



Contract No. _____

**CITY OF PHILADELPHIA
CONTRACT FOR MUNICIPAL WASTE PROCESSING AND DISPOSAL**

This Contract for Municipal Waste Processing and Disposal (the “Agreement” or the “Contract”) is made and entered into on the ____ day of _____, 2019, by and between **THE CITY OF PHILADELPHIA**, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, acting through its **DEPARTMENT OF STREETS** (the “City”), and **COVANTA SUSTAINABLE SOLUTIONS, LLC** (the “Contractor”), a Delaware State limited liability company authorized to do business in the Commonwealth of Pennsylvania (together, “Parties”).

BACKGROUND

- A. The City desires to ensure the provision of services for the processing and disposal of municipal solid waste in a reliable, cost-effective and environmentally sound manner.
- B. On January 24, 2019, the City, acting through its Procurement Department and the Department of Streets, issued a Request For Proposals (the “RFP”) for purchasing services for the processing and disposal of Municipal Solid Waste.
- C. On February 22, 2019, Contractor submitted to the City a proposal in response to the RFP. Contractor is a successful proposer to the RFP.
- D. Contractor has duly authorized its respective officials and officers to enter into and execute this Agreement.
- E. The RFP is hereby incorporated by reference as if fully set forth herein. The City and Contractor hereby agree to be bound by all of the terms and conditions contained in the RFP.

NOW, THEREFORE, the parties, in consideration of the mutual covenants, considerations, and promises contained herein, incorporating the above Background, and agreeing to be legally bound by this Agreement, agree as follows:

ARTICLE 1
DEFINITIONS

1.01 Definitions.

Words, phrases, or other expressions used in this Agreement shall have the meanings as described below:

- 1) Act 101 Plan - The plan prepared by the City, and approved by the Commonwealth, in accordance with the provisions of the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. § 4000.101 et seq. The Act 101 Plan may be amended in accordance with established City procedure and Applicable Laws.
- 2) Affiliates - Any Person that controls, is controlled by, or is under common control with Contractor.
- 3) Agreement - This Agreement between the City and Contractor, and all Exhibits attached hereto.
- 4) Agreement Date - The date first set forth above.
- 5) Agreement Year - A twelve (12) month period commencing on July 1 and ending on June 30 during the Term of this Agreement.
- 6) Alternate Facility - A Transfer Station(s) and/or Disposal Facility(ies) utilized by the City during a period of time that Contractor is unable to fulfill its obligations for receipt and/or disposal of Municipal Solid Waste in accordance with this Agreement.
- 7) Applicable Laws and Government Approvals – The Permits and any statute, law, constitution, charter, ordinance, judgment, order, decree, rule, regulation, directive, standard, policy or similarly binding authority, which shall be enacted, adopted, promulgated, issued or enforced by a Governmental Body relating to the Contractor, the City, the Transfer Station(s) and/or Disposal Facility(ies), and this Agreement, including without limitation, the Act 101 Plan.
- 8) Change in Law – As defined in Section 4.03.
- 9) Change in Law Adjustment – Shall mean for any period after the Disposal Fee Date and for any Change in Law the amount of any and all adjusted costs related to or based upon, directly or indirectly, the delivery and disposal of Municipal Solid Waste at the Designated Transfer Station(s) and/or Disposal Facility(ies), including capital costs, operating, design, construction, equipment maintenance, closure and/or post-closure care, start up, costs of the Designated Transfer Station(s) and/or Disposal Facility(ies) and any tax created after the Disposal Fee Date and any increase in governmental fees, federal, state and City imposed host community fees or surcharges (but excluding any locally imposed host community fees or surcharge and any adjustment in the tax rate to a tax existing prior to the Disposal Fee Date

including, but not limited to, the United States corporate income tax, the state income tax and real property taxes) resulting from the Change in Law.

10) Change in Law Costs shall mean costs actually incurred by a Contractor pursuant to a Change in Law and as set forth in Change in Law Adjustment.

11) Commencement Date – The start date of this Agreement, _____, 2019.

12) Commissioner – The Commissioner of the Department of Streets of the City (including an individual serving in an acting capacity) or his/her designee(s).

13) Commonwealth shall mean the Commonwealth of Pennsylvania.

14) Construction and Demolition Debris shall mean concrete, bricks and other construction and demolition waste.

15) Contract – This Agreement.

16) Contract Term – The Initial Term of the Contract plus City-option terms, if any.

17) Contractor – The entity named and designated in the first paragraph of this Agreement.

18) Day – A calendar day during the Term of this Agreement.

19) Designated Disposal Facility - The Disposal Facility(ies), including the sites, buildings, equipment and supplies which Contractor shall utilize to perform the Work set forth herein, and designated by Contractor in Exhibit “C” (as Exhibit “C” may be subsequently amended to reflect additional Disposal Facility(ies) offered by Contractor and accepted by the City) and approved by the City’s Act 101 Plan for the final disposal of Municipal Solid Waste under this Agreement.

20) Designated Transfer Station - The Transfer Station(s), including the sites, buildings, equipment, and supplies which Contractor shall utilize to perform the Work set forth herein, as designated by Contractor in Exhibit “C” (as Exhibit “C” may be subsequently amended to reflect additional Transfer Station(s) offered by Contractor and accepted by the City) and approved by the City’s Act 101 Plan for the final disposal of Municipal Solid Waste under this Agreement.

21) Disposal Facility - A property or properties used for the final disposal of Municipal Solid Waste in accordance with all Applicable Laws.

22) Disposal Fee(s) – The per Ton price paid by the City for the disposal of Municipal Solid Waste, Construction and Demolition Debris and/or Residual Waste at the Designated Transfer Station(s) and the Designated Disposal Facility(ies) as provided in Exhibit E.

Exhibit A

23) Disposal Fee Date - The last day on which the Contractor submitted proposed Disposal Fees for the consideration of the City in response to the City's RFP.

24) Disposal Permit - The permit issued by the Pennsylvania Department of Environmental Protection for a solid waste disposal and/or processing facility permit applicable to a Transfer Station.

25) Event of Default – A default as set forth in Article 6 of this Agreement.

26) Electronic Waste or E-Waste – Shall mean those materials collected by or on behalf of the City for processing and disposal as identified in Exhibit "I."

27) Exhibit(s) – The exhibits attached to this Agreement or as subsequently modified at the mutual agreement of the City and Contractor and incorporated by reference in this Agreement.

28) Finance Director - The Director of the Department of Finance of the City (including an individual serving in an acting capacity), or his/her designee.

29) Force Majeure Event shall have the meaning set forth in Section 6.04 of this Agreement.

30) Fiscal Year or FY – The City's budget year, comprised of the twelve (12) month period between July 1 and June 30.

31) Governmental Body shall mean, as appropriate, any one or several of: the United States of America, the Commonwealth, the City, any state, county or local unit of government or any agency, authority, regulatory body or subdivision of any of the foregoing as may have jurisdiction over or power and authority to regulate the City, Contractor, the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies), the Work, or this Agreement.

32) Guaranteed Annual Quantity – The minimum annual quantity of Municipal Solid Waste to be delivered to the Designated Transfer Station(s) by the City or accepted by Contractor from the City as set forth in Section 3.01 of this Agreement in any Agreement Year.

33) Holiday - All holidays designated on an official City calendar to be provided annually by the City to Contractor as it becomes available.

34) Initial Term shall have the meaning set forth in Section 2.01 of this Agreement.

35) Maximum Daily Quantity – The maximum quantity of Municipal Solid Waste that the City may by right deliver to the Designated Transfer Station(s) and/or may by right have the Contractor accept at the Designated Disposal Facility(ies) from the Northwest Transfer Station on a given Day during the Term. The Maximum Daily Quantity shall not include Residual Waste, Construction and Demolition Debris or Christmas trees delivered by the City pursuant to Section 3.02 of this Agreement.

Exhibit A

36) Municipal Solid Waste - Waste that is categorized as Municipal Waste under Section 103 of the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.103 and collected by or on behalf of the City in accordance with its Regulations Governing Municipal Refuse Collection. Municipal Solid Waste may also include (a) limited quantities of oversized bulky wastes collected as part of normal refuse collection such as appliances, furniture, mattresses, tires, and other such large objects, and (b) materials cleaned from City storm sewer street inlets and non-residential municipal waste collected from various City facilities. Municipal Solid Waste shall not include Construction and Demolition Debris which is sufficiently segregated so it may be recycled or disposed of as such, or Unacceptable Waste that is not included in subsections (a) or (b) herein.

37) Northwest Transfer Station - The Transfer Station owned and operated by the City and located at Domino Lane and Umbria Street, Philadelphia, Pennsylvania.

38) Performance Bond – A bond provided to ensure performance of this Agreement, as further defined at Section 5.01 of this Agreement.

39) Person shall mean any individual, general partnership, limited partnership, corporation, joint venture or association or other entity.

40) Residual Waste shall mean that waste which is categorized as Residual Waste under Section 103 of the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.103.

41) RFP shall have the meaning set forth in Section B. of the Background of this Agreement.

42) Term shall mean the Initial Term and any and all Additional Term(s).

43) Ton – A short ton of two thousand (2,000) pounds.

44) Transfer Station shall mean a property or properties permitted for the receipt of Municipal Solid Waste and for the transfer of such materials into vehicles for hauling to a Disposal Facility or for reuse in accordance with all Applicable Laws.

45) Unacceptable Waste shall mean:

a) any material that by reason of its quantity is ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies);

b) any material that by reason of its composition or characteristics is ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) pursuant to the provisions of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., and the regulations thereunder, except for those small quantities normally found in household or commercial solid waste which the City and Contractor are authorized to handle as Municipal Solid Waste;

- c) any material that by reason of its composition or characteristics is ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) pursuant to any other Applicable Law(s), including without limitation: (i) Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (ii) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.; (iii) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; (iv) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; (v) the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq.; or (vi) the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.101 et seq.; or
- d) any materials which any Governmental Body having appropriate jurisdiction shall determine from time to time to be harmful, toxic, hazardous, dangerous, or otherwise ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies).

46) Work shall mean the performance of all of Contractor's activities expressly required by this Agreement and all activities necessary or desirable for meeting the requirements of this Agreement.

47) Wrongfully Rejected Waste shall have the meaning set forth in Section 3.02 of this Agreement.

