

**ANNUAL CONTRACT FOR
MUNICIPAL COMMERCIAL GARBAGE COLLECTION, DISPOSAL AND
RECYCLING SERVICES FOR THE CITY OF SAN ANTONIO**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement (the “Agreement”) is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its Director of Finance or said Director’s designee (“Director”), pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 20____ and **BFI Waste Services of Texas, LP, dba Republic Services of San Antonio** by and through its General Manager (“Republic Services” or “Contractor”). City and Contractor may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

ARTICLE I
DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 “Aluminum” shall mean beverage, food and nonfood cans made of aluminum material (U.S. EPA 1995a).
- 1.2 “Applicable Law” is any applicable law (whether statutory or common), including statutes, ordinances, regulations, rules, governmental orders, governmental decrees, judicial judgments, constitutional provisions, and requirements of any kind and nature promulgated or issued by any governmental authority claiming or having jurisdiction.
- 1.3 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.4 “Contractor” is defined in the preamble of this Agreement and includes its successors.
- 1.5 “Director” is defined in the preamble of this Agreement and shall mean the City’s Finance Department Director / Deputy Chief Financial Officer or designee, unless otherwise specified.

- 1.6 “Disposal Site and Contractual Tonnage Commitments”: The disposal site must be a legally permitted municipal solid waste depository including, but not limited to, sanitary landfills permitted or approved by all appropriate governmental agencies having jurisdiction and requiring such licenses, franchises, permits or approvals to receive for processing or final disposal municipal solid waste and dead animals. Committed proposal prices are to include the disposal cost utilizing a legally permitted disposal facility. Under this contract, waste delivered to Contractor’s landfill or any legally permissible landfill approved by the City shall be credited toward the City’s guaranteed tonnage requirement under respective current landfill disposal contracts, if any such contract is already held by the successful Proponent.
- 1.7 “Excluded Waste” is: (1) Hazardous Waste; (2) radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, or toxic waste as defined by Applicable Law; or (3) any otherwise regulated waste.
- 1.8 “Glass” shall mean glass jars, bottles and containers.
- 1.9 “Hazardous Waste” includes, but is not limited to, any amount of waste listed or characterized as hazardous by the United States Environmental Protection Agency or any state agency pursuant to the Resource Conservation and Recovery Act (RCRA), and including future amendments thereto, and any other Applicable Law.
- 1.10 “High density polyethylene (HDPE)” shall mean translucent plastic containers labeled with the #2 code. (U.S. EPA 1995c).
- 1.11 “Local Government Record” as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.
- 1.12 “Low Density Polyethylene (LDP)” shall mean plastic film applications used for dry cleaning bags, bread and frozen food bags, and squeezable bottlers, such as honey and mustard, with the #4 code. (U.S. EPA 1995c).
- 1.13 “Mixed Paper” shall mean recovered paper that is not sorted into specific categories including junk mail, magazines, OCC, folding boxes (cereal box), aseptic packaging, telephone books, wrapping paper and other paperboard products. (U.S. EPA 1993a).
- 1.14 “Office paper” shall mean high-grade paper from offices such as computer paper, sorted white ledger, copier paper and office stationary.
- 1.15 “Old Corrugated Containers (OCC) 11” shall mean corrugated containers having liners of test liner, jute or kraft. (Paper Stock Industries Chapter Standards and Practices Circular).

- 1.16 “Old Newspaper (ONP) De-ink Quality (8)” shall mean fresh newspaper, free from magazines, white blank, pressroom over issue, and paper other news, containing not more than normal percentage of rotogravure and colored sections. May contain magazines. (Paper Stock Industries Chapter Standards and Practices Circular).
- 1.17 “Paper” shall mean paper products such as old newspaper, old magazines, office paper, telephone directories, old corrugated containers, bags and some paperboard packaging (Paper Stock Industries Chapter Standards and Practices Circular).
- 1.18 “Plastics” shall mean plastic bottles, containers and packages made from various resins including PETE, HDPE, PVC, LDPE, PP PS and other plastics, codes #1 through #7. Plastics will exclude construction and automobile products. Containers sizes shall be two gallons or smaller. (U.S. EPA 1995c).
- 1.19 “Polyethylene terephthalate (PETE)” shall mean clear plastic containers labeled with the #1 code. PETE containers are used for soft drinks, water, sports drinks, mouthwash and salad dressing. (U.S. EPA 1995c)
- 1.20 “Polypropylene (PP)” shall mean packaging, film and containers with the #5 code. PP containers include catsup, yogurt, magazine, and medicine. (U.S. EPA 1995c).
- 1.21 “Polystyrene (PS)” shall mean clear, hard and brittle plastics with the #6 code and is usually used for plastic cutlery and food containers. U.S. EPA 1995c).
- 1.22 “Polyvinyl Chlorine (PVC)” shall mean vinyl products with the #3 code and its application can be for pipe fittings, floor tiles, food and non-food packaging. U.S. EPA 1995c).
- 1.23 “Recycling” shall mean a process by which materials are collected, sorted, processed, or prepared into marketable commodities for manufacturing into new products.
- 1.24 “Recycling Processing Facility” shall mean a facility where recyclable material are sorted and processed or prepared for bulk shipment to a manufacturer for use as a raw material.
- 1.25 “Residuals” shall mean non-recyclable waste.
- 1.26 “Single-Stream Recycling Collection” shall mean municipal commercial collection of recycling commodities, whereas materials are collected, and combined together/commingled for transportation to recycling processor.
- 1.27 “Solid Waste” is any nonhazardous solid waste generated at City’s Locations that is not excluded by the provisions of this Agreement. Solid Waste shall not include any Excluded Waste.
- 1.28 “Texas Commission on Environmental Quality (TCEQ)” refers to the environmental regulatory agency for the State of Texas.

