

**GENERAL SERVICES AGREEMENT  
BETWEEN RECYCLE ANN ARBOR AND THE CITY OF ANN ARBOR  
FOR RESIDENTIAL CUSTOMER RECYCLABLES COLLECTIONS**

This agreement ("Agreement") is between the City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St. Ann Arbor, Michigan 48104 ("City"), and Recycle Ann Arbor, a Michigan nonprofit corporation, with its address at 2420 South Industrial Hwy. Ann Arbor, Michigan 48103 ("Contractor"). City and Contractor are referred to collectively herein as the "Parties." The Parties agree as follows:

**I. DEFINITIONS**

Administering Service Area/Unit means Public Services Area.

Contract Administrator means Public Services Area Administrator, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to City by Contractor under this Agreement.

Project means Residential Customer Recyclables Collections (ITB 4623).

**II. DURATION**

The term of this Agreement shall be for five years with one two-year extension at the City's option unless terminated earlier as provided for herein. The initial five-year term shall begin on July 1, 2021 ("Commencement Date") and expire on June 30, 2026.

Subject to the availability of funding, this Agreement may be extended by the City Administrator for one additional two-year period subject to the same terms and conditions and pricing in Contractor's Bid for years 6 and 7 by providing written notice on or before December 15, 2025 and Contractor shall provide written acknowledgment of the extension on or before June 15, 2026 but failure to acknowledge shall not impact the validity of the City's extension or the Agreement or Contractor's obligations thereunder.

**III. SERVICES**

A. The Contractor agrees to provide Residential Customer Recyclables Collections (ITB 4623) ("Services") and to furnish all materials, equipment and labor necessary and to abide by all the duties and responsibilities applicable to it for the Project in accordance with the requirements and provisions of the following documents ("Contract Documents"), including all written modifications incorporated into any of the documents, which are incorporated as part of this Agreement:

- This Agreement and Exhibits

- Invitation to Bid No. 4623 and Addenda 1-4 thereto
- Scope of Work, restated and attached as Exhibit A.
- Bid Proposal of Contractor, dated July 1, 2020, and restated and attached as Exhibit E.

The Contract Documents are complementary and what is called for by any one shall be binding. The intention of the documents is to include all labor and materials, equipment, and transportation necessary for the proper execution of the Project. Materials or work described in words that so applied have a well-known technical or trade meaning have the meaning of those recognized standards.

In case of a conflict among the Contract Documents, the requirement(s) of the document listed first above shall prevail over any conflicting requirement(s) of a document listed later.

The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or subtract from the extent of the services, the compensation shall be increased or decreased according Bid Form Section 1—Schedule of Prices. All such changes shall be executed under the conditions of the original Agreement.

- B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement. The Contractor shall also comply with and be subject to the City of Ann Arbor policies applicable to independent contractors
- D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City (if any) except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

#### **IV. INDEPENDENT CONTRACTOR**

The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

Contractor does not have any authority to execute any contract or agreement on behalf of the City, and is not granted any authority to assume or create any obligation or liability on the City's behalf, or to bind the City in any way.

## V. COMPENSATION OF CONTRACTOR

- A. The Contractor shall be paid on the basis of the bid prices restated in Exhibit B, Contractor shall submit invoices to the City on or before the fifteenth (15<sup>th</sup>) day of each month and the City shall pay Contractor within thirty (30) days of receiving invoices which are approved by the Contract Administrator.
- B. The Contractor will be compensated for Services performed in addition to the Services described in Article III, only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.
- C. The Contractor shall keep complete records of work performed (e.g. tasks performed/hours allocated) so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.
- D. Failure to perform all the work as specified in this contract (specifically including, but not limited to Article III and the Detailed Specifications), shall obligate the Contractor to pay the City, as liquidated damages and not as a penalty, an amount equal to those listed in section **12. PAYMENT**, subsection **Liquidated Damages and Deductions from Payments** in the Detailed Specifications. If any liquidated damages are unpaid by the Contractor, the City shall be entitled to withhold and deduct these unpaid liquidated damages from the monies due the Contractor.

The liquidated damages are for the non-quantifiable aspects of any of the previously identified events and do not cover actual damages that can be shown or quantified nor are they intended to preclude recovery of actual damages in addition to the recovery of liquidated damages.

## VI. INSURANCE/INDEMNIFICATION

- A. The Contractor shall procure and maintain from the Effective Date or Commencement Date of this Agreement (whichever is earlier) through the conclusion of this Agreement, such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death, or property damage which may arise under this Agreement; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor, or anyone employed by them directly or indirectly. Prior to commencement of work under this Agreement, Contractor shall provide to the City documentation satisfactory to the City, through City-approved means (currently myCOI), demonstrating it has obtained the policies and endorsements required by Exhibit C. Contractor shall add registration@mycoitracking.com to its safe sender's list so that it will receive necessary communication from myCOI. When requested, Contractor shall provide the same documentation for its subcontractor(s) (if any).
- B. Any insurance provider of Contractor shall be authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size

Category of "V". Insurance policies and certificates issued by non- admitted insurance companies are not acceptable unless approved in writing by the City.

- C. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Contractor or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the City's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

## **VII. PERFORMANCE BOND**

- A. Prior to commencing work under this Agreement, Contractor shall obtain and provide a performance bond to the City to secure performance of the services under the Agreement, and the bond, or such replacement bond as deemed acceptable to the City, shall remain valid and in effect during the duration of the Agreement on an annual basis. The Performance Bond shall be executed on a form attached as Exhibit D – Performance Bond Form in a manner and by a Surety Company duly authorized to issue performance bonds in Michigan and satisfactory to the City Attorney. The City and Contractor agree the amount of the performance bond is \$673,004.00 which is the approximate equivalent to six months of estimated service fees for the first year based on \$\_3.91/Household Served for 28,550 Residential Customer Households and \$\_7.67/Special Setout for 70 Special Setouts per week.
- B. The City will accept a cash deposit of immediately available US Dollars as an alternative form of security for the performance of services in the amount required under Article VII and may, in its sole discretion, accept an alternative form of security for the performance of the services in the amount required hereunder which may, for example, take the form of a letter of credit.

## **VIII. PROTECTION OF THE PUBLIC AND OF WORK AND PROPERTY**

The Contractor shall take all necessary and reasonable precautions to protect the safety of the public. It shall continuously maintain adequate protection of all work from damage, and shall take all necessary and reasonable precautions to adequately protect all public and private property from injury or loss arising in connection with this Contract. It shall make good any damage, injury or loss to its work and to public and private property resulting from lack of reasonable protective precautions, except as may be due to errors in the contract documents, or caused by agents or employees of the City. The Contractor shall obtain and maintain sufficient insurance to cover damage to any City property at the site by any cause.

In an emergency affecting the safety of life, or the work, or of adjoining property, the Contractor is, without special instructions or authorization from the Contract Administrator, permitted to act at its discretion to prevent the threatened loss or injury. It shall also so act, without appeal, if authorized or instructed by the Contract Administrator.

