shall be corrected by Contractor at no cost to City.

#### **8.5 Patents**

Contractor shall be responsible for all fees or claims for any patent, invention, or procedure used, installed, or provided by Contractor. Contractor shall assume all liability and fully indemnify and hold harmless City from and against all claims, suits, proceedings, damages, losses, expenses, fees (including attorney's and expert witness fees) and royalties arising from any infringement, real or claimed, of any patent on any article, machine, manufacture, structure, composition, arrangement, improvement, design, device, methods or process embodied or used in the performance of the Service/Work. City will give written notice of all such claims and patent infringement suits or proceedings instituted against Contractor, who shall defend same, and City will give Contractor authority, assistance, and all available information to enable it to do so.

#### **8.6 Administration**

This Contract shall be executed by both City and Contractor. The Contract shall be administered on behalf of City by City's Director of Public Works.

Contractor shall exert full control over the actions of all employees and other persons with respect to the use and preservation of property and existing facilities. Contractor shall exclude from the work areas all persons who have no purpose there, and shall require all persons on the sites to observe the same safety regulations as it requires of its employees.

#### **8.7 Taxes**

Contractor shall pay all fees and taxes associated with this Work. City will make no additional payments to cover the fees, taxes, or increase in taxes.

#### **8.8 Licenses, Permits, Regulations and Inspections**

Contractor shall be responsible for adhering to all licenses, permits and regulations required. Contractor shall obtain all permits and licenses required to perform the work and fulfill the requirements of this Contract.

Throughout the term of this Contract, Contractor shall promptly send to City copies of all correspondence received by Contractor from any agency of the State of Louisiana or United States Government related to this Contract. In addition, verbal citation of violation by any agency or verbal indication of citation of violation by any agency shall be immediately documented and transmitted to City and followed with a written

explanation.

Contractor shall comply with all applicable regulatory requirements. Contractor shall perform or procure, at no cost to City, all inspections required by permits, regulations, or the Contract. Contractor shall, at no cost to City, accommodate inspections and tests by City, State or other regulatory agency to verify compliance with laws, regulations or the Contract.

City, its duly authorized representative, or consultant shall have access to the work areas at all times during working hours. Contractor shall arrange for access of the above, when the site is closed.

### **8.9 Right-of-way (Solid Waste and Recyclable Materials Collection)**

Contractor shall not enter or occupy any private property outside the limits of the right-of-way, unless Contractor has obtained proper legal access, and has furnished proof thereof to City prior to acting.

### **8.10 Compliance with Laws**

Contractor shall conduct operations under this Contract in compliance with all applicable federal, state, and local laws, ordinances, and regulations.

### **8.11 Indemnification**

Contractor shall indemnify, defend and hold City harmless from and against any liability, fines, penalties or other obligations caused by Contractor's failure to comply with Federal, State, or local regulations covering or pertaining to the Service/Work covered by this Contract. Contractor shall further indemnify and save City harmless from any and all suits, penalties or claims of infringement by reason of Contractor's use or installation of any patented design, device, material or process, or any trademark or copyright in connection with the Service/Work agreed to be performed under this Contract, and shall indemnify and save City harmless for any costs, expenses and damages which it may be obligated to pay by reason of any such infringement at any time during the prosecution or after completion of the Service/Work.

To the fullest extent by law, Contractor agrees to protect, defend, indemnify, save and hold harmless City, its agents, officials, employees, servants, including volunteers, from and against any and all claims, demands, loss or destruction of property, actions or causes of action of every kind and character, including but not limited to claims based on negligence, strict liability and absolute liability which may arise in favor of any person or persons on account of illness, disease, loss of property, services, wages, death or personal injuries to the extent they are caused by Contractor's negligence or willful misconduct in the performance or non-performance under this Contract, except any and all claims, demands, loss or destruction of property, actions and causes of

action of every kind and character, including but not limited to claims based on negligence, strict liability, and absolute liability which may arise in favor of any person or persons on account of illness, disease, loss of property, services, wages, death or personal injuries to the extent they are caused by the negligence or willful misconduct of City, its employees or agents.