- 1.29 “Tin/steel cans” shall mean tin-coated steel containers, such as cans for food packaging. U.S. EPA 1993a). Containers include food cans, beverage cans, aerosol cans and lids from bottles and jars.
- 1.30 “Ton” shall mean 2,000 pounds unless otherwise specified.
- 1.31 “Unacceptable Wastes for Garbage” shall be defined as waste, the acceptance and handling of which by Contractor would cause a violation of any permit, condition, legal or regulatory requirement, substantial damage to Contractor's equipment and facilities, or present a danger to the health or safety or public or Contractor’s employees, including, but not limited to, hazardous waste, special waste, untreated medical waste, soil, dirt, rock, sand, and similar items.
- i. “Commercial refuse” shall include any solid wastes generated as a by-product of any commercial operation but shall not include swills, slops, toxic or corrosive materials, manure, or any other material found harmful to personnel or equipment as determined by the director or his designee. Commercial refuse shall also include MSW that was not generated at the city customers CPS account address and non-residential MSW (MSW that is generated from a business) that may be collected from businesses such as law offices, community centers and pools.
- ii. “Municipal solid waste (MSW)” shall mean solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, and all other solid waste other than industrial or hazardous solid waste.
- 1.32 “Unacceptable Wastes for Recycling” is any item that is not acceptable for recycling as defined in this agreement.
- 1.33 “Waste Material” is all Solid Waste and, Recyclable Material that are not excluded by this Agreement. Waste Material does not include any Excluded Waste.

ARTICLE II

TERM

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement is for a three (3) year period commencing DECEMBER 1, 2021, and ending NOVEMBER 30, 2024.
- 2.2 Renewals. At City’s option, this Agreement may be renewed under the same terms and conditions for up to two (2), additional one (1) year periods. Renewals shall be in writing and signed by Director, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefor. An election by City not to renew the agreement shall require no action or notification by the City to Contractor.

- 2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation. Contractor shall be compensated for services actually provided in accordance with the payment terms as adjusted from time to time. Contractor shall be compensated for its services based on the City's collections, (which are in arrears on a monthly cycle at the end of each month).

ARTICLE III
SCOPE OF SERVICES

- 3.1 Contractor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation to Contractor.
- 3.2 Solid waste garbage collection and recycling services provided by the Contractor shall be equivalent to service levels currently provided to City of San Antonio facilities which are as reflected in **Exhibit C**, Current Garbage Disposal and Recycling Collection Locations and Container Size List, are estimates for this contract. Unless otherwise noted, all costs required to perform the scope of services of this contract for the City are the responsibility of the Contractor and are included in **Exhibit E**, Price Schedule, including but not limited to container rental, collection, labor, recycling, disposal, all hauling, dump fees, re-setting and maintaining containers and equipment, disinfecting food disposal containers, insurance, etc.
- 3.3 Collections Days. Services shall be provided Monday – Saturday. Collection times shall be in accordance with City Code Section 14.41(f). Occasionally services may be requested on Sundays and City recognized holidays for open top containers and compactors. Contractor may charge the additional trip charge rate as specified in **Exhibit E**, Price Schedule, for Sunday or Holiday collection. The City prefers that the Contractor retain the current garbage and recycling collection days as described in the Price Schedule. Any proposed alternate collection schedules shall be in accordance with City Code Section 14.41(f) and approved in writing in advance by the using Department Director or designee.
- 3.4 Contractor warrants and certifies that Contractor, its employees, and all other persons designated by Contractor to provide services required by this contract, has the experience, qualifications, requisite training, registrations, permits, licenses and/or certifications, including, but not limited to, a Municipal Solid Waste (MSW) License and a Commercial Solid Waste Hauler Vehicle Permit. Additionally, Contractor shall ensure that Contractor, its employees, and all other persons designated by Contractor meet all competence standards promulgated by authoritative bodies and regulatory agencies, such as the Texas Commission on Environmental Quality (TCEQ), as applicable to the services provided herein.