**IX. DAMAGE CLAIMS**

The Contractor shall be held responsible for all damages to property of the City or others, caused by or resulting from the negligence of the Contractor, its employees, or agents during the progress of or connected with the prosecution of the work, whether within the limits of the work or elsewhere. The Contractor must restore all property injured including sidewalks, curbing, sodding, pipes, conduit, sewers or other public or private property to not less than its original condition with new work.

City shall refer complaints about damage to private or public property to Contractor. Contractor shall pay for or repair all damage to public or private property caused by its employees.

**X. WAGE REQUIREMENTS**

If the Contractor is a “covered employer” as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

Contractor agrees that all subcontracts entered into by the Contractor shall contain similar wage provision covering subcontractor’s employees who perform work on this Agreement.

**XI. NON-DISCRIMINATION**

The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of Title IX of the Ann Arbor City Code, and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

**XII. MATERIALS AND EMPLOYEES**

- A. The Contractor shall utilize, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Contract Administrator. The superintendent will be responsible to perform all project management for the Contractor. The superintendent shall be experienced in the work required for this Contract. The superintendent shall represent the Contractor and all direction given to the superintendent shall be binding as if given to the Contractor. Important directions shall immediately be confirmed in writing to the Contractor. Other directions will be confirmed on written request. The Contractor shall give efficient superintendence to the work, using its best skill and attention.

- B. Unless otherwise stipulated, the Contractor shall provide and pay for all vehicles, materials, labor, water, tools, equipment, light, power, fuel, transportation, and other facilities necessary or used for the execution and completion of the work.
- C. The Contractor shall at all times enforce strict discipline and good order among its employees, and shall seek to avoid employing the work of any unfit person or anyone not skilled in the work assigned.
- D. The Contractor shall employ competent laborers and mechanics for the work under this Contract, and shall ensure its employees and laborers are properly licensed and comply with all applicable regulatory requirements

### **XIII. PERMITS AND REGULATIONS**

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the contract documents are at variance with those requirements, it shall promptly notify the Contract

Administrator in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work.

### **XIV. REPRESENTATIONS AND WARRANTIES BY THE CONTRACTOR**

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience and licenses (if applicable) necessary to perform the Services it is to provide pursuant to this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services it is to provide pursuant to this Agreement.
- D. The Contractor certifies that it has no personal or financial interest in the Project other than the fee it is to receive under this Agreement. The Contractor further certifies that it shall not acquire any such interest, direct or indirect, which would conflict in any manner with the performance of the Services it is to provide pursuant to this Agreement. Further Contractor agrees and certifies that it does not and will not employ or engage any person with a personal or financial interest in this Agreement.
- E. The Contractor certifies that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes. Further Contractor agrees that the City shall have the right to set off any such debt against compensation awarded for Services under this Agreement.
- F. The Contractor warrants that its bid was made in good faith, it arrived at the costs of its bid independently, without consultation, communication or agreement, for the

purpose of restricting completion as to any matter relating to such fees with any competitor for these Services; and no attempt has been made or shall be made by the Contractor to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition.

- G. The person signing this Agreement on behalf of Contractor represents and warrants that she/he has express authority to sign this Agreement for Contractor and agrees to hold the City harmless for any costs or consequences of the absence of actual authority to sign.

#### **XV. REFUSAL TO OBEY INSTRUCTIONS**

If the Contractor refuses to obey the reasonable instructions of the Contract Administrator relating to the Scope of Services, the Contract Administrator may withhold payment for work performed out of compliance with such instructions.

#### **XVI. CONTRACT ADMINISTRATOR'S DECISIONS**

The Contract Administrator shall, within a reasonable time after the Contractor's presentation to the Contract Administrator, make decisions in writing on all claims of the City or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the contract documents.

#### **XVII. CITY'S RIGHT TO DO WORK**

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this Contract, the City, 3 days after giving written notice to the Contractor and its surety may, without prejudice to any other remedy the City may have, make good the deficiencies and may deduct the cost from the payment due to the Contractor.

#### **XVIII. OBLIGATIONS OF THE CITY**

- A. The City agrees to give the Contractor access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

#### **XIX. ASSIGNMENT**

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

**XX. DEFAULT, CURE, REMEDIES, AND TERMINATION OF AGREEMENT**

A. Contractor Default. Each of the following shall constitute an event of default by Contractor (each a "Contractor Default"):

1. Contractor fails, refuses, ceases, or is unable to perform the services under this Agreement.
2. Contractor is adjudged bankrupt, becomes insolvent, unable, or unwilling to pay its debts, or upon entry of an order for relief in favor of Contractor in a bankruptcy proceeding.
3. Contractor files a voluntary petition for relief under any bankruptcy, insolvency or similar law, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of insolvency.
4. An involuntary petition is brought against Contractor under any bankruptcy, insolvency or similar law which remains undismissed or unstayed for ninety (90) days.
5. Contractor fails to provide or maintain in full force and effect the insurance coverages and policies required under this Agreement provided such coverages and policies can be obtained on commercially reasonable terms.
6. Contractor fails to maintain the required performance bond or furnish a replacement bond or a continuation certificate of the existing bond not less than ninety (90) days before expiration of the performance bond and does not cure the same within the time period provided below.
7. Contractor commits any other default or breach of the Agreement not listed above and fails to cure the same within the time period provided below.

Contractor shall be given thirty (30) days from written notification by the City to cure any Contractor Default or, if such cure cannot reasonably be completed within thirty (30) days, so long as Contractor is diligently pursuing the cure, as long as is reasonably necessary to cure the default is of such a nature provided that such is capable of being cured.

B. City Default. Each of the following shall constitute an event of default by the City (each a "City Default"):

1. The City fails to pay any undisputed amount when and as due and fails to pay such amount within five (5) days after receiving written notice from Contractor that payment is overdue. If City fails to cure a default under this section within five (5) days after receiving notice from Contractor, Contractor may suspend its performance hereunder.



2. The City commits a default or breach of the Agreement other than a default or breach in an obligation to pay money to Contractor and fails to cure such breach within thirty (30) days after receiving written notice from Contractor specifying the default, provided that if the nature of the default is such that it will reasonably require more than thirty (30) days to cure, City shall not be in default so long as City promptly commences the cure and diligently proceeds to completion of the cure.

C. Remedies.

1. If either party is in breach of this Agreement, and subject to all applicable notice requirements and cure periods, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice; provided, whoever, that such termination shall not impair the obligation of the City to pay for any Services actually performed under the Agreement before the termination date. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.
2. By virtue of the nature of this Agreement, the remedy of damages for a breach hereof by a party may be inadequate, and the non-breaching party shall be entitled to injunctive relief, including, but not limited to, specific performance.
3. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.
4. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any agreement between the parties or otherwise
5. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

- D. Termination for Non-Appropriation. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The Contract

Administrator shall give Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

- E. The provisions of Articles VI (Insurance and Indemnification) and XIV (Representations and Warranties by the Contractor) shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party, including any payment obligation that has already accrued and Contractor's obligation to deliver all Deliverables due as of the date of termination of the Agreement.