Further Contractor hereby agrees to indemnify City for all reasonable expenses and attorney fees incurred by or imposed upon City in connection therewith for any loss, damage, injury or other casualty. Contractor further agrees to pay all reasonable expenses and attorney's fees incurred by City in establishing the right to indemnity pursuant to the provisions of this Section. Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if such are groundless, false or fraudulent, except for any such claims, demands, or suits to the extent they are caused by City.

#### **8.12 Representations of Contractor**

In order to induce City to enter into this Contract, Contractor represents that Contractor has familiarized itself with the nature and extent of the Contract documents, the work, the locality, and all Federal, State, and local laws, ordinances, rules, and regulations which may in any manner affect the progress of performance of the work. Further, the Contractor has given City written notice of any conflicts, errors or discrepancies that he has discovered in the Contract documents, and hereby accepts the written resolution thereof.

#### **8.13 Insurance and Bonds**

The Contractor shall at all times during the Contract maintain in full force and effect Employer's Liability, Workmen's Compensation, General Liability, and Auto Liability for bodily injury and property damage, including contractual liability coverage for the indemnity provisions contained herein. All insurance shall be by insurers and for policy limits acceptable to the Parish.

The Contractor agrees to furnish the City Certificates of Insurance to the effect that such insurance has been procured and is in force. However, the limits as shown herein shall not be interpreted to call for "stacking" of limits.

Coverage shall not be canceled, suspended, or voided by either party (the Contractor or the insurer) or reduced in coverage or in limits except after 90 days written notice has been given to the City. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy.

#### **A. Standard Worker's Compensation Insurance**

Workers Compensation insurance shall be in compliance with the Workers compensation law of the State of Louisiana. Employers Liability is included with a minimum limit of \$500,000 per accident/per disease/per employee. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law, coverage shall be included and include crewmembers or vessels including transportation, wages, and maintenance with the Employers Liability limit increased to a minimum of \$1,000,000. Coverage with an "In Rem" endorsement should the work to be performed involve watercraft.

#### **B. Comprehensive General Liability Insurance**

Commercial General Liability insurance, Broad Form Damage, including Personal and Advertising Injury Liability, Contractual Liability for Contractor's obligation assumed hereunder, Independent Contractors Coverage, Premises/Operations and Products/Completed Operations. There shall be a minimum limit per occurrence of \$1,000,000 and a minimum general aggregate of \$2,000,000. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (or current form approved for use in Louisiana), or equivalent, is to be used in the policy. If applicable, coverage for occurrences results from blasting, explosion or collapse, damage to underground property and injury or destruction of any property resulting there from.

#### **C. Business Auto Policy**

Commercial Automobile Liability Insurance shall have a minimum combined single limit per occurrence of \$1,000,000. ISO form number CA 00 01 (or current form approved for use in Louisiana), or equivalent, is to be used in the policy. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles.

These required limits listed above shall not be construed and are not intended to limit the obligations of indemnity and defense of the City contained herein, but merely constitute a minimum insurance requirement, which must be provided to secure such obligations. Pollution Liability coverage at least as broad as that provided under ISO pollution liability broadened coverage for covered autos endorsement (CA99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached.

#### **D. Umbrella Liability**

Umbrella Liability Insurance of Five Million (\$5,000,000.00) excess limits over and above the primary limits required in Section A, B, and C above, following form thereof including the Additional Insured and Waiver of Subrogation

endorsements.

#### **E. City of Kenner as an Additional Insured**

The City of Kenner, its officials, employees, representatives and/or agents must be shown on all liability policies described above as additional insurers. Coverage afforded the City, its officials, employees and representatives and/or agents as an insured applies as primary and not excess or contributing to any other insurance issued in the name of the City. Contractor must obtain "Additional Insured" and "Waiver of Subrogation" from all insurance carriers providing coverage under section B, C, and D. Contractor must obtain "Waiver of Subrogation" from all insurance carriers providing coverage under section A.