ARTICLE 2
TERM

2.01 Initial Term.

(1) Except as provided in Subsection 2.01 (2), the initial term (the "Initial Term") of this Agreement shall commence on July 1, 2019 (the "Commencement Date"), and terminate four (4) years thereafter or upon earlier termination under the terms of this Agreement.

(2) For E-Waste disposal and processing services, offered under Alternative 3 of the RFP, the initial term (the "E-Waste Initial Term") shall commence on July 1, 2019 (the "E-Waste Commencement Date"), and terminate two (2) years thereafter or upon earlier termination under the terms of this Agreement.

2.02 Additional Term(s).

(1) Except as provided in Subsection 2.01(2), the City may, at its sole option, amend this Contract to add on an annual basis up to three (3) successive one (1) year terms ("Additional Terms"). Unless otherwise amended, the same terms and conditions applicable in the Initial Term shall be applicable in the Additional Term(s). The City shall give Contractor ninety (90) days written notice of its intent to amend this Contract to add an Additional Term prior to each annual Additional Term. Each Additional Term shall be subject to appropriation of funds by City Council for such Additional Term. There shall be no liability or penalty to the City for electing

not to amend the term of this Contract to add Additional Terms. Each Additional Term of this Contract shall be deemed to constitute a separate contract, whose term shall not exceed one (1) year.

(2) For E-Waste disposal and processing services, the City may, at its sole option, request the Contractor to amend the E-Waste term to add up to three (3) additional one (1) year terms (“Additional E-Waste Term(s)”). Contractor may for any reason decline to amend either the first one-year Additional E-Waste Term request from the City or a subsequent request. Unless otherwise amended, the same terms and conditions applicable in the Initial E-waste Term shall be applicable in the Additional E-Waste Term(s). The City shall give Contractor written notice of its interest in amending the E-Waste Term of the Agreement at least ninety (90) days prior to end of any E-Waste Term. The Agreement will be amended unless Contractor notifies the City of its rejection of the City’s request to amend the E-Waste Term within thirty (30) days of the City’s request. Each Additional E-Waste Term shall be subject to appropriation of funds by City Council for such Additional E-Waste Term. There shall be no liability or penalty to either Party for electing not to amend the E-Waste Term of this Agreement to add Additional E-Waste Terms.

ARTICLE 3
FACILITIES AND OPERATIONS

3.01 Disposal Rights and Obligations.¹

(1) At all times during the Term of this Agreement, Contractor shall own, or control through contract or otherwise, the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) and represents, warrants and agrees that:

(a) the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) shall at all times during the Term of this Agreement be properly zoned and permitted to allow the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) to be used for the purposes contemplated by this Agreement and the RFP and be in compliance with all Applicable Laws; or in the case of a Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) that requires approval of Disposal Permits during the Term, Contractor shall provide reasonable assurances that the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) will have necessary Disposal Permits for the Term, such reasonable assurances describing the Contractor’s efforts to obtain or maintain Disposal Permits and the termination dates of the existing Disposal Permits shall be incorporated in the Agreement as Exhibit “F”;

(b) Contractor has sufficient Municipal Solid Waste transfer and disposal capacity available through reservation, contract or otherwise for the sole benefit of the City in an amount equal to the Maximum Daily Quantity of Municipal Solid Waste throughout the Term of this Agreement; or in the case of a Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) that requires Disposal Permits approvals to accept Municipal Solid Waste for transfer and/or disposal for the Term, Contractor shall provide reasonable assurances in

¹ Please note that pursuant to Section 3.13, Article 3 does not apply to E-Waste.

Exhibit “F” that the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) will have disposal capacity for the Term;

(c) all access roadways and structures subject to vehicular traffic are designed for AASHTO H-20 loading; all roadways are a minimum of twenty-four (24) feet in width; and sufficient queuing space is available within the confines of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) for all vehicles awaiting tipping;

(d) a minimum of two scales are present at each Designated Transfer Station(s) and/or Designated Disposal Facility(ies) which are at least ten (10) feet wide, seventy (70) feet long, and capable of weighing a sixty (60) Ton load;

(e) the scales must incorporate a fully automated, computerized weighing, identification and accounting system fully compatible with the City's system, as may be updated from time to time.

(f) the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall meet all of the minimum design specifications set forth in the RFP;

(g) Contractor shall provide an adequate number of clean restrooms for both its employees and City personnel. Contractor shall provide access to the Contractor’s telephone for City employees on official business and a public telephone for other use by City employees. The City shall require that City employees who use the restrooms and telephones comply with the Contractor’s rules and regulations for restroom and telephone use set forth in Exhibit “H”; and

(h) the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall be equipped with adequate bumper logs to prevent vehicles from backing into disposal pits. Bumper logs shall be designed and placed to prevent damage to unloading vehicles and to facilitate efficient unloading.

(2) Under no circumstances shall Municipal Solid Waste delivered to Contractor by or on behalf of the City pursuant to this Agreement be disposed of at any Transfer Station(s) and/or Disposal Facility(ies) that has/have not been included in the City’s approved Act 101 Plan.

(3) Contractor shall also use reasonable efforts to accommodate the City by providing additional capacity as requested by the City at rates contained in this Agreement.

(4) On an annual basis, thirty (30) Days prior to the commencement of each Agreement Year, Contractor shall certify to the City that adequate capacity remains at the Designated Transfer Station(s) and/or the Designated Disposal Facility to meet Contractor’s obligations hereunder.

(5) Contractor shall guarantee acceptance of the Maximum Daily Quantity during the times set forth in Exhibit “H” for the Term.

Exhibit A

(a) However, if the Contractor has failed to obtain or maintain a Disposal Permit for a Designated Transfer Station(s) and/or a Designated Disposal Facility(ies) that requires a Disposal Permit during the Term in accordance with Section 3.01(1)(a) and is therefore unable to accept the Maximum Daily Quantity, and the Contractor has provided notice to the City at least 270 days in advance of the last permitted disposal date, the guarantee shall extend only to the termination date of the Disposal Permit as provided in Exhibit "F".

(b) In the event that the Contractor cannot accept the Maximum Daily Quantity due to a failure to obtain or maintain Disposal Permits required under Section 3.01(1)(a), the City at its sole discretion may offer additional Work to one or more contractors under agreement with the City for the remainder of the Term.

(6) During each Agreement Year, the City shall deliver a Guaranteed Annual Quantity of Municipal Solid Waste to Contractor, except where Contractor has failed to obtain or maintain Disposal Permits for a Designated Transfer Station(s) and/or a Designated Disposal Facility(ies) or as provided under Article 6 of this Agreement.

(7) The Guaranteed Annual Quantity shall equal Seventy Five Percent (75%) of the Maximum Daily Quantity set forth in Exhibit "D" multiplied by 260. The Guaranteed Annual Quantity shall be adjusted by subtracting from the multiplier of 260, the number of Days that City deliveries to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) were restricted by any failure of Contractor to receive Municipal Solid Waste or any Force Majeure Event, calculated as follows:

Guaranteed Annual Quantity = .75 X Maximum Daily Quantity X (260 - (Days Contractor unable to accept Municipal Solid Waste + Force Majeure Event Days))

(8) For each Additional Term hereunder, if any, the City may adjust the Maximum Daily Quantity for each Agreement Year to reflect changes in the total quantity of Municipal Solid Waste collected by or for the City's Department of Streets. That is, should the total annual quantity of Municipal Solid Waste collected by or on behalf of the City increase or decrease, as for example, by population or demographic changes, source reduction, recycling, changed collection practices, deletion of Municipal Solid Waste collected by other City agencies and legal or regulatory changes, the City may adjust the Maximum Daily Quantity by the percentage change in total Municipal Solid Waste collected. At least ninety (90) Days prior to the beginning of each Additional Term, if any, the City shall inform Contractor in writing of changes in the total annual quantity of Municipal Solid Waste collected, estimating the annual quantity to be collected for the next Agreement Year and at the City's sole option establishing a new Maximum Daily Quantity. Such new Maximum Daily Quantity shall remain in effect throughout the applicable Agreement Year and shall continue through the remainder of the Term unless subsequently modified by the City in accordance with this subsection.

3.02 Amounts in Excess of Maximum Daily Quantity; Unacceptable Waste.

(1) Contractor may not reject any delivery of Municipal Solid Waste by or on behalf of the City, unless the Maximum Daily Quantity is exceeded or delivery occurs outside of the

required operating hours as set forth in Exhibit “C”. The provisions of this subsection shall apply only to Contractor's right to reject Municipal Solid Waste and shall not abrogate any of Contractor's other obligations (including the payment of damages) under the terms of this Agreement.

(2) If the City, or any person on behalf of the City, delivers Unacceptable Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), the City shall be promptly notified of such delivery. The City may reload and remove the Unacceptable Waste or the City may request Contractor to dispose of such Unacceptable Waste. The City shall pay the actual, reasonable and necessary costs incurred by Contractor with respect to the proper disposal of such Unacceptable Waste. The Guaranteed Annual Quantity shall not include any Unacceptable Waste. In no event shall the City be responsible for the handling and disposal costs of any Unacceptable Waste delivered to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) unless it can be clearly demonstrated that such waste was delivered by the City or caused to be delivered by the City.

(3) Nothing in this Agreement shall be construed to mean that the City guarantees the composition or quantity of any Municipal Solid Waste as it pertains to the proportion of any material contained therein. The obligations of Contractor hereunder shall not be diminished due to any variation in the composition of any Municipal Solid Waste which is delivered to the Designated Transfer Station and/or Designated Disposal Facility(ies).

(4) Any Municipal Solid Waste that is delivered to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) by or on behalf of the City that is rejected without a permitted rejection right shall constitute “Wrongfully Rejected Waste”. Such Wrongfully Rejected Waste shall be transported to and disposed of at an alternate location provided by Contractor or, if Contractor fails to provide an alternate location, to a site determined by the City. The City shall use reasonable efforts to transport and dispose of any Wrongfully Rejected Waste in the most economical manner practicable, consistent with Applicable Laws and then current market conditions so as to mitigate the amount of damages payable by Contractor hereunder.

(5) Contractor shall pay the City as damages the actual cost incurred by the City for the transfer, transportation and disposal of Wrongfully Rejected Waste. The City shall deliver an invoice to Contractor promptly following determination of amounts due for Wrongfully Rejected Waste, and payment shall be due within thirty (30) Days of receipt of such invoice.