- 3.5 All Contractor services and collection times shall be performed in accordance with applicable provisions of the City Code, Chapter 14 SOLID WASTE; http://library.municode.com/HTML/11508/level2/PTIICO_CH14SOWA.html .
- 3.6 In addition Contractor will provide all materials and equipment necessary to accomplish the requirements contained in in this Scope of Services and **Exhibit F**, Contractor's Proposal. Contractor shall also supply all levels of skill and labor necessary to successfully complete all services required under this contract.
- 3.7 All equipment furnished by Contractor shall remain the property of Contractor. The City shall not intentionally overload, move or alter the equipment and shall use the equipment only for its intended purpose. City shall provide safe, unobstructed access to the equipment on the scheduled collection day. Contractor may charge an additional fee for any additional collection service required by City's failure to provide access.
- 3.8 Contractor shall assume all responsibility and liability of all waste once loaded into the Contractor's vehicle, including, but not limited to, safe transportation of waste material, and ensuring that disposal is performed in accordance with all current regulations. Title to Waste Material shall pass to Contractor when loaded into Contractor's collection vehicle or otherwise received by Contractor. Title to and liability for any Excluded Waste shall at no time pass to Contractor or to the City (unless the either is the generator of such Excluded Waste).
- If Excluded Waste is discovered before it is collected by Contractor, Contractor may refuse to collect the entire Waste Container that contains the Excluded Waste. In such situations, Contractor shall contact the City and the City shall promptly undertake appropriate action to ensure that such Excluded Waste is removed and properly disposed of by the depositor or generator of the Excluded Waste. In the event Excluded Waste is present but not discovered until after it has been collected by Contractor, Contractor may, in its sole discretion, remove, transport, and dispose of such Excluded Waste at a facility authorized to accept such Excluded Waste in accordance with Applicable Law and charge the depositor or generator of such Excluded Waste for all direct and indirect costs incurred due to the removal, remediation, handling, transportation, delivery, and disposal of such Excluded Waste. The City shall provide all reasonable assistance to Contractor to conduct an investigation to determine the identity of the depositor or generator of the Excluded Waste and to collect the costs incurred by Contractor in connection with such Excluded Waste.
- 3.9 Loss or damage by Contractor Employees / Operations. City shall refer complaints regarding loss of or damage to public and/or private property to Contractor who shall repair, replace, or otherwise compensate City for all damage to said property caused by Contractor's employees and/or Contractor's operations while performing this contract.
- 3.10 Transportation, Storage and Legal Disposal Costs. The Contractor shall supply all necessary transportation and storage facilities for all materials and equipment necessary to perform all services described in this contract. The Contractor is responsible for the legal

disposal of non-recyclable waste at a State approved facility. All transportation, storage functions, disposal and recycle facilities shall be duly licensed or qualified under regulation, as may be necessary to environmental, health and safety compliance and Contractor shall pay all state fees imposed by the Texas Health and Safety Code, Chapter 361, Sec. 361.013.

- 3.11 Taxes, Governmental Fees and Charges. The Contractor shall agree to pay all applicable Local, State and Federal taxes, as well as applicable tonnage charges and regulatory fees during the life of this contract. The Contractor specifically agrees to pay all City solid waste vehicle licensing and permitting fees imposed by City Code Chapter 14, Sections 14-30 and 14-40, which is a material condition of the contract.
- 3.12 The Contractor shall maintain all permits and licenses required by law or ordinance throughout the term of this contract. Contractors must obtain and maintain the City's Commercial Solid Waste Hauler Vehicle Permit(s) prior to commencement of service.
- 3.13 Compliance. The Contractor shall follow all applicable Local, State, and Federal laws and regulations pertaining to the provision of the services detailed herein, including but not limited to those related to safety. Contractor shall avoid any practice that would create a perception of nuisance, such as odors and litter. Contractor shall comply with the regulations, guidelines and standards set forth in Chapter 14 of the City of San Antonio Code. Contractor shall also comply with the Regulatory Compliance and Criminal History Warranty as outlined in **Exhibit B**.
- 3.14 Landfill Facility Approval and Contractual Tonnage Commitments. Prior to commencement of contract, the City reserves the right to review and approve the Contractor's disposal sites. The cost of disposal is included in the pricing included in **Exhibit E**, Price Schedule.
- 3.15 Care and Diligence. The Contractor shall exercise all reasonable care and diligence in collecting refuse and recyclables. Collection equipment shall be muffled and operated at acceptable noise levels. Equipment shall be maintained to prevent leaks of oil or other liquids, and any such leaks will be covered immediately and cleaned up quickly. Contractor shall provide such personnel and equipment, including reserves, and develop reasonable route assignments to ensure adherence to determined schedules. Contractor must exercise due care to avoid dropping of refuse through collector activity and shall immediately at the time of occurrence clean up such spillage, dropping, or scattering.

VEHICLES

- 3.16 Contractor shall provide and maintain during the entire period of this contract collection vehicles sufficient in the number and capacity to efficiently perform the work and render the services required by this contract. Contractor shall have immediately available such additional vehicles, equipment, and personnel to ensure collections continue providing services on schedule in the event of vehicle breakdowns and repairs.

- 3.17 Contractor shall keep the collection vehicles in a sanitary condition at all times. To ensure compliance, the City shall reserve the right to inspect the vehicles at any time to ascertain condition. Each truck shall carry, at minimum, at all times a shovel and a broom or rake, for use for the collection of spilled refuse.
- 3.18 During collection activities, Contractor shall ensure operators observe procedures and exercise good judgment to create minimal disturbance to citizens of the city.
- 3.19 All equipment used in the service of this contract shall be well maintained, kept in good repair, and shall at all times comply with any State and Federal DOT safety regulations.
- 3.20 Contractor shall ensure all Contractor's vehicles are equipped with two-way communications and that the operators remain in constant contact, during operations, with the local office of the company.
- 3.21 Contractor shall furnish the City with a list of all equipment to be used in fulfillment of this contract and immediately notify the City when any additions or deletions take place. At a minimum, this list shall give the make, model, company I.D. number, and City's permit number for each vehicle.
- 3.22 The City shall have the option and the right at any time, without question, to order Contractor to remove a vehicle from service for actual or suspected non-compliance with any of contract requirements, and in so doing shall in no way relieve the Contractor of his responsibility for meeting the collection schedule requirements. Any vehicle so removed shall not be returned to service by Contractor until the Contractor proves to City's satisfaction that the vehicle is in compliance and City authorizes the return to service.