## **XXI. NOTICE**

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated below or such other person or address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

Recycle Ann Arbor  
Bryan Ukena, CEO  
2420 S. Industrial Highway  
Ann Arbor, MI 48104  
[bryanukena@recycleannarbor.org](mailto:bryanukena@recycleannarbor.org)

With a copy to:

Recycle Ann Arbor  
Attn: Board Chair Margie Teall  
1208 Brooklyn  
Ann Arbor, MI 48104  
MargieTeall@hotmail.com

With a copy to:

Hooper Hathaway, P.C.  
Attn: William M. Beuche, Esq.  
126 S. Main St.  
Ann Arbor, MI 48104  
wbeuche@hooperhathaway.com

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor  
Public Services Area Administrator  
301 E. Huron St.

Ann Arbor, Michigan 48104

With a copy to:

The City of Ann Arbor  
ATTN: Office of the City Attorney  
301 East Huron Street, 3<sup>rd</sup> Floor  
Ann Arbor, Michigan 48104

## **XXII. CHOICE OF LAW AND FORUM**

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

## **XXIII. DISPUTE RESOLUTION PROCESS**

The City and the Contractor agree to first use the following process to resolve disputes about issues related to the performance of this contract. If an issue arises requiring resolution, either party shall initiate this dispute resolution process by notifying the other party and scheduling a meeting. The meeting shall serve as a fact-finding opportunity to identify the issue, clarify the problem, review the applicable contract provisions relating to the issue, discuss alternative remedies, and agree upon a means of dispute resolution. The parties shall make a good faith effort to complete the agreed-upon tasks within 30 business days of the initial dispute resolution meeting, or specify an alternative schedule and deadline for resolving the issue. This dispute resolution process shall be considered as one alternative to the City imposing liquidated damages as per the contract provision immediately above. Nothing in this contract section, Dispute Resolution Process, shall be construed or implied to reduce, eliminate or otherwise affect the rights of the City or the Contractor to use any and all other means of legal remedies. In the event that the dispute is not resolved to the satisfaction of one or both parties, either party may initiate alternative methods of resolution and seek alternative remedies, by providing written notice to the other party advising them of the reasons for initiating such alternative measures.

## **XXIV. OWNERSHIP OF DOCUMENTS**

Upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use.

## **XXV. FORCE MAJEURE**

- A. Except as provided below, neither party shall be deemed to be in default or otherwise responsible for any delays or failures in performance due to acts of God,

acts of war, terrorism or civil disturbance, insurrection, rebellions, sabotage, acts of a public enemy, epidemic, quarantine restrictions, governmental action or inaction, fire, storm, flood, earthquake, extreme weather, labor shortage, labor disputes or strike, unavailability of power, transportation embargo, physical or economic disruption of product markets, or other causes beyond the party's reasonable control. An act of Force Majeure shall be a temporary impossibility to perform and suspends the party's duty to perform while the impossibility or impracticability exists but does not discharge its duty to prevent it from arising unless its performance after the cessation of the impossibility would be materially more burdensome than if there had been no impossibility. The provisions of this Section shall not apply to the failure of a Party to pay any monetary amounts when due under this Agreement.

- B. Any excuse or suspension of performance by a Party pursuant to Force Majeure shall be only to the extent, and for a period of no longer duration than, required by the nature of the event, and the party claiming excuse from obligation shall use its best efforts in an expeditious manner to remedy its inability to perform, and mitigate damages that may occur as result of the event.
- C. The Party claiming excuse shall deliver to the other Party a written notice of intent to claim excuse from performance of its obligations under this Agreement, whether partial or complete, by reason of an event of Force Majeure. Notice required by this Section shall be given promptly in light of the circumstances, but in any event not later than five (5) days after the occurrence of the event of Force Majeure. Such notice shall describe in detail the event of Force Majeure claimed, the services impacted by the claimed event of Force Majeure, the expected length of time that the Party expects to be prevented from performing, the steps which the party intends to take to restore its ability to perform, and such other information as the other Party reasonably requests.
- D. The partial or complete interruption or discontinuance of Contractor's services caused by an event of Force Majeure shall not constitute an event of default under this Agreement. Notwithstanding the foregoing, in the event of non-performance excused by Force Majeure, the City will have the right to perform and complete, by agreement or otherwise, the services herein or such part thereof as it may deem necessary and to contract with others to procure labor, equipment, and materials and incur all other expenses necessary for completion of the services.

## **XXVI. SEVERABILITY OF PROVISIONS**

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

## **XXVII. EXTENT OF AGREEMENT**

This Agreement, together Exhibits A, B, C and D, and the other Contract Documents, constitutes the entire understanding between the City and the Contractor with respect to the subject matter

of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Contractor and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

#### **XXVIII. ELECTRONIC TRANSACTION**

The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Agreement. This Agreement may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

#### **XXIX. EFFECTIVE DATE**

This Agreement will become effective when all parties have signed it. The Effective Date of this Agreement will be the date this Agreement is signed by the last party to sign it.

**[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE FOLLOWS]**

FOR CONTRACTOR

By \_\_\_\_\_  
Bryan Ukena, its CEO

This \_\_\_\_ day of \_\_\_\_\_, 2021

FOR THE CITY OF ANN ARBOR

By \_\_\_\_\_  
Christopher Taylor, Mayor

By \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

This \_\_\_\_ day of \_\_\_\_\_, 2021

Approved as to substance

\_\_\_\_\_  
Tom Crawford, City Administrator

\_\_\_\_\_  
Craig A. Hupy, P.E.  
Public Service Area Administrator

Approved as to form and content

\_\_\_\_\_  
Stephen K. Postema, City Attorney

**EXHIBIT A  
SCOPE OF SERVICES**

**1. PURPOSE AND BACKGROUND**

The City of Ann Arbor seeks bids from qualified and responsible contractors to provide the following services for a period of five years, beginning July 1, 2021, with one two-year contract extension at the City’s option. The services shall be in compliance with all applicable City regulations and code, including but not limited to Chapter 26 of City Code and the Solid Waste Regulations. If the City desires to extend the Contract, it shall provide written notice of its intent to extend to the Contractor on or before December 15, 2025, and Contractor shall provide written acknowledgement of the City’s exercise of its option to extend to the City on or before June 15, 2026.

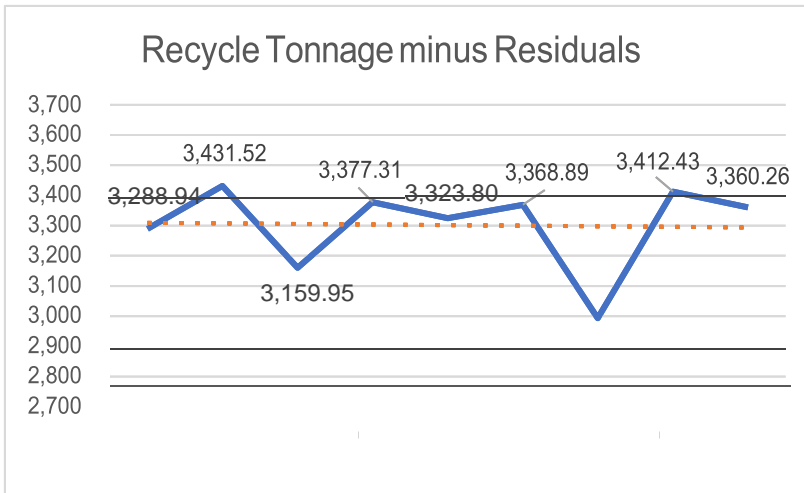
- A. Weekly residential recycling collection from single-family and equivalent homes (“Residential Customer Households”) as designated by the City, where the property meets all of the following criteria:
  - i. Ten (10) units or less;
  - ii. Each unit must have its own street-level entry and collection cart(s);
  - iii. Carts can be set out in front of the individual units or building(s) at the street edge/curb, or some equivalent location (such as an alley), in other words, the property has a common point where residents bring their container(s) for pick up; and
  - iv. The property must be serviceable by the Contractor’s collection trucks (who may be entering private roads or drives to provide the service).