3.03 Methods of Operation.

The Contractor shall inform the City in advance concerning plans for performing each part of the Work. If at any time the Designated Transfer Station(s), Designated Disposal Facility(ies), or Contractor's methods of executing the Work appear to the City to be inadequate to ensure the required reliability, safety, quality, or rate of progress of the Work, the City may request the Contractor to increase or improve its Designated Transfer Station(s) and/or Disposal Facility(ies) and/or methods; but neither compliance with such requests nor failure of the City to issue such requests shall relieve Contractor from its obligation to secure the degree of reliability,

safety, quality of the Work, and the rate of progress required by this Agreement. The Contractor shall be solely responsible for the reliability, safety, adequacy, and efficiency of its operations, Designated Transfer Station(s), and/or the Designated Disposal Facility(ies) and/or methods.

3.04 City's Use of an Alternate Facility.

(1) If for any reason (except for a Force Majeure Event as defined in Section 6.04 of this Agreement) the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) cannot accept delivery of the Maximum Daily Quantity as required under this Agreement at any time during the Term of this Agreement, the City shall have the right (in addition to any other rights or remedies available to the City under this Agreement, at law or in equity) to dispose of the Maximum Daily Quantity at an Alternate Facility and to hold the Contractor liable for all excess costs (including, but not limited to, increased tipping fees and additional City transportation costs) incurred by the City until such time as the City can deliver the Municipal Solid Waste to the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) or the Contractor can deliver Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Contractor shall have no claim or right to any benefit accruing to the City through its use of an Alternate Facility.

(2) Nothing contained in this Section 3.04 shall be construed to limit the City's right to proceed at any time under the provisions of Article 6 of this Agreement (Defaults and Remedies). Should the City elect to proceed under Article 6 of this Agreement by issuing a notice to cure, the Contractor shall remain liable under the provisions of this Section 3.04 for the City's excess costs in utilizing the Alternate Facility until the date the Contractor cures the breach to the satisfaction of the City or the City declares the Contractor in default hereunder and exercises the rights and remedies available to the City under Article 6 of this Agreement.

3.05 Inspection.

(1) At any time, the Commissioner or authorized representative may inspect the Designated Transfer Station(s), and/or the Designated Disposal Facility(ies) and the Work performed to determine compliance with this Agreement. Contractor shall furnish all reasonable assistance required for its inspection. Such inspection shall not relieve the Contractor from any obligation to perform the Work strictly in accordance with this Agreement.

(2) The City may have such representatives on site at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) during any or all operating hours. Contractor shall cooperate in all respects with the City's representatives, who shall have full access to all parts of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) and may at any time inspect the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), equipment, operating procedures, materials and records, including without limitation, scale and maintenance records.

(3) In exercising their rights under this Section 3.05, the Commissioner and other authorized representatives of the City shall not be obstructed and shall be free at all times to perform their inspection of the Designated Transfer Station(s) and/or the Designated Disposal

Facility(ies) but shall not interfere unreasonably with Contractor's operations during such inspections.

(4) Contractor shall provide for reasonable access to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) by the President of the City Council of Philadelphia and representatives of Councilmanic Districts (as requested by City Council) to monitor and record information pursuant to Applicable Laws on the environmental performance of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Councilmanic District representatives shall be granted reasonable visitation rights to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) located within their Councilmanic District. Contractor shall provide written notice to the City Council members in Councilmanic Districts (as requested by City Council) of any written violation notices issued by any Governmental Body.

3.06 Receipt of and Title to Municipal Solid Waste.

(1) Responsibility for and title to all Municipal Solid Waste delivered or caused to be delivered by the City to the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) shall vest in Contractor at such time as the Municipal Solid Waste is discharged from the delivering vehicle into the receiving spaces of the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies). Contractor shall have the right to designate the point of discharge within the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) of each load of Municipal Solid Waste, provided that such designation does not detain the delivery vehicles.

(2) At all times during the Term of this Agreement, Contractor shall operate and maintain the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in a manner that will permit weighing, delivery and exiting of vehicles delivering Municipal Solid Waste pursuant to this Agreement in not more than 20 minutes.

(3) Title to Unacceptable Waste shall not vest with Contractor.

(4) The Designated Transfer Station(s) and its transfer operation and/or the Designated Disposal Facility(ies) shall be designed and operated to accommodate all Municipal Solid Waste to be delivered in accordance with the Maximum Daily Quantity.

3.07 Facility Maintenance.

(1) Contractor shall have the sole responsibility for the operation and maintenance of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) utilized by the Contractor under this Agreement and shall maintain the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in a proper state of repair with due allowance made for reasonable wear and tear. The City may hold payment of invoices if it is determined that the Contractor is not in compliance with the provisions provided below.

(2) The Contractor shall maintain all of the Contractor's vehicles and containers used

in the performance of the Work in a clean and repaired condition.

(3) The Contractor shall be responsible for maintaining complete accessibility and clear passage through all necessary roadways at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) during all hours of operation, and shall plow all roads as necessary to maintain this condition.

(4) During the Term of this Agreement, Contractor shall be responsible for all major capital replacement(s), improvements, redesign, or other changes to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). The Contractor shall notify the City of any proposed material changes to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Changes shall be scheduled by the Contractor to avoid interruption in the operation of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Any redesign or installation of equipment shall not interfere with the ability of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) to meet all requirements of this Agreement.

(5) At all times during the Term of this Agreement, Contractor shall operate and maintain the Designated Transfer Station(s) and/or Designated Disposal Facility(ies): (i) in a safe and sound manner; (ii) in a manner that permits weighing and delivery of Municipal Solid Waste at all times during the hours of operation required under this Agreement; and (iii) as otherwise required by Applicable Laws and Government Approvals. Contractor shall be responsible for maintaining and renewing all licenses and permits and other Government Approvals required for operation of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in effect at all times and operating the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in accordance with Applicable Laws and Government Approvals.

(6) The Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall be maintained in a manner that will prevent odors from escaping the building. No detectable odors shall be present outside the boundaries of the Designated Transfer Station(ies) and/or the Designated Disposal Facility(ies). The Designated Transfer Station(s) and /or the Designated Disposal Facility(ies) shall be kept free and clear of all litter and debris at all times.

(7) The facility maintenance obligations described in this Section 3.07 shall not apply to the Designated Transfer Station(ies) and/or the Designated Disposal Facility(ies) that are owned, operated and maintained by third parties. Contractor shall use reasonable best efforts to ensure that such facilities owned by third parties are properly maintained and available to the City throughout the Term.

3.08 Hauling of Municipal Solid Waste by or for Contractor.

(1) Any hauling of Municipal Solid Waste by the Contractor shall be done with fully enclosed equipment so that the possibility of dripping, spilling, or scattering is kept to a minimum. Should any of these occur, Contractor shall be responsible, at its sole cost and expense, for prompt and timely cleanup of any such materials.

(2) The Contractor is required to comply with all State licensing requirements for transfer vehicles and any City waste management licensing requirements.

(3) In the event of a spill, leak or loss of Municipal Solid Waste at the Designated Transfer Station(s) and/or during transit to the Designated Disposal Facility(ies), Contractor shall immediately arrange for the clean-up and transportation of Municipal Solid Waste to the Designated Disposal Facility(ies) at Contractor's sole cost and expense, shall pay any resulting fines, assessments, penalties and damages resulting therefrom, and shall indemnify and hold harmless the City from any liability in connection with the foregoing.

3.09 Hours of Operation.

(1) Designated Transfer Station(s). The Designated Transfer Station(s) shall be open to accept delivery of Municipal Solid Waste during the days and hours set forth in Exhibit "C". Contractor may, at its option and at no additional cost to the City, open the Designated Transfer Station(s) at additional times to receive Municipal Solid Waste delivered by or on behalf of the City subject to applicable permit and regulatory limitations.

(2) Residual Waste. Contractor shall accept Residual Waste delivered by the City to the Designated Disposal Facility(ies) in accordance with Exhibit "C".

3.10 Weighing Devices.

(1) The number of Tons of Municipal Solid Waste delivered to the Designated Transfer Station(s) and/or Designated Disposal Facility(s) by or on behalf of the City and the number of Tons of Municipal Solid Waste from the Northwest Transfer Station shall be determined by obtaining an incoming and an outgoing weight for each delivery truck, roll-off container, or transfer vehicle on certified scales located at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies). Both the City and Contractor shall have the right at any time to require the weighing or reweighing of any vehicle.

(2) The Contractor shall be required to have the weight scales certified at any time but no more often than once a quarter, or upon request of the City. The Contractor shall furnish evidence of a maintenance agreement for the scales providing quarterly inspection and service maintenance. All costs and expenses associated with the installation, inspection, certification, and maintenance of the weight scales shall be borne exclusively by the Contractor.

3.11 Disposal Information.

(1) Daily Reports. By 12:00 noon each Day that Contractor is required to accept Municipal Solid Waste, Contractor shall provide the City with a report of each and every one of the previous Day's scale transactions at each scale at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) related to this Agreement. If the City has delivered Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) on a Saturday, Contractor shall provide the Friday and Saturday reports on the following Monday. This report will include a daily computer file in a DBF format or other format designated by the City

containing the following information in a file structure acceptable to the City: (a) names of Designated Transfer Station(s) and/or Designated Disposal Facility(ies); (b) date; (c) time of arrival and departure in military time; (d) sequential ticket number; (e) commodity code; (f) vehicle number; (g) gross vehicle weight at ingress; (h) gross vehicle weight at egress; (i) net weight of load; and (j) source code of City Department delivering the Municipal Solid Waste. With reasonable notice, the City may require that additional information be provided.

(2) **Monthly Reports.** In addition to any other reports required by any other provision of this Agreement, Contractor shall furnish to the City monthly written reports, together with such statements, documentary data or other information as the City may require, relative to any matter pertaining to Contractor's compliance with any provision of this Agreement. The data included in the detailed report shall be sufficiently detailed to facilitate analysis and shall be acceptable to the City. The monthly report shall include, without limitation, (a) any changes in the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) operating plans including anticipated outages scheduled for the next month, (b) quantity of Municipal Solid Waste transported from the Designated Transfer Station(ies) to the Designated Disposal Facility(ies), and (c) quantity of Municipal Solid Waste received at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). The monthly report shall be submitted on the 20th Day of the month following the month for which the report is submitted.