EQUIPMENT REQUIREMENTS

- 3.23 Contractor shall be responsible for furnishing all containers, supplies, labor and equipment necessary to effectively serve facilities with solid waste, disposal and recycling services. Containers and equipment shall be supplied at the Contractor's own expense with no additional cost to the City. Contractor shall provide parts and labor to repair any damaged container at the Contractor's cost. City reserves the right to inspect and approve Contractor's equipment prior to the commencement of services. Such equipment shall include, but is not limited to:
 - 3.23.1 Collection vehicles for commercial garbage and refuse pick up.
 - 3.23.2 Recycling collection vehicles for recycling material pick-up.
- 3.24 Contractor shall provide appropriate containers (e.g., wheeled carts, front loaders, open top containers, compactors) to collect all garbage and recyclables. At the beginning of service under this contract, containers shall be of good quality. All containers shall be clearly labeled and should be color-coded to indicate their intended use. Contractor shall maintain all containers in a clean and fully serviceable condition, free of offensive odors, graffiti

and safety hazards. Contractor shall be required to clean containers as necessary based on their standard use. Contractor shall provide prompt repair or replacement of all damaged containers.

- 3.25 When containers are removed from a City location for reasons of damage, repairs, or inability to safely operate, etc., Contractor must furnish replacement containers or services necessary the same day to meet the demands of the Department(s) at no additional cost to the City. Contractor is responsible for maintaining each Department's service level for collection of waste and recyclables on the required service days. Any additional expenses, including but not limited to multiple same day pickups, multiple containers, placement and removal of temporary containers to maintain the Departments service level will be at Contractors expense.
- 3.26 Container/equipment change out will be required when containers/equipment have been repetitively repaired for the same incident/malfunction. City shall have the option and right, at any time, to require change out of containers or equipment. City will not be held responsible for any cost to change out or repair Contractor's containers/equipment. City will not be held responsible for any cost to change out or repair Contractor's equipment that is not operational for its intended use.
- 3.27 Container maintenance shall include both physical operability (seals, drain plugs, hinges, lid seals, appearance, etc.) and sanitation. Containers placed in service at City locations must be in good, leak proof condition. No rusted or leaking containers that allow refuse to escape from the container to the physical site are allowed for placement at City locations. Contractor shall replace any container when such leakage is detected and reported.
- 3.28 City shall provide accessible locations for contractor's containers and designated contact person(s) for this contract. City reserves the right to manage certain classes of waste separately from this agreement.
- 3.29 Contractor shall maintain Contractors containers and remove any graffiti in accordance with City Code – City Code, Chapter 21, Article X – Graffiti.
- 3.30 All food disposal containers shall be sprayed by Contractor with Sani-Spray, or other similar spray containing disinfectant, detergent, deodorant, or equipped with an Ozonaire devise or equivalent, and sprayed insect repellent each time they are emptied. Cleaning and deodorizing of containers shall be performed by Contractor on a regular, at least monthly, basis.

ADDITIONAL CONTRACTOR REQUIREMENTS

- 3.31 Contractor shall provide an account representative and support staff with a local or non-toll telephone number as necessary to provide primary contact between City and Contractor and who shall be available during normal business hours to respond to City inquiries.

- 3.32 Contractor shall maintain an emergency telephone number during all hours and have a representative available to respond to emergency calls from City.
- 3.33 All regularly scheduled collections must be completed on the scheduled day, unless agreed to in writing by the City prior to the regularly scheduled service.
- 3.34 If Contractor is not able to service a container because it is not accessible (blocked entrance to container) to the collection vehicle on the scheduled day, Contractor shall contact the City department coordinator at the location to arrange to have the obstruction cleared. Contractor shall return to service the container the same day the notification from the City department is received that the obstruction has been cleared, or by Noon the following day, unless additional time is allowed by the City at the Contractor's request.
- 3.35 On an as needed basis, the City may add, modify, substitute or delete locations and containers from **Exhibit C**, Current Garbage Disposal and Recycling Collection Locations and Container Size List, upon fourteen (14) calendar days of written notice by email to the Contractor. Any alterations, additions, or deletions to **Exhibit C** in accordance with this Article, shall be documented with a dated, revised Current Garbage Disposal and Recycling Collection Locations and Container Size List which shall replace the existing **Exhibit C**, and which is subsequently incorporated by reference herein.
- 3.35.1 Container Delivery Charge (Fee for Placement of Container). This fee is listed in **Exhibit E**, Price Schedule, and is applicable only for new locations added pursuant to this section 3.35. This fee will not be charged for any containers already in place at the commencement of this Agreement.

RECYCLING

- 3.36 It is the intent of the City to recycle at the City facilities listed in **Exhibit C**, Current Garbage Disposal and Recycling Collection Locations and Container Size List, for 6, 8, 20 cu. yd. or larger open top containers and compactors. It is suggested that Contractor use EPA, the National Solid Waste Management Association, or similar industry standards for recycling at office buildings to estimate the potential for recyclables generated. City currently has approximately 61 locations consisting of frontload and compactor containers for recycling services.
- 3.37 Contractor has recycling rights to containers and compactors which are owned by the Contractor and rented/utilized by City for the duration of the contract. Contractor shall retain the revenue from the sale of recyclable materials collected containers. The revenue retained by Contractor shall be used to offset the cost of the container rental to the City. The City will have recycling rights to all other containers which are not the property of Contractor.
- 3.38 Recycling Processing Site. Contractor shall notify the City of the recycling location where recyclables will be unloaded and processed. City reserves the right to approve Contractor's recycling site(s). All recyclable materials for the Recycling Program shall be recycled and

not disposed in a landfill. **Contractor's failure to abide by obligations of the Recycling Program by disposing of recyclables at a landfill or co-mingling with solid waste collection shall constitute a material breach of contract. In such case, City may at its discretion terminate this contract for cause upon ten (10) days' notice to Contractor, with opportunity for cure.**