#### **F. Deductibles and self-insured retentions**

The Contractor shall be responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions must be declared to and accepted by the City of Kenner.

#### **G. Primary Insurance**

The Contractor's insurance shall be primary as respects the City of Kenner, its officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the City of Kenner shall be excess and non-contributory of the Contractor's insurance.

The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the policy limits.

#### **H. Waiver of Subrogation**

Contractor must obtain a "Waiver of Subrogation" from all insurance carriers providing coverage under sections A, B, C, and D in this Article for any and all claims which could be asserted against the City of Kenner, its employees, agents, representatives, officers, directors, elected and appointed officials, representatives and/or agents.

#### **I. Insurance Rating**

All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with an A.M. Best's rating of A:VI or higher.

If at any time an insurer issuing any such policy does not meet the minimum A.M.

Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance as required in the contract.

#### **J. Waiver of Insurance Requirements**

Notwithstanding anything to the contrary contained herein, the City of Kenner reserves the right at all times, in its discretion, to alter, amend, and/or waive the insurance requirements set forth herein where the insurance carried and/or to be provided by Contractor is deemed reasonable, sufficient and adequate to protect the interests of the City, provided that the City shall take no step to impose more stringent and onerous insurance requirements on the Contractor than those contained herein.

#### **K. BONDS**

##### **Performance Bond and Labor Payment Bond**

- a) The Contractor will be required to furnish corporate surety bonds as security of the performance of this Contract. Said surety bonds must be in the amount of 100% of the annual value of the Contract.
- b) Premium for the bonds described above shall be paid by the Contractor. A certificate from the surety showing that the bond premiums are paid in full shall accompany the bonds.
- c) The surety on the bonds shall be a duly authorized corporate surety company authorized to do business in the State of Louisiana with a minimum of an A- or better bond rating in accordance with A.M. Best Rating Classification.

#### **8.14 Conflict of Interest**

By signing this Contract, Contractor covenants that there is no public or private interest, direct or indirect, and that Contractor shall not acquire directly or indirectly in the future any such interest which does or may conflict in any manner with the performance of services rendered by Contractor or obligations under this Contract. Any conflicts shall be timely disclosed to City and City shall determine whether the conflict is cause for non-execution or termination of this Contract. Contractor further covenants that, in the performance of this Contract, no person having such an interest as described above shall be employed by Contractor.

#### **8.15 Criminal Background Records**

In the event that Contractor and/or employees/agents of Contractor are required to

work with or volunteer directly with children in the performance of services required under this Contract, then Contractor and/or employees/agents of Contractor shall submit to criminal background checks pursuant to the requirements of the Louisiana Child Protection Act.

**8.16 Notices**

Any communications to be given hereunder by either party to the other shall be deemed to be duly given if set forth in writing and personally delivered or sent by certified mail, postage prepaid with return receipt requested, as follows:

Notices should be sent to City at the following address:

City of Kenner  
c/o Director of Public Works  
1610 Reverend Richard Wilson Drive  
Kenner, Louisiana 70062

WITH A COPY TO

City of Kenner  
c/o City Attorney  
1801 William Boulevard  
Building C, Suite 302  
Kenner, Louisiana 70062

Notices should be sent to Contractor at the following address:

Written notices hereunder delivered personally or by certified mail, postage prepaid, return receipt requested, shall be deemed communicated as of actual receipt, in accordance with this paragraph.

**8.17 Non-Discrimination Clause**

Contractor agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972; Federal Executive Order 11246; Federal Rehabilitation Act of 1973, as amended; Vietnam Era Veteran's Readjustment Assistance Act of 1974; Title IX of the Education Amendments of 1972; Age Discrimination Act of 1975. Contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990. Contractor agrees to provide a work environment free of potential harassment and to not discriminate in its employment practices, and that it will render services under this Contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations, when applicable, shall be grounds for termination of this Contract.