(3) **Annual Reports.** Contractor shall submit to the City an annual report within sixty (60) days following the end of each Agreement Year that incorporates a summary of monthly operations reports for the preceding Agreement Year.

(4) **Late or Inadequate Reports.** In the event that Contractor files a report required under this Agreement after the date that it is due or files an inadequate report (the adequacy or inadequacy of such report being in the sole discretion of the City), payment of all amounts due to Contractor for the period covered by the late or inadequate report may be deferred until all late or inadequate reports are submitted or corrected to the satisfaction of the City. The City shall retain the last payment due under this Agreement until Contractor has provided all reports required in this Section.

3.12 Rules and Regulations.

(1) The City shall require its employees, agents, contractors and representatives to comply with Contractor's rules and regulations in performance of its duties under this Agreement attached hereto and marked as Exhibit "H", provided however, that all such rules and regulations shall be consistent with this Agreement, lawful, reasonable and uniformly applied to all haulers delivering waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies).

(2) Contractor may implement additional rules and regulations that are not inconsistent with this Agreement and Applicable Laws and which apply equally to all haulers delivering Municipal Solid Waste to the Designated Transfer Station(s) and Designated Disposal Facility(ies), upon thirty (30) Days prior written notice thereof to the City; provided however, that such additional rules and regulations may be implemented earlier than upon thirty (30) Days prior written notice if such implementation is required in order to avoid an emergency or to protect the health, safety and welfare of Contractor, its employees or Persons delivering

Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies).

(3) Contractor may refuse to receive Municipal Solid Waste from any vehicle operated by a hauler who repeatedly or intentionally violates the rules and regulations set forth in Exhibit “H”.

(4) The terms of payment and the rights and obligations of the parties shall be governed by the terms of this Agreement and not by any such rules and regulations set forth in Exhibit “H”.

3.13 E-Waste.

Unless otherwise stated, the services and procedures, rights and obligations described in Article 3 of this Agreement regarding Municipal Solid Waste shall not apply to E-Waste. All procedures regarding the transportation, processing, and disposal of E-Waste shall be in accordance with those identified in Exhibit “I” to this Agreement.

ARTICLE 4
CONSIDERATION

4.01 Invoices.

(1) The City shall pay to Contractor for the performance of the Work and the discharge by Contractor of all of its obligations as set forth in this Agreement, and the Contractor shall accept the per Ton price set forth in this Agreement as full and complete compensation and payment. Payment of such compensation shall be in the manner and at the time provided for in this Agreement.

(2) Contractor shall tender itemized invoices to the City in form and content acceptable to the City on a not more frequently than weekly basis on the Tuesday following a Work week for the Municipal Solid Waste delivered by the City during the applicable billing period. At a minimum, the invoice shall include the following: (a) Designated Transfer Station(s) location and/or the Designated Disposal Facility(ies) for Municipal Solid Waste from the Northwest Transfer Station; (b) date; (c) ticket numbers; (d) vehicle identification; (e) gross vehicle weight; (f) vehicle tare weight; (g) net payload; (h) Disposal Fee; and (i) summary daily report.

(3) The City shall pay (or cause to be paid) the invoice amount to Contractor in accordance with this Section 4.01 for the performance by the Contractor of its obligations hereunder. The City will pay said invoices in accordance with its standard payment procedures, normally within forty-five (45) Days from the date of receipt of a proper invoice.

(4) The City may offset against the invoice amount any amounts payable by Contractor to the City as damages.

- (5) Invoices shall be mailed to:

City of Philadelphia Streets Department
Municipal Services Building, Room 730
1401 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19102

4.02 Disposal Fees.

The City shall pay to Contractor the disposal fees described in Exhibit “E” (each a “Disposal Fee”; collectively, the “Disposal Fees”) in consideration of Contractor performing the Work under this Agreement:

(1) The City shall pay a per Ton price for Municipal Solid Waste delivered to the Designated Transfer Station(s) (or for the Guaranteed Annual Quantity in the event that the Guaranteed Annual Quantity has not been provided, as calculated pursuant to Section 4.01 of this Agreement) during the Initial Term of this Agreement and thereafter in accordance with the price schedule for any and all Additional Terms set forth in Exhibit “E”.

(2) The City shall pay a per Ton price for Residual Waste delivered directly to Contractor’s Designated Disposal Facility(ies) during the Initial Term of this Agreement and thereafter in accordance with the price schedule for any and all Additional Term(s) in Exhibit “E”. The City shall have no obligation whatsoever to provide any minimum quantity of Residual Waste to Contractor under this Agreement.

(3) The City may at any time agree to an offer by a Contractor to reduce the Disposal Fees in Exhibit “E”.

4.03 Change in Law.

- (1) Change in Law shall mean:

(a) the adoption, promulgation, initial application, issuance, modification or official change in interpretation, after the Agreement Date of any Applicable Law; and/or

(b) the imposition after the Agreement Date, of any condition on the issuance, reissuance or continued effectiveness of any existing Permit(s) or in any pending applications for Permit(s); and/or

(c) the order and/or judgment of any Governmental Body after the Agreement Date that would affect the obligations of the parties under this Agreement

(2) For each Change in Law that causes the Contractor to sustain Change in Law Costs, the City shall be assessed a share of such Change in Law Costs.

(a) All increases and decreases in surcharge fees assessed by the Commonwealth of Pennsylvania for the disposal of Municipal Solid Waste at a transfer station, landfill or resource recovery facility pursuant to, or in addition to Act 101 of 1988 and Act 90 of 2002, shall be added in full to or subtracted in full from the per ton disposal rate as a pass through cost increase or decrease to the City during the Term of the Agreement.

(b) For all other Change in Law Costs, Contractor shall within one hundred eighty (180) days of the effective date of any Change in Law, calculate the related per Ton Change in Law Adjustment that it has sustained as a result of such Change in Law, and shall give to the City written notice of the resulting per Ton assessment. The notice shall include, without limitation, information setting forth the assumptions, data, formula and calculations used in making the assessment and shall specify all applicable Changes in Law and the effective dates thereof. The City reserves the right to request from Contractor, and Contractor agrees to promptly provide to City, information in addition to that submitted with Contractor's notice under this Section 4.03(1)(b). In the event Contractor fails to notify the City in strict accordance with the terms of this Section 4.03(1)(b), Contractor shall have waived its right to assess the City for the Change in Law.

(c) Within sixty (60) Days of receiving written notice from Contractor under Section 4.03(1)(b), the City may challenge Contractor's assessment of the Change in Law by notifying Contractor in writing. If challenged, the City, at its sole cost and expense, may engage an independent consulting and/or accounting firm(s), reasonably acceptable to Contractor, to review and prepare an audit of Contractor's assessment. The City and Contractor hereby agree to be bound by the conclusion of the independent consulting and/or accounting firm(s) that may be engaged pursuant to this Section. In the event the City challenges Contractor's assessment of the Change in Law under this Section, and does not engage an independent consulting and/or accounting firm(s), the City and Contractor shall make good faith efforts to resolve the challenge in a reasonably prompt manner.

(d) Unless challenged under Section 4.03(1)(c) above, the City shall begin paying City's Change in Law Costs, subject to Section 4.03(3) below, on the later of the first day Contractor sustains increased costs as a result of a Change in Law or the date sixty (60) Days prior to the date that the City receives written notice of the Change in Law from Contractor. The per Ton assessment to the City under Section 4.03 shall be substantially equal to the increase charged to all users of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), as the case may be. If such Change in Law is subsequently eliminated or reduced, the City's Change in Law Costs shall be correspondingly eliminated or reduced.

(2) The City shall not be responsible for any Change in Law Adjustment related to a change in state law other than Pennsylvania law for any Designated Disposal Facility(ies) located outside of the Commonwealth.

(3) For Change in Law Costs in Section 4.03 (b) incurred on or after the Disposal Fee Date, the price per Ton increase from the Change in Law Adjustment shall be no more than five percent (5%) per year, and in no event shall the price per Ton increase from the Change in Law Adjustment be more than the following percentages over the corresponding periods:

<u>Years</u>	<u>Percent</u>
4	10
5	11.66
6	13.33
7	15.00

(4) For Change in Law Costs incurred after the Disposal Fee Date but prior to the Agreement Date, such Changes in Law and proposed Change in Law Adjustments shall be disclosed to the City on or before the Agreement Date. The City, at its sole discretion, may elect not to execute the Agreement due to Change in Law Adjustments.

4.04 Patents.

Royalties and fees for patents covering processes, materials, articles, apparatus, devices, or equipment used in connection with the Work shall be included in the Disposal Fee(s) amount and no additional payments therefor shall be due or payable by the City. Contractor shall satisfy, at its sole cost and expense, all demands that may be made at any time for such royalties or fees, and Contractor shall be liable for any damages or claims for patent infringements. Contractor shall, at his own cost and expense, defend all suits or proceedings that may be instituted against the City for infringement or alleged infringement of any patents involved in the Work; and in case of an award of damages Contractor shall pay such award.

4.05 E-Waste Pricing.

All fees and payments for E-Waste services shall be as identified in Exhibit “I” to this Agreement.

4.06 Illegal Dumping and Keep Philly Beautiful COP Programs

All payments by Contractor regarding City’s programming to reduce illegal dumping and other Keep Philly Beautiful programs shall be as described in Exhibit “J.”

ARTICLE 5
GENERAL CONDITIONS

5.01 Performance Bond.

(1) Upon execution of this Agreement, Contractor shall provide security for the faithful performance of the Work and for compliance with the terms of this Agreement in the form of a performance bond (the “Performance Bond”), with an approved surety company as surety thereon, in a sum equal to one-half the anticipated value (as determined by the City) of the Revenue Payment to be paid during the first year of this Agreement. The Performance Bond shall be in the form set forth in Exhibit A and issued by a surety company duly authorized and licensed to do business in the Commonwealth and approved by the City.

(2) During each subsequent Agreement Year, Contractor shall provide the City with a Performance Bond certificate thirty (30) Days prior to the commencement of each subsequent Agreement Year. The value of the Performance Bond shall be adjusted to an amount equal to one-half the anticipated value (as determined by the City) of the anticipated Revenue Payments for the upcoming Agreement Year.

(3) The Performance Bond must be issued by a surety listed on the then-current annual "Surety List" promulgated by the Commonwealth Insurance Department. The Performance Bond amount must be in an amount permitted by the Surety List. If the surety issuing the Performance Bond fails to meet the requirements of this Section 5.01, Contractor shall have thirty-five (35) Days from the date the inadequate Performance Bond was rejected by City to obtain a Performance Bond issued by a surety that meets the requirements of the Surety List.