- 3.39 Recyclable Materials. The Contractor agrees to collect and transport recycling commodities collected at municipal commercial facilities. The Contractor shall not be authorized to delete any materials from those listed below, unless otherwise directed by the Director of the City's Solid Waste Management Department. In the event that the City deletes items from the Recycling Program during the term of the contract, the Contractor shall agree to comply and adjust performance accordingly. Recyclable Materials include:
- 3.39.1 Paper products: Acceptable material consists of newsprint, ad circulars, catalogs, carbonless paper, dry goods packaging with liners removed (e.g., cereal, pasta, rice, beer/soda cartons, etc.) envelopes, file folders, flattened cardboard, junk mail, magazines, newspapers, office paper (shredded paper is not included), paper bags, paper towel/toilet paper cores, phone books, non-metallic gift wrap.
- 3.39.2 Glass: Items include bottles and jars with labels and lids. No mirrors, windows, ceramics, or other glass or glazed materials are allowed.
- 3.39.3 Cans: Empty aluminum and steel/tin cans used for beverages and food are acceptable. Empty aerosol cans shall also be accepted. No scrap metal is collected.
- 3.39.4 Rigid Plastic Containers: Plastic products shall include household plastic containers labeled # 1-7 with the recycling symbol on the bottom of container. Labels and lids may be present. No Polystyrene (Styrofoam®) packaging, including molded Styrofoam stamped PS#6, is acceptable.
- 3.40 Contractor shall deliver recyclables collected to a permitted recycling processor.
- 3.41 City Facility Recycling Reports. Contractor shall complete and submit a City Facility Recycling Report Form (**Exhibit D**) to the City's Finance Department on a biannual basis for recyclable materials collected in 20 cubic yard containers or larger. Biannual reports are due on the 15th every April and October. The first biannual recycling report for this contract shall be due by April 15, 2022. Contractor must also submit an annual report by March 1st of each year, documenting activities that occurred in the previous calendar year.
- 3.41.1 1st biannual: October 1 through March 31.
- 3.41.2 2nd biannual: April 1 through September 30.
- 3.42 Recycling at City facilities shall be categorized into six (6) distinct groups. City reserves the right to revise the groups identified and add additional recycling facilities and buildings.

- 3.42.1 Sports and Entertainment (Alamodome).
- 3.42.2 Aviation (all Aviation facilities).
- 3.42.3 Convention (Convention Center).
- 3.42.4 Downtown Operations (La Villita, Market Square & Parking Operations).
- 3.42.5 Parks (all Parks facilities).
- 3.42.6 General Office Buildings and Pre K Buildings.

ARTICLE IV **COMPENSATION TO CONTRACTOR**

- 4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Contractor in accordance with **Exhibit E**, Price Schedule. Parties agree that the following apply to **Exhibit E**, Price Schedule:
 - 4.1.1 Container Delivery Charge (Fee for Placement of Container). This fee is applicable only for new locations added pursuant to section 3.35. This fee will not be charged for any containers already in place at the commencement of this Agreement.
 - 4.1.2 Recycling Item II. Frontloaders - Proposed Rates for New Service – Recycling. Haul Rate is once per month and includes service once per week.
 - 4.1.3 Recycling Item III. Proposed Rates for New Services - Open Top Containers and Compactors - Recycling, Collection and Processing. Haul Rate is per haul. Delivery charge is only charged one time (at the time of delivery). No rental fees apply to open top containers. The \$1500 installation fee is a one-time charge for compactors.
 - 4.1.4 Recycling Item IV. Proposed Rates for Temporary Services - Open Top Containers - Recycling, Collection and Processing. Haul Rate is per haul for temporary containers. There is only a delivery charge for open top containers. No delivery charge applies for 4, 6, and 8 yard containers. The delivery charge for open top containers (20, 30, and 40 yard) is a one-time fee.
- 4.2 Contractor shall submit monthly invoices to City upon completion of services, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976. All unpaid invoices shall carry interest at the rate permitted by applicable state law.

4.3 In accordance with the Texas Prompt Payment Act, City shall have not less than 30 days to pay for goods or services. Time for payment, including payment under discount terms, will be computed from the later of: (1) the date performance of the service under the contract is completed or (2) the date City receives a correct and valid invoice for the services. Payment is deemed to be made on the date of mailing of the check. Payment is made in US dollars only.

This provision shall not apply where there is a bona fide dispute between City and Contractor about the service performed that causes the payment to be late, or where the invoice is not mailed to the address provided herein.

4.4 The payment amount due on invoices may not be manually altered by City personnel. Once disputed items are reconciled, Contractor must submit a corrected invoice or a credit memorandum for the disputed amount.

4.5 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The parties hereby agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in section 4.1 above. Total payments to Contractor cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing.

4.6 Final acceptance of work products and services require written approval by City. The approving official shall be Director. Payment will be made to Contractor following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

ARTICLE V **OWNERSHIP OF DOCUMENTS**

5.1 In accordance with Texas law, Contractor acknowledges and agrees that all Local Government Records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such Local Government Records produced by or on the behalf of Contractor pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Contractor.