#### **8.18 Non-assignability**

Contractor shall not sell, sublease, or assign any interest in this Contract and Contractor shall not transfer any interest in the same, whether by assignment or novation, without the prior written consent of City thereto, provided, however, that claims for money due or to become due to Contractor from City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be promptly furnished to City.

#### **8.19 Taxes**

Contractor hereby agrees that the responsibility for payment of taxes from the funds thus received under this Contract and/or council appropriation shall be said Contractor's obligation. Pursuant to LSA R.S. 47:301 *et seq.*, City is excluded from the payment of the state sales and use tax and the sales and use tax levied by any political subdivision.

#### **8.20 Ownership of Records**

All records, reports, documents, or other material related to this Contract and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of City, and shall, upon request, be returned by Contractor to City, at Contractor's expense, at the termination or the expiration of this Contract.

#### **8.21 Entire Contract**

This Contract and any exhibits incorporated herein, constitute the entire Contract between the parties with respect to the subject matter hereof and supersedes all prior representations, agreements, and understandings, whether oral or written, between City and Contractor with respect to the subject matter hereof, including, without



limitation, all prior drafts of this Contract and all prior drafts of any Appendix to this Contract, and any and all written or oral statements or representations by any official, employee or agent of City by Contractor.

Any alterations, variations, modifications, or waivers of provisions of this Contract shall be valid only when they have been reduced to writing, duly signed, and attached to the original of this Contract. No claim for services furnished or requested for reimbursement by Contractor, not provided for in this Contract, shall be allowed by City.

#### **8.22 Order of Precedence**

In the event of any inconsistent or incompatible provisions in Contracts entered into pursuant to a Bid solicitation, Request for Proposals, or Request for Qualifications, this executed Contract shall take precedence, followed by the provisions of City's Bid solicitation, Request for Proposals, or Request for Qualifications, and then by the terms of the Contractor's Bid response, Proposal, or Statement of Qualifications.

#### **8.23 Code of Ethics**

Contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (LSA R.S. 42:1101 *et seq.*, "Code of Governmental Ethics") applies to Contractor in the performance of services and work authorized under this Contract. Contractor agrees to immediately notify City if potential or actual violations of the Code of Governmental Ethics arise at any time during the term of this Contract.

#### **8.24 Severability**

The parties to this Contract understand and agree that the provisions herein, shall, between them, have the effect of law, but in reference to matters not provided herein, the Contract shall be governed by the laws and regulations of the United States of America, the State of Louisiana, and the City of Kenner. If any provision of this Contract is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Contract, such provision is fully severable, and this Contract must be construed and enforced as if such illegal, invalid, or unenforceable provisions never comprised a part of this Contract; and the remaining provisions of this Contract remain in full force and effect and may not be affected by the illegal, invalid, or unenforceable provision or its severance from this Contract.

#### **8.25 Applicable Law and Venue**

This Contract shall be consummated in the State of Louisiana, and shall be governed and/or construed in accordance with the laws of the State of Louisiana. Exclusive venue shall be the Twenty Fourth Judicial District Court for the Parish of Jefferson, State of Louisiana. By entering this Contract, Contractor expressly waives any objections to jurisdiction and venue, regardless of Contractor's residence or domicile. In

the event that either City or Contractor commences a legal proceeding to enforce or interpret any of the terms of this Contract or to terminate this Contract, the prevailing party in any such suit shall receive from the other a reasonable sum as attorney's fees and court costs as may be fixed by the court.