5.02 Letter of Credit

(1) In lieu of the Performance Bond, Contractor shall have the right to substitute a Letter of Credit for the performance bond required hereunder at the beginning of any fiscal year of the City (July 1) and maintain in effect such Letter of Credit in lieu of such performance bond for each City fiscal year (July 1 to June 30) for all of the remaining Term and any Additional Term if the Contractor fulfills all of the provisions as set forth in this Section 5.02.

(a) The Letter of Credit shall comply with all applicable requirements of the Agreement.

(b) The Letter of Credit and/or each Letter of Credit thereafter shall be available to draw against up to and including the maximum amount thereof for any and all claims that may arise during the Term and the Additional Term for ninety (90) days after the expiration of the then-current Letter of Credit, if no acceptable renewal Letter of Credit or performance bond is timely provided or required.

(c) The Letter of Credit shall be issued by a bank that has a long-term credit rating of at least AA by Standard and Poors, Inc. and Aa by Moodys Investors Service, Inc. ("Acceptable Credit Rating") and shall be approved by the City, which approval shall not be unreasonably withheld. If the bank issuing the Letter of Credit is incorporated/chartered outside the United States of America and does not have a domestic branch, the Letter of Credit must be confirmed by a domestic bank with an Acceptable Credit Rating. If the credit rating of the bank issuing the Letter of Credit or the confirming bank drops below an Acceptable Credit Rating, the Contractor must supply a substitute Letter of Credit with an Acceptable Credit Rating within thirty-five (35) days of notice to or knowledge of the Contractor of such event.

(d) The Contractor shall furnish or shall cause to be furnished a legal opinion acceptable to the City from independent counsel or the bank's counsel stating that the Letter of Credit is legally enforceable in the United States as to the issuing bank, and, if applicable, the confirming bank.

(e) The duly authorized representatives of the City for the Letter of Credit are the Finance Director and/or the Streets Commissioner as well as those serving in an acting capacity for said positions.

(f) The Letter of Credit shall be in a form acceptable to the City.

(g) The issuing bank must furnish an acceptable form of draw certificate and sight draft with the Letter of Credit.

(2) The Letter of Credit shall be for a sum equal to one-half the value (as determined by the City) of the anticipated Revenue Payments for the upcoming Agreement Year. The Letter of Credit shall provide for annual renewal, after successful completion of the first (12) months of operation following the Operations Commencement Date. During each subsequent twelve (12) month period, the stated amount of the Letter of Credit amount shall be adjusted to an amount equal to one-half the anticipated value of the Disposal Fees for that period.

(3) Any Letter of Credit issued during the Term shall contain a clause providing for the automatic annual renewal of the Letter of Credit on the beginning day of the City's fiscal year (July 1) at which time it shall renew for ninety (90) days in satisfaction of the requirements outlined in this Section. Any Letter of Credit issued for an Additional Term shall run from July 1 up to June 30 of the following year at which time it shall renew for ninety (90) days after the expiration of the then-current Letter of Credit if no acceptable renewal Letter of Credit or performance bond is timely provided or required in satisfaction of the requirements of this Section.

(4) In the event the Letter of Credit is not automatically renewed as contemplated in Section 5.03 (3), a substitute Letter of Credit or performance bond shall be delivered to the City for each annual renewal period at least sixty (60) days before the expiration of the Letter of Credit. Substitution of a performance bond for a Letter of Credit during the Term or the Additional Term is contingent on provision of a Letter of Credit for a period of ninety (90) days after the expiration of the then-current Letter of Credit in satisfaction of the requirements of this Section.

5.03 Economic Opportunity Plan.

(1) In accordance with the Philadelphia Code Section 17-1600 et seq., as it exists on the Commencement Date, the City has established a requirement for Economic Opportunity Plan(s) ("EOP") for this Agreement. The EOP attached hereto as Exhibit "B" constitutes the entire EOP approved by the Office of Economic Opportunity for this Agreement. Contractor agrees to comply with and abide by the EOP attached to this Agreement as Exhibit "B."

(2) In accordance with Section 17-1402(f) of the Philadelphia Code, Contractor shall during the Term of the Contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Contractor, any officer, director or management employee of the Contractor, or any person representing the Contractor that a particular Person could be used by the Contractor to satisfy any goals established in the Contract for participation of

minority, women, disabled or disadvantaged business enterprises. The Contractor shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by the Department, and the form shall be signed and filed with the Department within five Business Days after the Contractor as so advised. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

5.04 Notices.

Contractor shall maintain an office within the City during the Term of this Agreement. Notices provided for herein shall be sufficient if hand delivered or mailed by certified mail (postage prepaid) to the City at the following address:

City of Philadelphia Streets Department
Municipal Services Building, Room 730
1401 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19102
Attn.: Commissioner

with a copy to:

City of Philadelphia Law Department
1515 Arch Street, 16th Floor
Philadelphia, Pennsylvania 19103-2081
Attention: Chief Deputy City Solicitor, Regulatory Affairs Unit

for Contractor:

Derek Veenhof
Executive Vice President
Covanta Sustainable Solutions, LLC
445 South Street
Morristown, NJ 07960

with a copy to:

Covanta Holding Corporation
445 South Street
Morristown, NJ 07960
Attn: General Counsel

or to such other respective addresses as the parties may, from time to time, designate to each other in writing.

5.05 Applicable Laws and Permits.

(1) This Agreement shall be entered into under the laws of the Commonwealth and interpretation and construction shall be governed by such laws. Both parties shall observe and comply, at their sole cost and expense, with all Applicable Laws in connection with this Agreement. Contractor certifies that the Facility is in compliance with Applicable Laws and applicable Permits, and the Facility shall remain in compliance with Applicable Laws and applicable Permits during the Term of this Agreement. Throughout the Term of this Agreement, the City may from time to time request reasonable assurances from Contractor that Contractor's operations, the Facility is in compliance with Applicable Laws and applicable Permits. Contractor shall respond to the City's request for such assurances within ten (10) days of such request.

(2) Contractor shall obtain and maintain, at its sole cost and expense, all Permits, certificates of authority, approvals and inspections required by federal, state, and local supervisory agencies for the performance of the Work.

(3) Failure of the Contractor's Facility to comply with Applicable Laws or Contractor's failure to provide reasonable assurances of compliance may result in the suspension or termination of the delivery of Recyclable Materials to the Facility by the City under this Agreement.

5.06 Independent Contractor.

At all times during the Term of this Agreement, the relationship of Contractor to the City shall be that of an independent contractor.

5.07 Subcontracting and Assignment.

(1) Contractor shall be responsible during the Term of this Agreement for complete supervision and control of its subcontractors as though they were its own forces. Notice to Contractor shall be considered notice to all of Contractor's subcontractors.

(2) Contractor shall be liable for the failure of its subcontractors in any phase of the Work. Contractor shall be as fully liable, responsible, and accountable to the City for the acts and omissions of its subcontractors and of persons employed by them as it is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relationship or liability between any of Contractor's subcontractors and the City unless so elected by the City in writing.

(3) Contractor shall neither assign nor subcontract the Work, or any part thereof without the prior written consent of the City, nor shall Contractor assign, by power of attorney or otherwise, any of the money payable under this Agreement unless the prior written consent of the City has been obtained. The granting or denial of the City's consent under this Section shall be in the City's sole discretion.

(4) The City reserves the right to assign this Agreement to any other party. This Agreement shall be binding upon the parties hereto, their heirs, administrators, successors and assigns.

5.08 Payment for Labor and Supplies.

Contractor agrees to promptly pay all Persons, which have furnished labor or supplies in connection with the Work required under this Agreement and shall provide, upon request of the City, evidence that the same have been fully paid or satisfactorily secured. In addition to any other indemnification obligations under this Agreement, Contractor shall indemnify, defend and hold the City harmless from all claims, suits or actions for labor and supplies furnished in connection with this Agreement.

ARTICLE 6
DEFAULTS AND REMEDIES

6.01 Default of the Contractor.

The occurrence of one (1) or more of the following events shall constitute an event of default under this Agreement (each an “Event of Default”):

(1) Except for Force Majeure Events as defined in Section 6.04 of this Agreement or a failure to obtain or maintain Disposal Permits as described in Section 3.01(5) an Event of Default shall occur immediately if Contractor is unable to accept Municipal Solid Waste from City for more than three (3) consecutive days that Contractor is obliged to receive such Municipal Solid Waste pursuant to the terms of this Agreement.

(2) Except for Force Majeure Events as defined in Section 6.04 of this Agreement or a failure to obtain or maintain Disposal Permits as described in Section 3.01(5), an Event of Default by Contractor shall occur if one (1) or more of the following occurs and Contractor fails to cure the same within ten (10) Days after receiving written notice thereof from City, unless Contractor has promptly commenced and is continuing diligently and in good faith to cure such default and does cure such default within thirty (30) Days of such notice (except for a default under Section 6.01(2)(c) or (d) below):

(a) Contractor cannot accept delivery of Municipal Solid Waste in the Maximum Daily Quantity agreed to under this Agreement at any time during the Term of this Agreement;

(b) Contractor fails to perform any Work to be performed by it under this Agreement;

(c) the filing of a petition by or against Contractor for relief as a bankruptcy or insolvency or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of Contractor property; or, an assignment by Contractor for the benefit of creditors; or, the taking possession of the

property of Contractor by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or liquidation of Contractor or for the operating, either temporary or permanent, of Contractor's business, provided, however, that if any such action is commenced against Contractor, the same shall not constitute an Event of Default if Contractor causes the same to be dismissed or discharged within sixty (60) Days after the filing of same;

(d) the filing of a petition by or against Guarantor for relief as a bankruptcy or insolvency or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of Guarantor property; or, an assignment by Guarantor for the benefit of creditors; or, the taking possession of the property of Guarantor by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or liquidation of Guarantor or for the operating, either temporary or permanent, of Guarantor 's business, provided, however, that if any such action is commenced against Guarantor, the same shall not constitute an Event of Default if Guarantor causes the same to be dismissed or discharged within sixty (60) Days after the filing of same; and/or

(e) Contractor fails to fulfill any other terms, conditions, obligations or covenants contained in this Agreement, including Section 5.03 (Economic Opportunity Plan) provided such failure to comply with Section 5.03 was not the direct result of a default of the M/W/DSBE subcontractor(s) in the performance of contractual obligations to the Contractor.