5.2 Contractor acknowledges and agrees that all Local Government Records, as described herein, produced in the course of the work required by this contract will belong to and be the property of City. Contractor will turn over to City all such records. Contractor shall not, under any circumstances, release any records created during the course of performance of this contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

5.3 In accordance herewith, Contractor agrees to comply with all applicable federal, state and

local laws, rules and regulations governing documents and ownership, access and retention thereof.

ARTICLE VI

RECORDS RETENTION

- 6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as “documents”), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
- 6.2 Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return the documents to City at Contractor’s expense prior to or at the conclusion of the retention period. In such event, Contractor may retain a copy of the documents at its sole cost and expense.
- 6.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.
- 6.4 S.B. 943 – Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a given fiscal year, Contractor acknowledges that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the City or sent between the City and a vendor, contractor, potential vendor, or potential contractor, may apply to this contract. Contractor agrees that the contract can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 6.5 Contractor warrants and certifies, that it, has not knowingly or intentionally failed to comply with this subchapter in a previous contract. City hereby relies on Contractor’s certification, and if found to be false, City may terminate this Agreement for material breach.

ARTICLE VII
TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by City without cause upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement by giving written notice of termination to the Contractor, as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
 - 7.3.2 Violations of regulatory compliance or breach of criminal history warranty as provided in Article XIX;
 - 7.3.3 Contractor's failure to abide by obligations of the Recycling Program by disposing of recyclables at a landfill or co-mingling with solid waste collection; or
 - 7.3.4 Any material breach of the terms of this Agreement, as determined solely by City.
- 7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such 30 day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.
- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;
 - 7.4.2 Bankruptcy or selling substantially all of company's assets;
 - 7.4.3 Failing to perform or failing to comply with any covenant herein required; or
 - 7.4.4 Performing unsatisfactorily.
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

- 7.6 Regardless of how this Agreement is terminated, Contractor shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested by City.
- 7.7 Within ninety (90) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said ninety (90) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 7.8 Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement. City shall pay Contractor any fees incurred prior to the date of termination.
- 7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

ARTICLE VIII

NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Contractor, to:

BFI Waste Services of Texas, LP
15800 North Allied Way
Phoenix, AZ 85054
Attn: Legal Department

ARTICLE IX **PERFORMANCE BOND**

- 9.1 Contractor shall furnish City a performance deposit in the full amount of the contract price within ten (10) days from the execution of this Contract. Failure to do so shall be an Event for Cause and will result in termination of the Contract. The parties acknowledge and agree that it is a condition precedent to this Contract to comply with this Article.
- 9.2 Contractor shall maintain said performance bond for one year following the expiration or termination of this Contract or any renewals or extensions thereof or until final resolution of any litigation to which the use of the deposit may relate, whichever is later.
- 9.3 The rights reserved to City with respect to the performance deposit are in addition to all other rights of City, and no action, proceeding or right with respect to the performance deposit shall affect any other right City has or may have.
- 9.4 Contractor shall provide a performance bond made payable to the City of San Antonio, executed by a corporate surety acceptable to City who is licensed pursuant to the Texas Insurance Code and listed on the United States Department of Treasury's Listing of Approved Sureties (Dept. Circular 570). Said bond must be in a form acceptable to City. Said bond shall further provide that the surety shall indemnify the obligee for all damages or losses resulting from the principal's default. Said bond shall further guarantee the principal's performance of all terms and obligations under this contract. Said bond must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. The performance bond must clearly and prominently display on the bond or on an attachment to the bond: (1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or (2) the toll-free telephone number maintained by the Texas Department of Insurance pursuant to §521.051, Texas Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number. This bond must be executed and delivered to City prior to commencement of work under this contract.

ARTICLE X
INSURANCE

- 10.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required blanket-form endorsements and completed Certificate(s) of Insurance to the City’s Finance Department, which shall be clearly labeled “RFP 21-044, RFX 6100013717, Annual Contract for Municipal Commercial Garbage Collection, Disposal and Recycling Services for the City of San Antonio” on page 2 in the Certificate. The Certificate(s) shall be completed by an authorized representative and signed by a person authorized by that insurer to evidence coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the authorized representative’s signature and email address, and be sent, with copies of all applicable blanket-form endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and blanket-form endorsements have been received and approved by the City’s Finance Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.
- 10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.
- 10.3 A Contractor’s financial integrity is of interest to the City; therefore, subject to Contractor’s right to maintain reasonable deductibles, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation or other state approved program	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Employers' Liability or other state approved program	
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Damage to property rented by you	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.

f. Independent Contractors Liability	
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Environmental Liability (Claims-made Coverage)	\$1,000,000 per claim

- 10.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the City as additional insureds. Contractor shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City’s Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City’s Risk Manager, which shall become a part of the contract for all purposes.
- 10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive evidence of the policies via an ACORD form certificate and blanket-form endorsements thereto. Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 10.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed via blanket-form endorsement to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by blanket-form endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers’ compensation or alternative program policies;
 - Provide for a blanket-form endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation and employers' liability or alternate program, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - Provide advance written notice directly to City of any cancellation, non-renewal or material change in coverage except workers' compensation, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 10.7 Within five (5) calendar days of a cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable blanket-form endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.8 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or blanket-form policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- 10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.
- 10.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 10.12 Contractor and any subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE XI
INDEMNIFICATION

- 11.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting**

from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. In addition, Contractor agrees to indemnify, defend, and hold the City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

- 11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.
- 11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