See Appendix 1 for current customer listing/mapping.

- B. Delivery of collected recyclables to the City of Ann Arbor Material Recovery Facility (MRF) at 4150 Platt Road, Ann Arbor will take place during the City of Ann Arbor Scalehouse working hours, Monday through Friday, 7:00 a.m. to 4:00 p.m. or on Saturdays 7:00 a.m. to 4:00 p.m., during those weeks that include a major holiday, (New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas).

**Current Performance and Program Goals**

The City’s Solid Waste Program aims to maximize waste diversion through recycling and compost streams and to minimize landfilling. The City encourages residents through education, outreach and infrastructure, to use recycling and organics collection services where available. Almost 18% of the waste set out as part of the curbside and business services is diverted to recycling, as shown in the following Figure 1 (Fiscal Year 2019 data) and the City is interested in increasing the amount of material diverted for recycling.



**Figure 1 – City Scale Data  
FY2018 - 2019**

The City is also interested in improving the quality of our recycling stream by reducing contamination and moisture. The Contractor shall work collaboratively with the City to address this program performance issue. Items currently not accepted for collection include furniture,

large appliances (such as washers and dryers), carpets, rugs, mattresses and plastic-wrapped mattresses, barbecues, toys and bicycles, plastic bags, foam packaging, etc. Contamination shall be addressed by the collector at the curbside through the City’s tagging program.

### **Automated and Manual Collection**

The City owns 32-gallon, 64-gallon, and 96-gallon Toter carts that are currently utilized for curbside pickup, that are primarily serviced by automated side-arm trucks. The vendor will be responsible for providing service for these carts at Residential Customer Households and any new City customers of the same land-use type due to annexations, new development or site re-development.

The City also has a manual residential recycling collection, on an as-needed basis, to disabled customers or those having special needs. The program, known as “Special Setouts,” discussed in section R2:10 of the City’s Solid Waste Regulations as noted below, identifies and approves individuals. These approved locations shall receive their weekly trash, recycle and compost servicing by drivers exiting the vehicle, picking up the cart left outside of the garage, taking it down the driveway, emptying the cart and placing it back next to the garage. The City’s electronic work order management system (Cityworks) will be used by the City and the Contractor as the asset management tracking program for managing this portion of the collections. There are approximately 70 customers who currently receive manual recycling collection service.

#### *R2:10 Variances Additions*

##### **(1) CURBSIDE COLLECTION SERVICE FOR PERSONS WITH DISABILITIES**

*Side door or porch set-out service is provided by the City or its authorized contractor to citizens who are physically unable to place their refuse or recycling containers at the curbside, and are unable to make other arrangements to have materials placed at the curbside. This type of collection will be known as “Special Pickup.”*



*Special Pickup service is subject to approval by the City following an on-site interview and must be renewed every two years. To arrange an interview, call the City's Customer Service Center at 99-Green (994-7336).*

## **Collection Schedule**

The current residential recycling collection schedule is a Monday through Friday, five days-a-week schedule.

Recycling collection service shall be between 7:00 a.m. and 4:00 p.m. year-round, excluding City Holidays on which waste collection is not performed (including New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day) in which case waste and recycling collection occurs the following day, including Saturday. For example, if a holiday occurs on a Wednesday and no collection is performed that day, Wednesday collection will occur the following Thursday, Thursday collection on Friday, and Friday collection on Saturday so that a 5-day collection cycle is achieved.

The recycling collection schedule will follow the same as the City's trash and compost collection schedule. For example, if the City collects trash and compost at a Residential Customer Household on Monday, the Contractor will collect recycling at that location on Monday. The City will discuss substantive adjustments (for example more than a street) to the collection schedule with the Contractor at least 30 days before adjustments are implemented. The City will strive for mutual agreement with the Contractor regarding adjustments to the collection schedule; however, the City maintains final decision-making power over the residential recycling collection schedule.

Contractor Residential Customer Recyclables Collection routes may not extend outside the Residential Recycling Service Area.

## **2. COLLECTION SERVICES**

Contractor shall perform Residential Customer Recyclables Collection services in accordance with the following terms and conditions:

- A. Contractor shall provide weekly Residential Customer Recyclables Collection service to all City Residential Customer Households. The City currently provides residential recycling service to 28,550 Residential Customer Households, but the number of Residential Customer Households is subject to change.
- B. Contractor shall provide weekly Residential Customer "Special Setouts" Recyclables Collection service as determined by the City in accordance with Section R2:10 of the City's Solid Waste Regulations. At these locations, the Contractor's driver(s) shall exit their vehicle, retrieve the cart left outside of the garage, take it down the driveway to the collection vehicle, empty the cart and return it to the location from which it was removed. The Contractor's driver(s) shall follow the regular walk for pedestrians while on private property and shall not trespass nor cross property to the adjoining premises unless the occupant or owner of both properties has given permission. Care shall be taken to prevent damage to

property, including flowers, shrubs, and other plantings. The City currently provides Special Setout service to approximately 70 Residential Customer Households, but the number of Special Setouts is subject to change.

- C. Contractor shall provide Residential Customer Recyclables Collection services commencing no earlier than 7:00 a.m. and terminating no later than 4:00 p.m., Monday through Friday, except for holiday service as described in *Collection Schedule* above.
- D. Contractor shall deliver all collected recyclables to the City of Ann Arbor Material Recovery Facility (MRF) at 4150 Platt Road, Ann Arbor.
- E. Contractor shall provide all Residential Customer Recyclables Collection services with as little disturbance as possible. Except in the case of Special Setout service, Contractor shall leave recycling carts in an upright position at the same point from which its contents were collected, without obstructing alleys, roadways, driveways, sidewalks or mail boxes.
- F. Contractor shall provide all vehicles, materials, labor, water, tools, equipment, light, power, fuel, transportation, maintenance and other facilities necessary to perform Residential Customer Recyclables Collection services for the City's 32-gallon, 64-gallon and 96-gallon Toter carts. The Contractor's collection vehicle fleet shall be able to service all Residential Customer curb side carts including those on dead end streets, narrow streets, cul-de-sacs and dirt roads.
- G. Residential Customers are allowed one free 32-gallon, 64-gallon or 96-gallon recycle cart per household, but may purchase additional carts as needed, through the City. The Contractor shall service all recycling carts at each Residential Customer Household at the per Household unit price. The Contractor shall not receive additional compensation for multiple cart tips at the same Residential Customer Household address. There are currently approximately 900 Residential Customer Household locations that have multiple carts, but the number of Residential Customer Households with multiple carts is subject to change.
- H. Contractor shall tag carts that do not meet the requirements of the City's Solid Waste Ordinance ([Chapter 26 of City Code: https://library.municode.com/mi/ann\\_arbor/codes/code\\_of\\_ordinances?nodeId=TI-TIIUT\\_SE\\_CH26SOWAMA](https://library.municode.com/mi/ann_arbor/codes/code_of_ordinances?nodeId=TI-TIIUT_SE_CH26SOWAMA).) and its related Solid Waste Regulations (for example, unapproved materials, materials outside the carts, overflowing materials, etc.). Contractor shall obtain and use City provided template for printing of tags for their use.
- I. City shall have the right to inspect the Contractor's collection vehicles and their contents at any time while operating with the City or at City facilities,.
- J. Contractor shall provide route maps to the City for approval at least 30 days in advance of the commencement of the Contract. The City and Contractor shall review the route and collection schedules at least annually.