6.02 Remedies of the City Following the Contractor's Default.

(1) The rights and remedies afforded to the City under the terms of this Agreement shall not be deemed to be exclusive but shall be cumulative, and the City shall have and reserves any and all other rights and remedies provided at law or in equity, and the City may elect the manner in which it shall proceed.

(2) Upon an Event of Default by Contractor, the City may elect to terminate this Agreement and award a new contract to a substitute contractor. In lieu of termination, the City may temporarily suspend delivery of Municipal Solid Waste to Contractor and dispose in an Alternate Facility in accordance with Section 3.04 of this Agreement. Regardless of how the City elects to proceed upon an Event of Default by Contractor, Contractor, its surety under Section 2.01 above, and Guarantor shall be liable to the City for all damages (including but not limited to excess costs) sustained by the City by reason of an Event Default by Contractor under this Agreement.

(3) The Work to be performed hereunder by the Contractor involves the health and safety of the residents of the City. In the event of an anticipatory breach or an Event of Default under this Agreement by the Contractor, the City shall be and Contractor consents that the City is entitled to injunctive relief enjoining and restraining Contractor from doing any act in violation of this Agreement, or mandating that such act or acts be done by Contractor to carry out the terms of this Agreement. The application by the City for an injunction or mandate to any court shall not be, and shall not be construed to be, a waiver by the City of any other right or remedy available to the City under this Agreement, at law or in equity, and shall not be deemed a waiver of any other or further breaches of condition or failure to perform hereunder. The exercise of such right or rights by the City shall not prejudice in any manner whatsoever the rights of the City to enforce or secure any

other rights or remedies, including but not limited to, the right to seek damages (including excess costs) for breach of this Agreement.

(4) It is also agreed by the parties hereto that upon an Event of Default under Section 6.01(2)(c) above, this Agreement shall not be an asset of the Contractor in any proceeding set forth in Section 6.01(2)(c).

6.03 Nonwaiver.

Neither party hereunder shall be deemed to have waived any part, provision, language, covenant, condition or requirement of this Agreement unless such waiver is in writing and signed by such party. Any partial waiver shall not be deemed to be in any manner the waiver of any other part, provision, language, covenant, condition or requirement, and where any waiver is made, either partially or otherwise, of any provision, condition, or requirement, it shall be strictly construed and deemed to be a waiver of no more than that which is clearly expressed in writing. Any ambiguity shall be resolved in favor of the City.

6.04 Force Majeure.

(1) Contractor or City shall not be excused nor relieved from any act or responsibility of performance under the terms of this Agreement except for the following events of Force Majeure (each a “Force Majeure Event”) which prevent the Contractor or City from performing under this Agreement:

(a) an Act of God;

(b) state of declared war, insurrection, labor strike, but as to the Contractor, only those labor strikes against a third party (excluding Contractor’s Affiliates) occurring off the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) which substantially interrupts the supply of materials and equipment needed to construct or operate the Designated Transfer Station(s) and/or Designated Disposal Facility(ies);

(c) any conditions (excluding costs) which are clearly beyond the control of the party claiming the Force Majeure Event and, as to the Contractor, without the fault or negligence of Contractor or Contractor's agents, employees, subcontractors or suppliers provided, however, that the party claiming the Force Majeure Event shall exhaust every available reasonable remedy to correct the condition and promptly report to the other party in writing the circumstances which justify non-performance;

(2) Upon the occurrence of a Force Majeure Event which prevents the Contractor or the City from performing any of its obligations under this Agreement, the non-performing party shall notify the other party as soon as is reasonably practicable regarding the Force Majeure Event and shall diligently endeavor to eliminate the cause of the Force Majeure Event.

(3) In the event a Force Majeure Event prevents the Contractor from performing responsibilities or obligations hereunder with respect to the receipt of Municipal Solid Waste at the

Designated Transfer Station(s) and/or Designated Disposal Facility(ies), Contractor shall use reasonable best efforts to provide alternative arrangements which are acceptable to the City for the receipt of the Municipal Solid Waste during the Force Majeure Event, and Contractor shall continue to perform and comply with all portions of this Agreement with which it is possible for the Contractor to perform and comply. Any proposed alternative arrangement submitted to the City for its approval shall be at no greater cost to the City than the City would have incurred under this Agreement (transportation costs and Disposal Fees included) and any savings accruing to Contractor as a result of such arrangement shall be credited to the City.

(4) Notwithstanding any other terms in this Article 6, if Contractor fails to perform its obligations under this Agreement resulting from a Force Majeure Event for sixty (60) consecutive Days the City may terminate the Parties' obligations under the Agreement that are impacted by the Force Majeure Event.

(5) If the Force Majeure Event prevents the City from performing responsibilities or obligations hereunder with respect to the delivery of Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) and such Force Majeure Event continues for a period of sixty (60) consecutive Days, Contractor shall have the right to terminate the Parties' obligations under the Agreement that are impacted by the Force Majeure Event.

ARTICLE 7
TERMINATION AND SUSPENSION

7.01 Termination and Suspension.

(1) Termination. Upon an Event of Default by Contractor, the City may elect to terminate this Agreement and award a new contract to a substitute contractor pursuant to Section 6.02(2). The City shall provide written notice to the Contractor. Except in circumstances where continuing the Agreement may endanger the health or safety of the City or its residents, the City shall provide a minimum of thirty (30) Days' notice of termination.

(2) Suspension. If the City elects to suspend the Contractor's Work following an Event of Default, suspension shall not constitute a waiver or release of any liability of Contractor for such Event of Default or any of the City's damages or other remedies arising out of such Event of Default; nor shall such suspension be deemed an election of remedies in derogation of any other remedy. Contractor acknowledges that the City shall have the right, at its sole discretion, to suspend Contractor's performance in the event City Council does not appropriate funds for the performance of this Contract. In the event that the City issues a suspension notice to Contractor, such suspension shall continue from the effective date specified in the notice until a date specified in the notice which shall be not more than one hundred and eighty (180) days after the effective date (the "Suspension Period"). On or prior to the expiration of the Suspension Period, the City shall either terminate this Contract by giving a termination notice pursuant to Section 6.02(2), or by notice to Contractor, instruct Contractor to resume the Work pursuant to this Contract upon the expiration of the Suspension Period. After issuing a Suspension Notice, the City shall pay any invoices submitted by Contractor for Work rendered prior to the commencement of the Suspension Period or otherwise payable by the City to Contractor under this Contract, subject to all of the City's rights and remedies against Contractor, including but

not limited to its rights of set off and its right to review and accept Work prior to payment therefor.

7.02 Contractor Responsibilities Upon Termination or Suspension.

(1) Upon the City's transmission of a Termination Notice or a Suspension Notice under any provision of this Contract, Contractor and its agents, employees and Subcontractors, shall:

(a) take immediate action in an orderly manner to discontinue Work and demobilize work forces to minimize the incurrence of costs; and

(b) The City's termination or suspension of this Contract shall not affect any obligations or liabilities of either Party accruing prior to the effective date of such termination or suspension.

(c) There shall be no liability, cost or penalty to the City for termination or suspension of this Contract.

7.03 Payments to Contractor and City upon Termination or Suspension.

(1) Upon termination or suspension of this Contract by the City for an Event of Default or a Force Majeure Event, Contractor and the City may each be entitled to payments to be determined by the parties and subject to audit, as shall compensate them for such amounts as may be due and owing as of the termination date or suspension date; provided, however, that:

(a) no allowance shall be included for termination or suspension expenses or for anticipated profits, unabsorbed or underabsorbed overhead, or unperformed Work; and

(b) the City shall deduct from any amount due and payable to Contractor prior to the termination date, but withheld or not paid, the total amount of fees, costs or additional expenses incurred by the City in order to satisfactorily complete the Work required to be performed by Contractor under this Contract, including the expense of engaging another party for this purpose, and such other damages, costs, losses and expenses of the City as may be incurred or result from such termination for an Event of Default.

ARTICLE 8
INSURANCE AND LIABILITY

8.01 Maintenance of Insurance.

(1) Unless otherwise approved by the City's Risk Manager in writing, Contractor shall throughout the Term of this Agreement, at its sole cost and expense, and Contractor shall cause its subcontractors, at their sole cost and expense, to procure and to maintain in full force and effect, the types and minimum limits of insurance specified below. All insurance shall be procured from reputable insurers admitted to do business on a direct basis in the Commonwealth or otherwise acceptable to the City. All insurance herein, except Environmental Impairment

Liability and Workers' Compensation, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Work be performed under this Agreement until the required evidence of insurance has been furnished. The insurance shall provide for at least thirty (30) Days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or non-renewed. The City, its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance Policy. An endorsement is required stating that the City, its officers, employees, and agents, shall be named as additional insureds on the General, Environmental/Pollution & Umbrella Liability Insurance Policies.

- (a) Workers' Compensation and Employers' Liability
 - (i) Workers' Compensation: Statutory Limits
 - (ii) Employers' Liability:
 - \$500,000 Each Accident – Bodily Injury by Accident;
 - \$500,000 Each Employee – Bodily Injury by Disease;
 - \$500,000 Policy Limit – Bodily Injury by Disease.
 - (iii) Other States' Endorsement
- (b) General Liability Insurance
 - (i) Limit of Liability: \$2,000,000 per occurrence for bodily injury including death) and property damage liability.
 - (ii) Coverage: Premises operations; collapse, explosion and underground hazards, blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).
- (c) Automobile Liability Insurance
 - (i) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
 - (ii) Coverage: Owned, non-owned, and hired vehicles.
- (d) Environmental Impairment or Pollution Liability Insurance
 - (i) Limit of Liability: \$5,000,000 each incident/\$5,000,000 aggregate for bodily injury (including death) and property damage.
 - (ii) Coverage: Shall include sudden, accidental and gradual occurrences and may be written on a claims-made basis provided that coverage for occurrences happening during the term of this

contract be maintained in full force and effect under the policy or “tail” coverage for a period of at least two (2) year following the Term of this Agreement.

- (e) Umbrella Liability Insurance: at limits totaling \$10,000,000 per occurrence when combined with insurance required under (b), (c), and (d) above.