ARTICLE XII
ASSIGNMENT AND SUBCONTRACTING

- 12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.
- 12.2 It is City's understanding and this Agreement is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Agreement: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director in writing.
- 12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Director.
- 12.4 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.
- 12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

ARTICLE XIII
INDEPENDENT CONTRACTOR

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of “respondeat superior” shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

ARTICLE XIV
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the Contractor represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City’s Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City’s Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Contractor’s certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Contractor shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

ARTICLE XV
CONFLICT OF INTEREST

- 15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Sections 2-42 and 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
 - an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.
- 15.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Contract is made in reliance thereon, that by contracting with the City, Contractor does not cause a City employee or officer to have a prohibited financial interest in the Agreement. Contractor further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

ARTICLE XVI
AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor. Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

ARTICLE XVII
CONSUMER PRICE INDEX (CPI) FOR PRICE ADJUSTMENTS

- 17.1 Price Adjustments. The prices shown on the Price Schedule may be increased or decreased as follows, using the Consumer Price Index published by the Bureau of Labor Statistics (“BLS”) of the United States Department of Labor.
- 17.2 The Base Price that is subject to price adjustment is the selling price shown on the original Price Schedule submitted by Contractor with its original bid.
- 17.3 The Consumer Price Index (“CPI”) series that will be used to escalate the base payment is the Consumer Price Index for US Department of Labor, Bureau of Labor Statistics, Consumer Price Index-Urban Wage Earners and Clerical Workers South Urban (all items).

- 17.4 Base Period for Price Adjustment. The reference period from which changes in the CPI shall be measured is the effective date of the month and year in which this contract is awarded.
- 17.5 Date for Price Adjustment. Prices shall be adjusted for the optional renewal terms, beginning December 1, 2023 and December 1, 2024. (the “Price Adjustment Date”).
- 17.6 Method of Calculation for Price Adjustment. To calculate the price adjustment, the following formula shall be used.

Divide the current index value (the value as of the Price Adjustment Date) by the index value for the Base Period. The resulting number is the percentage change in the index value between the current period and the Base Period (the “percentage change in index value”).

Multiply the base price by the percentage change in index value. The sum equals the adjusted price.

Example: (The numbers shown below are for illustration purposes only.)

Current index value at time of calculation	115.5
Divided by index for base period	110.0
Equals percentage change in index value	1.050
Base price	\$1,000.00
Multiplied by the percentage change in index value	1.050
Equals adjusted price	\$1,050.00

The same procedure shall be followed for each price adjustment authorized herein, using the current CPI for the new Price Adjustment Date and the CPI for the Base Period.

- 17.7 Version of Data for Price Adjustment. Calculations of price adjustments shall use the latest version of the CPI data published as of the Price Adjustment Date, without regard to later revisions.

If this index is discontinued, the Parties shall use the most nearly comparable statistics published by the BLS, or, if the BLS ceases to publish such statistics, those published by a recognized financial authority, as determined solely by City.

- 17.8 Limitation of Price Adjustment. In no event shall the aggregate of all price adjustments authorized herein for any given Line Item exceed **5%** of the original base price for that Line Item. If the calculation results in an increased price that would exceed this limitation, the price adjustment shall be limited to a maximum price adjustment of **5%** of the original base price.

- 17.9 Written Requests for Price Adjustments. Price adjustments are not automatic. Contractor must submit a written request for a price adjustment to the Finance Department. Requests must be received by the Finance Department at least 60 days prior to the date the price adjustment is to take effect. If City does not wish to accept the price adjustment, City may terminate the contract for convenience with no liability. City may initiate a price adjustment in the event of falling prices. City shall notify Vendor at least 60 days prior to the date the price adjustment is to take effect.

ARTICLE XVIII **COMPLIANCE**

- 18.1 Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.
- 18.2 Non-Discrimination. As a party to this contract, Contractor understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

ARTICLE XIX **REGULATORY COMPLIANCE AND CRIMINAL HISTORY WARRANTY**

- 19.1 Compliance Histories, Warranty, Fiduciary Duty, Discretionary Termination. Contractor must demonstrate to the City's satisfaction that Contractor has and maintains clean environmental, criminal, and other compliance histories with state, federal, and local agencies or authorities. Contractor warrants to the City that he / she / it (in the case of a corporation or other legal entity), including advisors, executive and supervisory employees, agents and representatives, are in good stead with all regulatory authorities that may have interests in or jurisdiction over the work activity or service provided by the Contractor. Regulatory interest or jurisdiction may go directly to the Contract activity in question, to potential consequences of the activity, or indirectly to any regulated matter which may reflect upon the Contractor's competency and integrity. The City relies upon Contractor's Warranty and shall treat the Contractor as having a special fiduciary duty to the City in this respect due to potential for environmental, third party, and other regulatory liabilities which may attend this Contract, including but not limited to regulatory criminal responsibility. Contractor acknowledges such fiduciary duty to the City, promising a high standard of performance and best efforts to protect the public interest against consequences of environmental mishap. Contractor warrants that no matters pertaining to violations, notices of violation, or notices of regulatory concern are now pending against Contractor or those persons (employees/affiliates) of concern mentioned above; and that no civil or criminal litigation, and no manner of enforcement activity, however preliminary, is pending against Contractor or those persons, regardless of category or class of violation or potential violation. In reliance on Contractor's Warranty, the City reserves to itself the

right to terminate the Contract, without further obligation upon the City and without further recourse or remedy for the Contractor except that the City shall duly pay Contractor for work or services performed to date of termination, should the City determine, following award of the Contract that Contractor failed to reveal and explain to the City's satisfaction any such matters having regulatory or criminal import or implications.