#### **8.26 Subcontractors**

Contractor shall not enter into any subcontract for work or services contemplated under this Contract without first obtaining written approval of City. Any subcontracts approved by City shall be subject to conditions and provisions as City may deem necessary; provided, however, that notwithstanding the foregoing, unless otherwise provided in this Contract, such prior written approval shall not be required for the purchase by Contractor of supplies and services which are incidental but necessary for the performance of the work required under this Contract; and provided, further, however, that no provisions of this clause and no such approval by City of any subcontract shall be deemed in any event or manner to provide for the incidence of any obligation of City beyond those specifically set forth herein.

An approved subcontractor shall not subcontract any portion of its authorized Service/Work except by written approval of City. If Contractor sublets any part of this Contract, Contractor shall be as fully responsible for the acts and omissions of its subcontractor(s), and of any persons either directly or indirectly employed by its subcontractor(s), as it is for the acts and omissions of persons directly employed by Contractor.

Contractor shall ensure that each subcontractor or other person performing any Service/Work or activity on behalf of Contractor (whether directly or indirectly in connection with the Contract) complies with all provisions of this Contract, with respect to the work to be performed or materials or equipment to be supplied by such subcontractor or other person.

#### **8.27 Foreclosure, Condemnation and Receivership**

Upon the occurrence of any event which may reasonably lead to the foreclosure or other judicial sale of all or any material part of the equipment or the termination of any lease or mortgage covering all or any material part of the equipment, Contractor shall immediately notify City of such occurrence. In the event that the equipment, or any material part of the equipment, is taken, appropriated or condemned pursuant to law and the effect of such taking is to materially frustrate or impede the ability of Contractor to carry out its obligations pursuant to the Contract, then City may terminate the Contract, effective upon receipt of City's written notice to Contractor regarding such cancellation.

#### **8.28 Bankruptcy**

Contractor shall immediately notify Kenner in writing if Contractor: (1) files a voluntary petition in bankruptcy; (2) if Contractor has an involuntary petition in bankruptcy filed against it and it is not dismissed within ninety (90) days; (3) makes an assignment for the benefit of creditors, applies for or consents to the appointment of any receiver or trustee of all or any part of its property; (4) institutes dissolution or liquidation proceedings with respect to its business; (5) an order is entered approving an involuntary petition to organize the business of Contractor or to effect a plan or other arrangement with creditors or appointing a receiver or trustee for Contractor of all or part of its property; or (6) is issued a writ of attachment, execution, distraint, levy, possession or any similar process by any court against the equipment used in fulfilling the Contract.

In the event that said petition, writ or warrant shall not be dismissed or a stay of foreclosure obtained or said assignment, appointment, or bankruptcy proceedings shall not be rescinded or terminated, within ninety (90) days of the issuance making or commencement therein, then City within its sole discretion may cancel the Contract in conformity with Section 7.2 hereof, unless: (1) within ninety (90) days after election or appointment, any receiver or trustee of Contractor as a debtor-in-possession in connection with any such reorganization or similar proceedings, shall have remedied any uncured failure to comply with any provision of this Contract; and (2) within said ninety (90) days, said receiver or trustee or Contractor as debtor-in-possession, shall have executed the contract, duly approved by City and the court having jurisdiction over the premises, whereby said receiver or trustee or Contractor in said capacity assumes all obligations and agrees to be bound fully by each and every provision of this Contract.

### **8.29 Non-Enforcement**

Neither party shall be relieved of any obligation by reason of any failure of the other party to enforce prompt compliance with any provision of the Contract. Failure of one party to enforce prompt compliance with any other provision on one occasion shall not prevent the other party from enforcing prompt compliance with the provisions on subsequent occasions.

### **8.30 Rules and Regulations**

The Director of Public Works, in consultation with Contractor, reserves the right to require such reasonable rules, regulations or directives concerning Collection of Solid Waste and Curbside Recycling Materials Collection or with any of the Service/Work defined herein, provided such rules, regulations or directives are consistent with the provisions of this Contract.