8.02 Evidence of Insurance Coverage.

(1) The original certificate of insurance must be submitted to the City’s Risk Manager at the following address:

City of Philadelphia
Division of Risk Management
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

(2) The original Certificates of Insurance shall be submitted to the Risk Manager at the above address, at least ten (10) Days prior to the commencement of any rights exercisable by Contractor hereunder and no more than three (3) business days following the expiration of any policy required hereunder. The actual endorsement adding the City as an additional insured must be submitted to the City Risk Manager at the above address. The City reserves the right to require Contractor to furnish written responses from its insurance representatives to all inquiries made pertaining to the insurance required under the Agreement at any time upon ten (10) days written notice to Contractor. Questions must be mailed to

Derek Veenhof
Executive Vice President
Covanta Sustainable Solutions, LLC
445 South Street
Morristown, NJ 07960

The City also reserves the right, in any event, not more frequently than once every year, to reasonably adjust the amounts, types and deductibles of the insurance coverage required hereunder, upon thirty (30) Days’ notice to Contractor.

- (3) A copy of the certificate of insurance shall be submitted to:

City of Philadelphia Streets Department/Sanitation Division
Municipal Services Building, Room 730
1401 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19102
Attn.: Commissioner

8.03 No Limit of Liability.

The insurance requirements set forth in this Article 8 shall in no way be intended to limit, modify or reduce the indemnification, made in this Agreement or to limit Contractor's liability to the limits of the policies of insurance required hereunder.

8.04 Indemnification.

Contractor shall indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liability and expenses including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, hazardous substances, contamination or adverse effects on the environment, failure to pay such subcontractors and suppliers, any breach of this Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret) resulting from Contractor's negligent acts or omissions or the negligent acts or omissions of Contractor's agents, subcontractors, officers, employees or servants under or in connection with this Agreement. This obligation to indemnify, defend and hold harmless City, its officers, employees and agents, shall survive the termination of this Agreement.

ARTICLE 9
ADDITIONAL REPRESENTATIONS AND COVENANTS OF CONTRACTOR
RELATING TO CERTAIN APPLICABLE LAWS

In addition to the representations, warranties and covenants made by Contractor in Article 8, Contractor further represents, warrants and covenants that, to the extent of their applicability to Contractor, Contractor is in compliance with the laws, ordinances, regulations and executive orders described below. By executing this Contract, Contractor thereby certifies to such compliance. Contractor further certifies that the representations, warranties and covenants provided pursuant to this Article shall continue to remain true throughout the Term of this Contract or any other period of time required by such laws. In the event said representations, warranties and covenants are or become untrue or inaccurate, Contractor shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty or covenant is untrue or inaccurate. The provisions of this Article are not intended to limit the applicability of the other provisions of this Contract, including, without limitation, Contractor's agreement to comply with all Applicable Law.

9.01 Non-Discrimination; Fair Practices.

This Contract is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Contract, Contractor shall not discriminate or permit discrimination against any individual because of race, color, religion, ancestry or national origin, sex, gender identity, sexual orientation, age or disability. Nor shall Contractor discriminate or permit discrimination against individuals in employment,

housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 9.01 (Non-Discrimination; Fair Practices), the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

9.02 Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations.

(1) In accordance with Chapter 17-400 of the Code, Contractor agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting the applicability of Article 6 (Defaults and Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(2) Contractor agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Code. Contractor's failure to so cooperate shall constitute, without limiting the applicability of Article 6 (Defaults and Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

9.03 Federal Laws.

Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. Section 794), the Age Discrimination Act of 1975, (42 U.S.C. Sections 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

9.04 Americans With Disabilities Act.

Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from providing services or materials under this Contract. By executing and delivering this Contract, Contractor covenants to comply with all provisions of the Americans With Disabilities Act (the "ADA"), 42 U.S.C.

§§12101 - 12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Contractor; (b) to the benefits, services, materials, activities, facilities and programs provided in connection with this Contract; (c) to the City, or the Commonwealth of Pennsylvania; (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth; and (e) if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its funds, benefits, services, activities, facilities and programs applicable to this Contract. Without limiting the applicability of the preceding sentence, Contractor shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, facilities, programs and activities provided by the City through contracts with outside contractors.

9.05 Northern Ireland.

(1) In accordance with Section 17-104 of the Code, Contractor (including any parent company, subsidiary, exclusive distributor or company affiliated with Contractor) (1) confirms that it does not have, and agrees that it will not have at any time during the Term of this Contract (including any extensions of the Term), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) agrees that no product to be provided to the City under this Contract will originate in Northern Ireland, unless Contractor has implemented the fair employment principles embodied in the MacBride Principles.

(2) In the performance of this Contract, Contractor agrees that it will not use any suppliers, Subcontractors or subconsultants at any tier (1) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (2) who will provide products originating in Northern Ireland unless said supplier, subconsultant or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles.

(3) Contractor agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Code. Contractor expressly understands and agrees that any false certification or representation in connection with this Section 9.05 (Section 17-104 of the Code) and any failure to comply with the provisions of this Section 9.05 (the Section 17-104 of the Code) shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law (including, but not limited to, Section 17-104 of the Code) or in equity. In addition, Contractor understands that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

9.06 Limited English Proficiency.

Contractor understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, Contractor shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order No.

12250 of the President of the United States, publication of the Mayor of the City of Philadelphia entitled, "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Contractor, (b) to the benefits, services, activities and programs provided in connection with this Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Contractor shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

9.07 Business, Corporate and Slavery Era Insurance Disclosure.

(1) In accordance with Section 17-104 of the Code, the Contractor, after execution of this Contract, will complete an affidavit certifying and representing that the Contractor (including any parent company, subsidiary, exclusive distributor or company affiliated with Contractor) has searched any and all records of the Contractor or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

(2) The Contractor expressly understands and agrees that any false certification or representation in connection with this Section and/or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law (including, but not limited to, Section 17-104 of the Code) or equity and the Contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

9.08 Protected Health Information.

(1) The City of Philadelphia is a "Covered Entity" as defined in the regulations issued pursuant to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The City's business activities include both (1) functions which make the City a Covered Entity, and, therefore, subject to HIPAA, and (2) functions that are not subject to HIPAA. In accordance with 45 CFR §164.105(a)(2)(iii)(D), the City has designated certain departments and units of the City as health care components that must comply with HIPAA ("Covered Components"). The Covered Components of the City as of August 1, 2013 include: Ambulatory Health Services, a unit of the Philadelphia Department of Public Health ("PDPH"); the Office of Behavioral Health and Intellectual Disability Services; the Philadelphia Nursing Home (a unit of PDPH); the Benefits Administration Unit of the Office of Human Resources; Emergency Medical Services (a unit of the Philadelphia Fire Department); and the Philadelphia Public Health Laboratory (a unit of PDPH). This list is subject to change, and any department or unit of the City that the City in

the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Section 9.08.

(2) To the extent (1) this Contract is entered into by the City for or on behalf of a Covered Component and/or requires the performance of services that will be delivered to or used by a Covered Component (whether or not the City department or unit through which the City entered the Contract is a Covered Component), and/or (2) Contractor is a “Business Associate” of the City, as defined in 45 CFR §160.103, Contractor shall comply with the City’s Terms and Conditions Relating to Protected Health Information (“City PHI Terms”) posted on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link). The City PHI Terms are hereby incorporated in this Section 9.08 as if fully set forth herein. (A printed version of the City PHI Terms, in the City’s sole discretion, also may be attached to this Contract.)

9.09 Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century Minimum Wage and Benefits Standard and Mayoral Executive Order 03-14.

(1) Contractor is a “Service Contractor” in that by virtue of entering into this Contract, Contractor has entered into a “Service Contract,” as those terms are defined in Section 17-1302 of the Code and Mayoral Executive Order 03-14, entitled, “Policy Regarding Minimum Wage and Benefits to be Provided by City Contractors and Subcontractors,” which supplements Chapter 17-1300 of the Code, entitled “Philadelphia 21st Century Minimum Wage and Benefits Standard.” Additionally, any Subcontract between Contractor and a Subcontractor to perform work related to this Contract is a “Service Contract” and such Subcontractors are also “Service Contractors” for purposes of Chapter 17-1300 and the Executive Order. (Chapter 17-1300 is accessible at <http://www.amlegal.com/library/pa/philadelphia.shtml> and Executive Order 03-14 is accessible at <http://www.phila.gov/ExecutiveOrders/Executive%20Orders/EO%203-14.pdf>.) If Contractor or any Subcontractor is also an “Employer,” as that term is defined in Section 17-1302 (more than 5 employees), and as the term “Employer” is further described in Section 17-1303 of the Code, absent a waiver, Contractor shall provide, and cause any such Subcontractors to provide their covered Employees (persons who perform work for a covered Employer that arises directly out of a Service Contract with the City), with the minimum wage standard and minimum benefits standard stated in Chapter 17-1300 of the Code and Executive Order 03-14. A summary of the current requirements is as follows:

Minimum Wage

(a) Between January 1, 2019 and June 30, 2019, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$12.40/hour;

(b) Between July 1, 2019, and June 30, 2020, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$13.25/hour;

(c) Between July 1, 2020, and June 30, 2021, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$13.75/hour;

(d) Between July 1, 2021, and June 30, 2022, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$14.25/hour;

(e) Between July 1, 2022 and June 30, 2023, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$15.00; and

(f) Starting July 1, 2023, and each year thereafter, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$15.00 multiplied by the then current CPI Multiplier as annually adjusted, as described in Section 9.09(1)(g).

(g) For purposes of determining the minimum hourly wage required under 9.09(1)(f) above, the CPI Multiplier shall be calculated annually by the Director of Finance, for wages to be provided on and after July 1 of each year, by dividing the most recently published Consumer Price Index for all Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, by the most recently published CPI-U as of July 1, 2022.

Minimum Benefits

(a) to the extent Contractor (or its Subcontractor under Subcontract) provides health benefits to any of its employees, provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Contractor (or its Subcontractor); and

(b) provide to each full-time, non-temporary, non-seasonal covered Employee at least the minimum number of earned sick leave days required by Code Section 17-1305(2).

(2) If covered, absent a waiver, Contractor shall promptly provide to the City all documents and information as the City may require verifying its (and its Subcontractors' compliance with the requirements of Chapter 17-1300 and Executive Order 03-14. Contractor and its Subcontractors shall notify each affected employee what wages are required to be paid pursuant to Chapter 17-1300 and Executive Order 03-14.