- 19.2 **VOIDABLE CONTRACT:** Contractor's failure to abide by disclosure and explanation requirements in this Article shall render the Contract voidable at the City's discretion, with no compensation due Contractor, if concealed or undisclosed violations, or undisclosed or concealed investigations leading to formal criminal charges, are of such portent, in the City's judgment, as to place the City in a position of regulatory or third party liability exposure, or shall pose or result in a threat to the public health, safety, or welfare. Any sums paid to Contractor, in the event of a voided contract, shall be recoverable by the City, in addition to and cumulative of any other legal or equitable remedies the City may have. Contractor understands the City shall enjoy the termination and voidable contract remedies set forth in this Article due to the fiduciary duty owing from Contractor to City and due to the City's reliance on the Contractor's Warranty of Regulatory Compliance and Warranty of Clean Criminal History.

ARTICLE XX

NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

ARTICLE XXI

LICENSES/CERTIFICATIONS

Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

ARTICLE XXII
LAW APPLICABLE & LEGAL FEES

- 22.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 22.2 Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matter in question between City and Contractor arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 22.3 Unless provided otherwise in this Agreement, the Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

ARTICLE XXIII
LEGAL AUTHORITY

The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

ARTICLE XXIV
PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

ARTICLE XXV
CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

ARTICLE XXVI
CONFIDENTIAL INFORMATION

Contractor shall secure the confidentiality of records and information that Contractor may have access to in accordance with the applicable Federal, State, and local laws and regulations. This provision shall not be construed as limiting City's or its authorized representatives' right of access to records or other information under this Contract. Nothing in this Agreement shall prevent

Contractor from disclosing to others or using in any manner information which Contractor can show:

(i) has been published and has become part of the public domain other than by acts, omissions or fault of Contractor or its agents and employees;

(ii) has been furnished or made known to Contractor by third parties (other than those acting directly for or on behalf of Contractor) as a matter of legal right without restrictions on its disclosure;

(iii) was in Contractor's possession prior to the disclosure thereof by City to Contractor; and/or

(iv) is required by any Applicable Law to be disclosed to any governmental agency as part of the normal course of complying with the agency's rules or regulations.

Notwithstanding the foregoing, no material provided by City for disposal shall be considered confidential information.

ARTICLE XXVII **SEVERABILITY**

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

ARTICLE XXVIII **STATE PROHIBITIONS ON CONTRACTS**

28.1 This Article only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

28.2 "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or

affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

- 28.3 Prohibition on Contracts with Companies Boycotting Israel. Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate this contract for material breach.

- 28.4 Prohibition on Contracts with Companies Boycotting Certain Energy Companies. In accordance with SB 13, effective September 1, 2021, Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

- 28.5 Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. In accordance with SB 19, effective September 1, 2021, Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not

discriminate during the term of the contract against a firearm entity or firearm trade association.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach

ARTICLE XXIX
PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS
WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Contractor's certification. If found to be false, or if Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

ARTICLE XXX
PROHIBITED CONTRIBUTIONS

30.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Contractor understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

30.2 Contractor acknowledges that the City has identified this Contract as high profile.

30.3 Contractor warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

ARTICLE XXXI
EXECUTION IN COUNTERPART

This Agreement and any amendments thereto may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. In the event that any signature is delivered by facsimile transmission or by email delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

ARTICLE XXXII
AUTOPEN OR ELECTRONIC SIGNATURE

This Agreement and any amendments hereto may be signed by autopen or electronic signature (e.g., DocuSign or similar electronic signature technology) and may be transmitted by electronic means. Copies of this Agreement and any amendments hereto that are so executed and delivered have the same force and effect as if executed with handwritten signatures and physically delivered.

ARTICLE XXXIII
INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

- Exhibit A** City’s Request for Proposal (RFP) No. 21-044; RFx 6100013717, including any addendums, exhibits, and attachments
- Exhibit B** Regulatory Compliance and Criminal History Warranty
- Exhibit C** Current Garbage Recycling Collection Locations and Container Sizes
- Exhibit D** City Facility Recycling Report Form

Exhibit E Price Schedule

Exhibit F Contractor's Proposal submitted in response to RFP No. 21-044; RFx
6100013717

ARTICLE XXXIV
FORCE MAJEURE

Should performance of any obligation created under this Agreement become illegal or impossible, any failure or delay in performance under this Agreement due to contingencies beyond a party's reasonable control, including, but not limited to, strikes, riots, terrorist acts, compliance with Applicable Laws or governmental orders, fires, bad weather and acts of God, shall not constitute a breach of this Agreement, but shall entitle the affected party to be relieved of performance during the period of, and only to the extent of, such prevention or hindrance, provided the affected Party provides reasonable notice of the event of force majeure and exercises all reasonable diligence to remove the cause of force majeure. The City shall grant Contractor variances in routes and schedules as deemed necessary by Contractor related to any of the above occurrences.

ARTICLE XXXV
ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

[Signature Page Follows]

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

**BFI WASTE SERVICES OF TEXAS,
LP, DBA REPUBLIC SERVICES OF
SAN ANTONIO**

(Signature)

Printed Name: _____

Title: _____

Date: _____

Approved as to Form:

Assistant City Attorney

(Signature)

Printed Name: **William K. Rich II**

Title: **General Manager**

Date: _____