- K. Contractor shall utilize the City's work order management system (Cityworks) or equivalent and provide a monthly report from Cityworks containing missed pick-ups, reasons for missed pick-ups, tagged setouts, reasons for tagged setouts, spills, accidents, safety incidents, and any other complaints.
- L. Contractor shall submit monthly invoices for services rendered showing the calculation of the total monthly invoice amount based on the number of Residential Customer Households serviced and any additional charges or amounts due.
- M. Contractor shall at the end of each work day, submit through the work order management system (Cityworks) or equivalent, service requests for carts that are in need of repair, recycling or disposal. The City will repair, deliver and dispose of carts.
- N. Contractor shall attend monthly progress/status meetings in-person with City staff for the first year of the Contract, and as needed thereafter as determined by the City.

### 3. DELAYS IN COLLECTION SERVICES

Contractor shall perform all services under this Contract in a thorough and professional manner. All Collection Services described in this Contract shall be performed regardless of weather conditions or difficulty of collection. Adverse weather or other extraordinary circumstances shall not be considered reason for not providing services unless cessation is authorized by the Contract Administrator by 6 a.m. of that business day or as approved by the Contract Administrator. Contractor shall perform all additional services described in this Contract professionally, promptly and courteously. The Contractor shall make its own determination as to conditions and shall assume all risk and responsibility and shall complete the work in and under whatever conditions it may encounter or create without extra cost to the City.

### 4. CONTINGENCY PLANNING

Without limiting Contractor's liability for performance of its obligations under this Contract, the Contractor shall implement and maintain throughout the Contract term such contingency measures as may be appropriate, in the City's sole discretion (acting reasonably), including a comprehensive business continuity plan (the "**Business Continuity Plan**"), to continue the performance of its obligations under this Contract under various scenarios including equipment failure, fuel shortage, strike, road closures (including due to weather, construction or otherwise), fire, pandemic, quarantine, and natural disasters . The City will have the right, upon request from time-to-time, to review the Business Continuity Plan. Contractor shall update its Business Continuity Plan at least once each year and in the event of any material change in operations or circumstance. The Contractor shall invoke its Business Continuity Plan when necessary due to any incident or event, including an event of Force Majeure that has the potential to have a material impact on Contractor's ability to provide any material part of the Residential Customer Recyclables Collection services for any material period of time, or upon the request of the City. Without limiting Contractor's obligations under this Contract, whenever an incident or event that invokes the Business Continuity Plan also impacts other services provided by Contractor, and as a result Contractor is

allocating resources or implementing temporary service changes or workarounds, Contractor will treat the City and the Residential Customer Recyclables Collection services no less favorably than any of its other customers, in each case in the allocation of such resources or in the implementation of such temporary service changes or workarounds.

## **5. SPILLS AND CLEANUP**

- A. All loads collected by the Contractor shall be completely contained in their collection vehicles at all times, except when material is being loaded and unloaded. The contractor shall sufficiently clear hoppers and maintain all collection vehicles to prevent the occurrence of blowing or spillage.
- B. Any spillage of materials that occurs during Residential Customer Recyclables Collection shall be immediately cleaned up or removed by the Contractor at its sole expense. Contractor shall keep accurate records of each occurrence of spillage and of its cleanup, and will make such records available to the City as requested and included as part of the regular monthly report delivered to the City. The Contractor expressly acknowledges it is solely responsible for any violations of applicable laws that may result from said spillage.
- C. Contractor shall maintain all collection vehicles to ensure that no liquid wastes (e.g., leachate) or oils (e.g., lubricating, hydraulic or fuel) are discharged to customer premises, public streets or private roads, catch basins or waterways. All collection and route supervisor vehicles used by the Contractor shall be equipped with a spill kit sufficient in size to contain a spill of equivalent volume to the largest lubricating, hydraulic or fuel tank on the largest collection vehicle. Any discharge of liquid wastes or oils that occur from Contractor's collection vehicles or route supervisor vehicles will be cleaned up or removed by Contractor within three (3) hours of being noticed by Contractor's staff, the City, or customers, and shall be remediated by the Contractor at its sole expense. Such cleanup or removal shall be documented with pictures and notice of the cleanup or removal will be provided in writing to the City within three working days. Contractor shall immediately notify the City of any spills that enter groundwater or drainage systems.

## **6. CUSTOMER SERVICE AND REPORTING REQUIREMENTS**

- A. The Contractor shall provide each of their drivers with the necessary equipment to take and upload pictures and provide mobile reports immediately following each missed pickup (unserviceable), and use the City's Cityworks system, or an alternative Contractor-provided system that is exportable to the City's database (Cityworks) and acceptable to the City, as the main point of contact for communication with the customer and the City. The driver shall also tag each unserviceable missed pickup and identify the reason for the missed pickup.
- B. If the Contractor cannot provide an alternative work management system that is compatible with Cityworks and acceptable to the City, the City will provide the asset management software, Cityworks, to the Contractor. The selected

contractor(s) will be required to have or to purchase a tablet running either the Apple iOS or the Android platform (Windows Mobile is not supported) that has a cellular card and supports the Cityworks native mobile app in order to review and complete work orders. The Cityworks native mobile app is available for free through the respective platform's app stores.

- C. The Contractor shall maintain a representative who is available during normal business hours by telephone in the event of an emergency. The Contractor shall have a representative, or an answering service to contact the representative.
- D. The Contractor shall respond to, log, track and report all customer complaints, inquiries and service requests, via Cityworks or other approved system, including: date and time of complaint/inquiry/service request; customer information (name, address, telephone number and e-mail) if the customer is willing to give this information; method of transmittal; nature of and details regarding the complaint/inquiry/service request; date, time, and manner of resolution of the complaint or service request; additional follow-up needed; date, time and details regarding follow-up conducted; and any service changes resulting from the resolution of the complaint/inquiry/service request. These items shall be logged daily. The Contractor will make a conscientious effort to resolve all complaints and service requests within one (1) business day of the original contact. If a longer response time is necessary for complaints or requests, the reason for the delay will be noted in the log, along with a description of the Contractor's efforts to resolve the complaint or request.
- E. In the event that a Customer contacts the City directly with a complaint inquiry or service request, the City will transmit the inquiry/request via Cityworks to the Contractor who shall follow the directions for resolution as described in item D., above.