### **8.31 Inspection**

The vehicles and equipment used to perform the work shall be subject to the right of

periodic inspection during normal business hours by City.

### **8.32 General Records Requirements**

In addition to other such records specified in the Contract Documents, Contractor shall also maintain accurate books and records employing generally accepted accounting principles (GAAP) relating to the performance of this Contract in accordance with the following minimum requirements:

- A. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers and cancelled checks, as well as all other records, documents, and information evidencing or associated with charges for services; expenditures or disbursements; revenues from the sale of Recyclable Materials, and any other financial transaction related to this Contract for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Contract.
- B. Any records or documents to be maintained pursuant to this Contract shall be made available for inspection or audit, during regular business hours, upon written twenty-four (24) hours request by the designated representative of City. The records shall be made available to a City representative at Contractor's office.

### **8.33 Rights and Remedies Not Exclusive**

All rights and remedies given to a party by this Contract shall be in addition to and cumulative with any and all other rights or remedies, existing or implied, at law or in equity. Such rights and remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the applicable party. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy, nor shall any such delay or omission be construed to be a waiver of or acquiescence to any detail. The exercise of any such right or remedy by a party shall not release any other party from its obligations or any liability under this Contract.

### **8.34 Reservation of Rights**

Without limitation upon the rights which City might otherwise possess, City does hereby expressly reserve the following rights, powers and authorities: (1) to exercise its governmental powers to the full extent that such powers may be vested in or granted to City; and (2) to exercise any other rights, powers, or duties required of or authorized to City under the Constitution and laws of the State of Louisiana.

### **8.35 Challenges to Contract**

Each party is equally responsible for the terms and conditions of this Contract and each party is satisfied that these terms and conditions are legally enforceable in their entirety. Nothing in this Section shall preclude an action by either party or an alleged breach of Contract.

### **8.36 Representations and Warranties**

Contractor warrants, represents, agrees and acknowledges that, as of the Effective Date of this Contract:

- A. Contractor is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Louisiana, and is duly authorized to do business in Louisiana; and,
- B. Contractor has the requisite power and authority under applicable law and its Articles of Organization and Operating Agreement, and is authorized by resolution of the Board of Directors or other governing body or individuals of Contractor, and has secured all consents which are required to be obtained as of the Effective date of this Contract, to enter into and legally bind Contractor under this Contract and to empower Contractor to take all actions necessary to perform all of its obligations pursuant to this Contract; and,
- C. To the best of Contractor's knowledge, information and belief, this Contract is enforceable against Contractor in accordance with the provisions herein; and,
- D. Contractor has made no representations, warranties, or agreements inconsistent with or with respect to the subject matter of this Contract; and,
- E. There is no action or proceeding pending or threatening against Contractor which questions the validity or prospective validity of this Contract or any of the essential elements upon which this Contract depends or of any action to be taken by Contractor; and,
- F. Insofar as the legal capacity of Contractor to carry out any obligation pursuant to this Contract is concerned, the execution of, and performance pursuant to, this Contract will not result in the breach or violation of any provision of the article of incorporation or association or by-laws of Contractor or of any state, regulation, agreement, judgment, or decree to which it is subject.

### **8.37 Authority to Sign Contract**

At or before the Effective Date of this Contract, Contractor shall deliver to City a certified copy of the resolution of the Board of Directors or other governing body or individual of Contractor authorizing the execution of this Contract.

### **8.38 Application to Successors**

All of the provisions of this Contract shall apply to Contractor, its successors and assigns.

### **8.39 Right of Intervention/Opposition**

Contractor agrees that it shall not oppose the intervention by City, at City's sole cost and expense, in any suit, action, or proceeding involving Contractor with respect to and related to the Solid Waste Collection and Curbside Recyclable Materials Collection in City or any material provision of this Contract.