## **7. TRANSITION AND IMPLEMENTATION PLAN**

Prior to service commencement, the Contractor shall undertake the following actions to ensure that they are ready to begin the service on the Service Commencement Date of July 1, 2021:

- A. Contractor shall develop and submit to City no later than 30 days prior to the start of the Contract, a transition and implementation plan (the "Transition and Implementation Plan") for implementing Residential Customer Recyclables Collection services, including a specific timeline and the process to be used to ensure that implementation occurs on the Service Commencement Date.
- B. Design of collection routes. Routes must be designed to not conflict with City routes (for example recycling will be on the same day as trash).
- C. Identification of Residential Customers whose properties will pose a problem for the provision of collection services and suggestions to resolve the problem.

- D. Verification of the actual number of Residential Customer Households that will be serviced. Any discrepancies found between the actual number of Residential Customer Households within a collection area and the data supplied in these documents shall be reported with supporting information to the City at least thirty (30) days prior to commencement of service.
- E. Print sufficient quantities of cart tags to be used for field communication with Residential Customers with respect to proper container set out, unsuitable container conditions, contamination and non-acceptable items, and any other pertinent communication items.
- F. Submission of any required Plans indicated within this Scope of Work.

**8. CONTRACTOR PERSONNEL CONDUCT**

- A. Contractor personnel performing Residential Customer Recyclables Collection services shall at all times be courteous, refrain from loud, inappropriate or obscene language, exercise due care, perform their work without delay, minimize noise, and avoid damage to public or private property. Contractor personnel shall not solicit tips, gifts or any other form of gratuity from customers or residents. If on private property, Contractor personnel for special setouts will follow the regular pedestrian walkways and paths, returning to the street after replacing empty carts. Contractor personnel will not trespass or loiter, cross flower beds, hedges or property of adjoining premises, or meddle with property that does not concern them or their task at hand. Contractor will adhere to the City’s Solid Waste regulations with regard to cart placement including but not limited to bike lanes.
- B. Contractor personnel shall wear a professional and presentable uniform with an identifying badge with photo identification and company emblem visible to the average observer.

**9. COLLECTION VEHICLE AGE AND STANDARDS**

Without limiting any other requirements or obligations of the Contractor, the Contractor shall meet or exceed the following standards with respect to collection vehicles used to perform Residential Customer Recyclables Collection services in the City.

- A. Throughout the contract term, all vehicles will have a high standard of aesthetics so as to maintain their as-new appearance and positively represent both the Contractor and the City.
- B. Contractor shall provide the City with an annual Fleet schedule with make, model and year, and assigned identify number.
- C. The Contractor shall equip each collection vehicle with an Automated Vehicle Locator (AVL).
- D. The Contractor shall maintain all collection vehicles in a clean and sanitary manner.

- E. All collection vehicles shall have appropriate safety markings, including operable highway lighting, flashing and warning lights, clearance lights and warning flags, all in accordance with applicable law(s). All collection vehicles and all parts and systems of all collection vehicles shall operate properly and be maintained in a condition compliant with all applicable laws, good industry standards, and be in a condition satisfactory to the City. Any vehicles not meeting these standards shall not be used within the City until repairs are made. All collection vehicles will be equipped with variable tone or proximity-activated reverse movement back-up alarms.

## **10. RECORD KEEPING AND REPORTING DELIVERABLE**

The following records maintained pursuant to this Contract shall be provided to the City on a monthly basis, or other such schedule as approved by the City, in a format and by a method approved by the City. The Contractor shall provide records to the City as described below:

The Contractor shall submit to the City within fifteen (15) days after the end of each month during the term of this Contract, the Monthly Report, which shall include a short summary (for example one-two pages) in the form of graphs, charts and other summary data of the following information:

- A. Total tonnage of all collected recyclables weighed at the City scale.
- B. Missed pickups by issue category (for example, weather, or lack of accessibility, etc.).
- C. Percent of residential recycling route completed on schedule.
- D. Number of carts tagged by issue category (for example, broken cart, yard waste in recycle).
- E. Number of vehicular accidents or damage occurring to City/public property within the City limits.
- F. Number and type of spills that occur during Residential curbside Recyclables Collection.

## **11. CUSTOMERS COMPLIANCE ISSUES**

The City and Contractor acknowledge that, in rare cases, some customers may cause disruptions or conflicts that make continued Residential Customer Recyclables Collection services from that customer unreasonable. Those disruptions or conflicts may include unwillingness to properly prepare materials, repeated suspect claims of timely set-out followed by demands for Residential Curbside Recyclables Collection, repeated unsubstantiated claims of Contractor damage to customer's property, or other such problems.

The Contractor will make every reasonable effort to provide Residential Customer Recyclables Collection services for those customers who are not in compliance with city requirements.

However, with the City’s written agreement, the Contractor may deny or discontinue Residential Customer Recyclables Collection for a noncompliant customer after prior written notice is given to the City of the intent to deny or discontinue service, including the name, service address, reason for such action, and what reasonable efforts to accommodate the customer have been made and in what manner they have failed.

If the noncompliant customer submits a written letter or e-mail to the City appealing the Contractor's decision, the City may, at its discretion, intervene in the dispute. In this event, the decision of the City will be final. The City may also require, in its sole discretion, the denial or discontinuance of Residential Customer Recyclables Collection services to any Customer who is determined by the City to be ineligible.

## **12. PAYMENT**

### **Residential Customer Households**

In this Contract, the term “Residential Customer Households” means those residential properties within the City’s boundaries that are approved by the City for curbside recyclables collection defined by the City’s Public Services Area.

The City may identify Residential Customer Households, where the property meets all of the following criteria:

- i. Ten (10) units or less;
- ii. Each unit must have its own street-level entry and collection cart(s);
- iii. Carts can be set out in front of the individual units or building(s) at the street edge/curb, or some equivalent location (such as an alley), in other words, the property has a common point where residents bring their container(s) for pick up; and
- iv. The property must be serviceable by the Contractor’s collection trucks (who may be entering private roads or drives to provide the service).

Multi-Family sites may be converted to “Residential Customer Household” status or Residential Customer Household sites may be converted to “Multi-Family/Commercial” sites (as described in the Scope). Residential sites eligible for change to Multi-Family/Commercial status must be more than ten units. The City will strive for mutual agreement with RAA regarding changes to site status, but any related change to the recycling service must be approved by the City and the City maintains final decision-making determination.

### **Payment for Residential Customer Recyclables Collection Service**

The City will pay the Contractor for the services under this contract based on the City’s current number of Residential Customer Households serviced once per week in each week of the month, partial weeks will be prorated based on 5-day work week.

For example, in March 2020, which has 22 working collection days, the City would pay the Contractor for 125,620 Residential Customer Households serviced, calculated as follows:



$$\begin{array}{r} 28,550 \text{ Households} \times 4 \text{ full weeks} = 114,200 \text{ Households serviced} \\ + \\ 28,550 \text{ Households} \times 2/5 \text{ (prorated days in March 30 \& 31)} = \\ 11,420 \text{ Households serviced} \end{array}$$

The City will pay Contractor for the work completed in accordance with the Contract for the month as follows:

- i. Total of the number of Residential Customer Households listed in the current Schedule of Prices
- ii. Annual Price Adjustments
- iii. The gross payment amount for each month will be reduced by the Service Level Failure
  - a. Credits as set out in the Contract.

### **Number of Residential Customer Households**

As part of the transition and implementation the City and Contractor shall exchange information regarding the number of Residential Customer Households to be serviced, and prior to the commencement of services, the City shall provide Contractor with the final number of Residential Customer Households which number shall be used for Contractor's monthly invoices. The number of Residential Customer Households shall be subject to change during the term of the Contract based on the conditions outlined in the Scope.

### **Change in Number of Residential Customer Households**

The City will, once per calendar quarter on January 1, April 1, July 1, and October 1 of each year, through the term of this Contract provide the Contractor with an updated number of Residential Customer Households. After the City provides that updated number to the Contractor, which shall be used for Contractor's monthly invoices for the upcoming calendar quarter or until updated and changed by the City.

If the Contractor becomes aware that any Residential Customer Households have become demolished or destroyed, or that there are additional Residential Customer Households not currently on the City's list, the Contractor shall promptly provide that information to the City.

### **Annual Price Adjustments**

Prices submitted by the Contractor shall be increased no more than the Contractor-proposed terms on the Bid Form Section 1—Schedule of Prices on the start of each City Fiscal Year during the Contract term, and any extension term.

### **Liquidated Damages and Deductions from Payments**

In addition to any other available remedies and subject to the terms of the Agreement, the City may impose the amounts specified below as liquidated damages for each instance of the following Contractor failures:

Failure to tag and notify customer of noncompliance with City Solid Waste Ordinance including entry into CityWorks	\$10.00 each event
Failure to clean up spilled material from a collection vehicle within three (3) hours	\$500 plus cost of clean-up by City or third- party each event
Failure to clean up spilled material from a customer container within three (3) hours	\$250 each event
Failure to service a serviceable residential customer container on service day	\$250 each event
Failure to complete daily services within the same business day (excluding holidays)	\$250 each event
Failure to perform any part of the services as required in the Detailed Specifications not otherwise listed in this section,.	\$250 each event
Failure to make prompt payments to subcontractors for equipment, supplies or labor as they come due	\$500 each event
Failure to timely submit monthly invoices on time	\$100 each event
Failure to timely submit monthly or other reports	\$500 each event
Failure to timely implement the Business Continuity Plan after work is interrupted	\$5,000 each event
Failure to attend monthly meetings with the City	\$250 each event

The City may withhold or nullify the disputed portion of the invoice on written notice to Contractor specifying the ground or grounds relied on, on account of one (1) or more of the following:

1. The Contractor has failed to perform any portion of the work in accordance with the Contract.
2. The Contractor is failing to make prompt payments as they become due to Subcontractors or for equipment, labor or supplies, relative to this agreement.
3. There exists unsatisfied claims made to the City by anyone in connection with the work for damages that were caused by the Contractor, or Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor directly.
4. The Contractor has not submitted a monthly or quarterly report(s) required under the Contract.
5. The work is interrupted and the Contractor does not implement its Business

Continuity Plan.

6. Not providing a representative, agendas and/or follow-up meeting notes for monthly meetings.

The liquidated damages are for the non-quantifiable aspects of any of the previously identified events and do not cover actual damages that can be shown or quantified nor are they intended to preclude recovery of actual damages in addition to the recovery of liquidated damages.

The assessment of liquidated damages shall be determined by the Contract Administrator, in his or her sole discretion which shall be binding, and liquidated damages may be deducted from the payment to Contractor each month.

### **13. ADDITIONAL TERMS**

#### **Scavenging Forbidden**

Contractor shall not scavenge, or permit employees to scavenge any materials that have been set out by customers at the curb at any time and at any location during Contractor's performance of the services or otherwise.

#### **Risk**

Contractor will be responsible for all risks, including risk of loss of, or damage caused by, the collected materials from the time the recyclables are collected by the Contractor until delivery to the City-designated post-collection receiving facility(ies). Collected materials will be deemed to be delivered when the Contractor's truck has been weighed at the City's scale, off-loaded from Contractor's vehicles at the receiving facility(ies). Contractor will be responsible for the cost of any damage to the receiving facility(ies) caused by the Contractor.

**EXHIBIT B  
COMPENSATION**

General

Contractor shall be paid for those Services performed pursuant to this Agreement inclusive of all reimbursable expenses (if applicable), in accordance with the terms and conditions herein. The Compensation Schedule below/attached states nature and amount of compensation the Contractor may charge the City (pricing provided is monthly rather than weekly):

Unit Price Bid – Renewal Year 6

<u>Item No.</u>	<u>Item Description</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
Item #1	Household Served (per Week) (Automated Service)	28,550	\$ <u>4.37</u>	\$ <u>124,721.73</u>
Item #2	Special Setout (per Week) (Manuel Service)	70	\$ <u>8.57</u>	\$ <u>600.08</u>

Unit Price Bid – Renewal Year 7

<u>Item No.</u>	<u>Item Description</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
Item #1	Household Served (per Week) (Automated Service)	28,550	\$ <u>4.47</u>	\$ <u>127,527.97</u>
Item #2	Special Setout (per Week) (Manuel Service)	70	\$ <u>8.77</u>	\$ <u>613.58</u>

7yr. ESTIMATED TOTAL

\$ 10,078,809.84

BF-2

Unit Price Bid – Renewal Year 6

<u>Item No.</u>	<u>Item Description</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
Item #1	Household Served (per Week) (Automated Service)	28,550	\$ <u>4.37</u>	\$ <u>124,721.73</u>
Item #2	Special Setout (per Week) (Manuel Service)	70	\$ <u>8.57</u>	\$ <u>600.08</u>

Unit Price Bid – Renewal Year 7

<u>Item No.</u>	<u>Item Description</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
Item #1	Household Served (per Week) (Automated Service)	28,550	\$ <u>4.47</u>	\$ <u>127,527.97</u>
Item #2	Special Setout (per Week) (Manuel Service)	70	\$ <u>8.77</u>	\$ <u>613.58</u>

7yr.

ESTIMATED TOTAL

\$ 10,078,809.84

BF-2

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

From the earlier of the Effective Date or the Commencement Date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall provide certificates of insurance to the City on behalf of itself, and when requested any subcontractor(s). The certificates of insurance and required endorsements shall meet the following minimum requirements.

- A. The Contractor shall have insurance that meets the following minimum requirements:
1. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:  
  
Bodily Injury by Accident - \$500,000 each accident  
Bodily Injury by Disease - \$500,000 each employee  
Bodily Injury by Disease - \$500,000 each policy limit
  2. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 04 13 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:  

\$1,000,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
\$2,000,000	Per Project General Aggregate
\$1,000,000	Personal and Advertising Injury
\$2,000,000	Completed Operations Aggregate
  3. Motor Vehicle Liability Insurance equivalent to, as a minimum, Insurance Services Office form CA 00 01 10 13 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements that diminish the City's protections as an additional insured under the policy Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
  4. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.
- B. Insurance required under A.2 and A.3 above shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance

the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City for any insurance listed herein.