### **8.40 Force Majeure**

Notwithstanding anything contained in this Contract to the contrary, but excepting Section 5.6. hereof, Contractor's time for achieving compliance under this Contract shall be extended if any delay results from inability of Contractor to complete a task timely in accordance herein, and such delay is beyond Contractor's reasonable control, being caused by conditions included but not limited to acts of God, flood, hurricane, explosion, riot, war, sabotage, fire, acts of terrorists, lack of adequate fuel, judicial or governmental laws or regulations, City approvals, or litigation not commenced by Contractor. The Parties acknowledge and agree that unusually severe weather shall not be a Force Majeure, except when there is an immediate peril to life or property and such necessitates governmental intervention.

### **8.41 Construction of the Contract**

Contractor acknowledges that it has been represented by counsel in the negotiation of this Contract, that it has carefully read the terms and conditions hereof and is willing to and does accept all of the risks of such terms and conditions, and agrees that in the event of any ambiguity in this Contract, or in the event of any other dispute over the meaning thereof, this Contract shall not be construed against City and in favor of Contractor by virtue of the fact that drafts thereof were prepared by City.

### **8.42 Time is of the Essence**

Time is of the essence to the performance of the terms and conditions of this Contract. Contractor acknowledges that the Stipulated Damages in Section 5.13 hereof are for mere delay and that City may demand performance of this Contract and Stipulated Damages.

### **8.43 Headings**

The headings contained in this Contract are to facilitate reference only, and do not form

a part of this Contract and shall not in any way affect the construction or interpretation thereof.

#### **8.44 Claims for Liens**

Contractor shall be solely liable for and shall hold City harmless from any and all claims or liens for labor, services or materials furnished to Contractor in connection with the obligations underlying this Contract.

#### **8.45 Conditions to Precedent to Effectiveness**

This Contract shall not become effective unless and until signed by the Mayor of City and a duly authorized representative of Contractor, which signatures shall constitute and operate as an acceptance of each and every term and condition and limitation contained in this Contract.

#### **8.46 Federal Clauses**

Contractor agrees to the following miscellaneous terms and provisions for all federally funded and reimbursable contracts:

- A) Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled, "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
- B) Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented by Department of Labor Regulations (29 CFR Part 3).
- C) Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5).
- D) Contractor shall comply with all notices of awarding agency requirements and regulations pertaining to reporting.
- E) Contractor shall comply with all notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- F) Contractor shall comply with all awarding agency requirements and regulations pertaining to copyrights and rights in data.
- G) Contractor shall provide access by the State of Louisiana, City of Kenner, United States of America, Federal Emergency Management Agency, Controller General of the United States, or any of their duly authorized representatives, to any books, documents, papers and records of Contractor which are directly pertinent to this specific Contract for the purpose of making audit, examination or excerpts, and transcriptions.
- H) Contractor shall retain all required records for a period of at least three years after the State of Louisiana or City of Kenner has made final payments and all

- other pending matters are closed.
- I) Contractor shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR Part 15).
  - J) Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163, 89 STAT 871).
  - K) Contractor certifies that Contractor will not and has not used any Federal funds to influence an employee or member of Congress in obtaining any federal award (Byrd Anti-Lobbying Amendment).
  - L) Contractor declares that Contractor, its principles or affiliates (subcontractors), are not currently disqualified as a result of debarment or suspension.

THIS CONTRACT CONTAINS OR HAS ATTACHED HERETO ALL OF THE TERMS AND CONDITIONS AGREED UPON BY THE CONTRACTING PARTIES. IN WITNESS WHEREOF, THIS CONTRACT HAS BEEN SIGNED ON THE DATES INDICATED BELOW.

**WITNESSES:**

**CITY OF KENNER**

\_\_\_\_\_  
 Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
 E. Ben Zahn, III, Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
 Printed Name: \_\_\_\_\_

**WITNESSES:**

**IV Waste, LLC**



\_\_\_\_\_  
Printed  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Sidney D. Torres, IV, Owner and  
President

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed  
Name: \_\_\_\_\_

DRAFT