- C. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional and unqualified 30-day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number(s); name of insurance company; name(s), email address(es), and address(es) of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions, which may be approved by the City in its sole discretion; (c) that the policy conforms to the requirements specified. Contractor shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor shall provide within 30 days, a copy of the policy(ies) and all required endorsements to the City. If any of the above coverages expire by their terms during the term of this Agreement, the Contractor shall deliver proof of renewal and/or new policies and endorsements to the Administering Service Area/Unit at least ten days prior to the expiration date.



**EXHIBIT D  
PERFORMANCE BOND**

- (1) **Recycle Ann Arbor of 2420 S. Industrial Hwy, Ann Arbor, MI 48104** (referred to as "Principal"), and \_\_\_\_\_, a corporation duly authorized to do business in the State of Michigan (referred to as "Surety"), are bound to the City of Ann Arbor, Michigan (referred to as "City"), for **\$673,004.00**, the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by this bond.
- (2) The Principal has entered a written Contract with the City dated \_\_\_\_\_, 2020 and entitled **GENERAL SERVICES AGREEMENT BETWEEN Recycle Ann Arbor AND THE CITY OF ANN ARBOR FOR Residential Customer Recyclables Collections.**
- (3) The term of this bond is for the period commencing \_\_\_\_\_ and expiring on \_\_\_\_\_, unless released by the City prior thereto. However, the term of this bond may be extended by an additional one-year period(s) by issuance of a Continuation Certificate by the Surety.
- (4) The liability of the Surety under this bond and all continuation certificates issued in connection therewith shall not be cumulative and shall in no event exceed the bond amount set forth above or in any additions, riders or endorsements properly issued by the Surety.
- (5) Non-renewal by the Surety shall not constitute a default under this bond.
- (6) Whenever the Principal is declared by the City to be in default under the Contract, the Surety may promptly remedy the default or shall promptly:
  - (a) complete the Contract in accordance with its terms and conditions; or
  - (b) obtain a bid or bids for submission to the City for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, arrange for a Contract between such bidder and the City, and make available, as work progresses, sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which Surety may be liable hereunder, the amount set forth in paragraph 1.
- (7) Surety shall have no obligation to the City if the Principal fully and promptly performs under the Contract.
- (8) Surety agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder, or the specifications accompanying it shall in any way affect its obligations on this bond, and waives notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work, or to the specifications.
- (9) Principal, Surety, and the City agree that signatures on this bond may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this bond. This bond may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

**SIGNED AND SEALED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

(Name of Surety Company)  
By \_\_\_\_\_  
(Signature)  
Its \_\_\_\_\_  
(Title of Office)

(Name of Principal)  
By \_\_\_\_\_  
(Signature)  
Its \_\_\_\_\_  
(Title of Office)

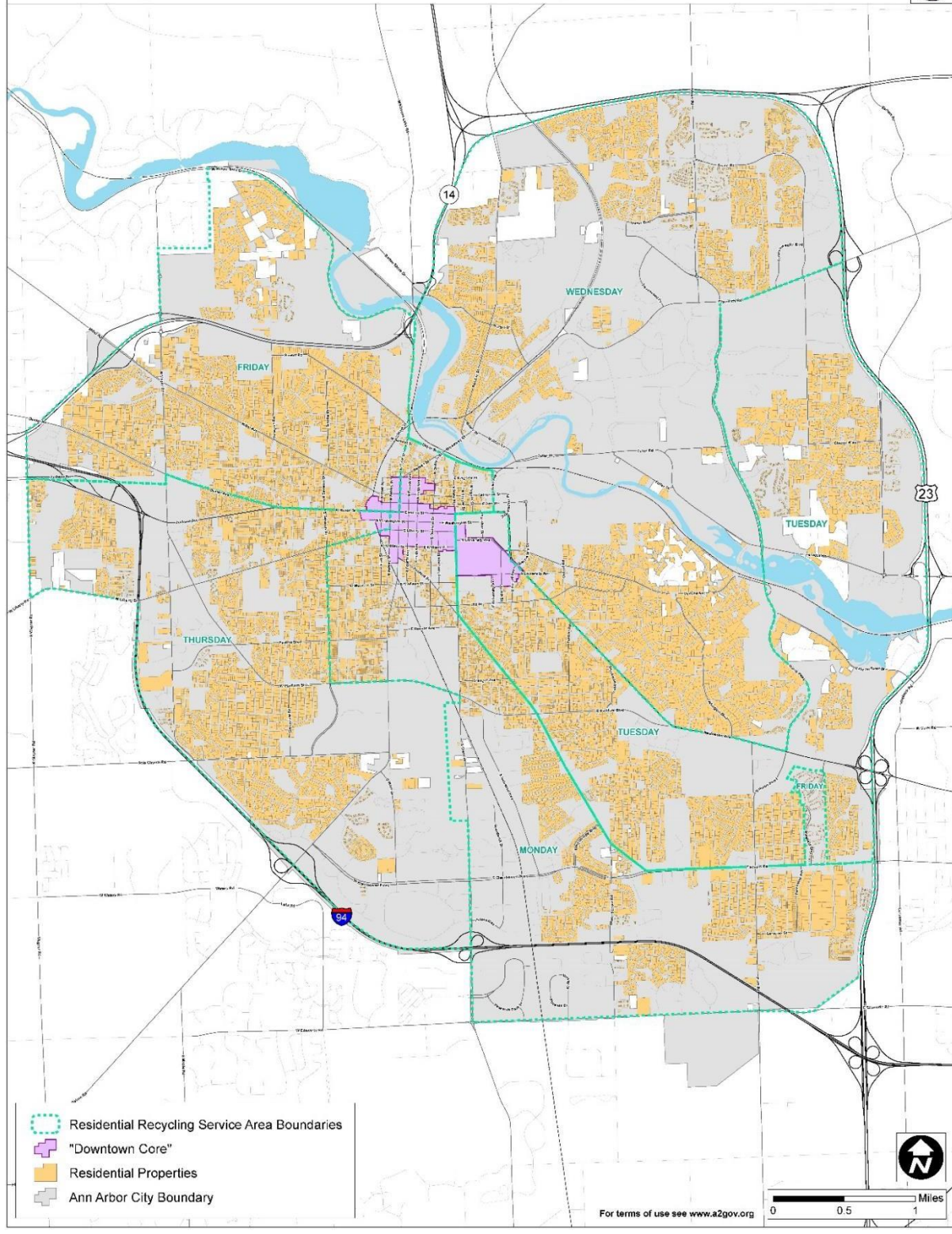
Approved as to form:

Name and address of agent:

\_\_\_\_\_  
Stephen K. Postema, City Attorney

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# City of Ann Arbor - Residential Recycling Service Area



**EXHIBIT E**  
**Bid Proposal of Contractor, dated July 1, 2020**