(3) Absent a waiver, a Contractor subject to Chapter 17-1300 and Executive Order 03-14 shall comply with all their requirements as they exist on the date when the Contractor entered into this Contract with the City or when this Contract is amended. Absent a waiver, Contractor shall also be responsible for the compliance of its Subcontractors with the requirements of Chapter 17-1300 and Executive Order 03-14. Contractor shall take such steps as are necessary to notify its Subcontractors of these requirements, including, without limitation, incorporating this Section 9.09, with appropriate adjustments for the identity of the parties, in its Subcontracts with such Subcontractors. A Contractor or any of Contractor's Subcontractors subject to Chapter 17-1300 and the Executive Order that fail to comply with their provisions may, after notice and hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. Furthermore, the Council may, by resolution adopted

after a public hearing, determine that there are reasonable grounds to believe that an employer subject to Chapter 17-1300 has failed to comply with its provisions, and that if such failure is established, then debarment would be an appropriate remedy for such failure. A copy of any such adopted resolution shall be forwarded to the Director of Finance, or such other officer or agency designated by the Mayor, who shall without undue delay provide appropriate notice and opportunity for hearing, and after such hearing, make a final determination as to whether there has been a violation of Chapter 17-1300, and whether debarment, as provided by Chapter 17-1300, should be imposed. Such debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract. The debarment procedure by Council resolution shall be in addition to any other procedure for debarment or suspension from City contracts established under Chapter 17-1300.

(4) Without limiting the applicability of Article 6 (Defaults and Remedies) above, Contractor's failure to comply, or the failure of Contractor's Subcontractors to comply with the requirements of Chapter 17-1300 or Executive Order 03-14 shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(5) Contractor's covered employees shall be deemed third-party beneficiaries of Contractor's representation, warranty, and covenant to the City under this Section 9.09 only, and the covered employees of a Subcontractor of Contractor performing under a Subcontract shall be deemed third-party beneficiaries of their employer's representation, warranty and covenant to Contractor under this Section.

(6) The Office of Labor Standards may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code. An overview offering guidance on the applicability of, and requirements placed on City contractors and their first tier Subcontractors by Chapter 17-1300 of the Code and Executive Order 03-14 is available on the City's website (at <https://secure.phila.gov/eContract/> under the "About" link) (see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors").

(7) The City expressly waives all requirements related to life partners under Chapter 17-1900 of the Philadelphia Code. Contractor extends equal benefits to same-sex spouses and different-sex spouses of its full-time employees and will continue to do so for the duration of this Contract.

9.10 Chapter 17-1400 of the Philadelphia Code: Contributions and Other Mandatory Disclosures.

(1) Contractor confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made, and agrees that none shall be made during the Term of this Contract, and any Additional Term, by Contractor, any Subcontractor, or any party from which a contribution can be attributed to the Contractor or Subcontractor, that would render the Contractor or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of Sections 17-1404(1) and 17-1405 of the Code; and that disclosures made as part of its application to receive a Non-Competitively Bid

Contract contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Contract voidable at the City's option, and, as to contributions made by or attributable to Contractor, shall make the Contractor liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Contractor allowed under the Contract, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this Section 9.10 (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Contractor shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Section 9.10, and as described elsewhere in this Contract, shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

(2) Contractor shall, during the term of the Contract, any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance the Contractor, or any Subcontractor or Consultant utilized by Contractor in connection with this Contract, has made, or any individual or entity has made if such contributions can be attributed to Contractor, or such Subcontractor or Consultant pursuant to the attribution rules of Section 17-1405, during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.

(a) Such disclosure shall be made on a form provided by the Department awarding the Contract, and the form shall be signed and filed with such Department within five (5) business days of the contribution. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Contractor or of a Consultant.

(b) It shall not be a violation of Section 9.10 if Contractor fails to disclose a contribution made by a Consultant because the Contractor was unable to obtain such information from the Consultant, provided the Contractor demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(i) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the Contract, and before the Consultant communicated with a City department or office, official or employee on behalf of the Contractor;

(ii) Including in such agreement a provision requiring the Consultant to provide the Contractor in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by the Contractor if the Consultant fails to provide all required information on a

timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of the Contractor as of the date of such termination;

(iii) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit the Contractor to comply with the provisions of Chapter 17-1400; and

(iv) Invoking the termination provisions of the written agreement in a full and timely manner.

(3) The Contractor shall, during the Term of the Contract, any Additional Term, and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401 of the Code) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in Section 17-1401 of the Code) given to any Person in response to any such request. The Contractor shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.

(a) Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five (5) business days after a request was made or a payment in response to a request was made, as the case may be.

(b) The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Director of Finance, Procurement Department, and the Department of Records.

(c) The Contractor shall, during the Term, and any Additional Term, of the Contract disclose the name and title of each City officer or employee who directly or indirectly advised the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor that a particular Person could be used by the Contractor to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Contractor shall also disclose the date the advice was provided, and the name of such particular Person.

(i) Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five business days after the Contractor was so advised.

(ii) The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

9.11 Executive Order 03-11: Gifts.

(1) Pursuant to Executive Order 03-11, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment, invitation, food, drink or loan, unless consideration of equal or greater value is conveyed in return, from any of the following sources:

- (a) A person seeking to obtain business from, or who has financial relations with the City;
- (b) A person whose operations or activities are regulated or inspected by any City agency;
- (c) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;
- (d) A person seeking legislative or administrative action by the City; or
- (e) A person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.

(2) Contractor understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, Contractor shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

ARTICLE 10
MISCELLANEOUS

10.01 Governing Law.

This Contract shall be deemed to have been made in Philadelphia, Pennsylvania. This Contract and all disputes arising under this Contract shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to principles of Pennsylvania law concerning conflicts of laws.

10.02 Amendments; Waiver.

This Contract may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written Amendment signed by the Parties. Except to the extent that the Parties may have otherwise agreed in writing in an Amendment, no waiver, whether express or implied, by either Party of any provision of this Contract shall be deemed: (a) to be a waiver by that Party of any other provision in this Contract; or (b) to be a waiver by that Party of any breach by the other Party of its obligations under this Contract. Any forbearance by a Party in

seeking a remedy for any noncompliance or breach by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

10.03 Integration.

The Contract Documents forming this Contract, including the Contractor Agreement and the General Provisions and the exhibits incorporated by reference therein, contain all the terms and conditions agreed upon by the Parties, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties (except to the extent specifically set forth herein). No other prior or contemporaneous agreements, covenants, representations or warranties, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any Party or to vary any of the terms contained in this Contract.

10.04 No Joint Venture.

The Parties do not intend to create, and nothing contained in this Contract shall be construed as creating, a joint venture arrangement or partnership between the City and Contractor with respect to the Work.

10.05 No Third-Party Beneficiaries.

With the exception of the remedy provided to third party beneficiaries by Article 9, nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights, remedies, or other benefits, including but not limited to third-party beneficiary rights, under or by reason of this Contract. This Contract shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of this Contract.

10.06 Counterparts.

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

10.07 Severability and Partial Invalidity.

The provisions of this Contract shall be severable. If any provision of this Contract or the application thereof for any reason or in any circumstance shall to any extent be held to be invalid or unenforceable, the remaining provisions of this Contract and the application of such provision to Persons, or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

10.08 Survival.

Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Contract shall survive the expiration or earlier termination of this Contract, along with the following: Contractor's representations, warranties and covenants set forth in Article 9 (Additional Representations and Covenants of Contractor Relating to Certain Applicable Laws) above; and Contractor's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section 8.04 (Indemnification) above.

10.09 Dispute Resolution.

(1) In the event a dispute arises between the Parties regarding the application or interpretation of any provision of this Contract, the aggrieved Party shall promptly give notice in writing to the other Party invoking the provisions of this Section and the Parties shall negotiate in good faith and attempt to resolve such dispute. If the Parties fail to resolve the dispute within thirty (30) days after delivery of such notice, each Party shall have the right to require, by written notice to the other Party containing a brief description of the dispute, that each Party nominate and have a senior officer of its management meet with the other Party's nominated senior officers at a City office or at any other mutually agreed location, within fifteen (15) business days of such request, in order to attempt to resolve the dispute.

(2) Should the Parties be unable to resolve the dispute to their mutual satisfaction within fifteen (15) days after such meeting, then, if the Parties in their respective discretion so agree, the Parties may submit to non-binding mediation on terms to be mutually agreed, in which event any applicable statute of limitations shall be tolled. The mediation shall be conducted in the City of Philadelphia. Each Party shall pay its own expenses of mediation. The fees of, and authorized expenses incurred by, the Mediator shall be equally divided between the Parties. The Mediator shall be an attorney or other professional mutually acceptable to the Parties who has no prior, current, or on-going relationship to either Party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the Parties reach agreement with respect to the disputed matter or one Party determines in its sole discretion that its interests are not being served by the mediation.

(3) In the event that the Parties do not agree to proceed to such mediation or in the event and to the extent such dispute remains unresolved following any such mediation, each Party shall have the right to pursue any and all remedies available to it.

(4) During the process described in this Section neither Party may suspend or terminate the performance of its obligations under the Contract.

10.10 Interpretation of Certain Words.

Whenever in this Agreement, the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words or phrases of like import are used, it shall be understood that

the order, direction, requirements, permission, or allowance of the City is intended only to the extent of judging compliance with the terms of this Agreement. None of these terms shall imply the City has any authority or responsibility for supervision of Contractor's forces or operations, such supervision and the sole responsibility therefore being strictly reserved solely to Contractor. Similarly, the words "approved," "reasonable," "suitable," "acceptable," "proper," "satisfactory," or words of like effect and import, unless otherwise provided, shall mean approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of the City, subject to limitation as provided in the preceding sentence.

10.11 Headings.

The titles, captions or headings of Articles, Sections and Exhibits or schedules in this Contract are inserted for convenience of reference only; do not in any way define, limit, describe or amplify the provisions of this Contract or the scope or intent of the provisions, and are not a part of this Contract.

10.12 Oral Statements Not Binding; Amendments

The written terms and provisions of this Agreement shall supersede all oral statements of any representatives of the parties. Oral statements shall not be effective or be construed as being a part of this Agreement. This Agreement shall not be changed or modified except as specifically provided herein or by a duly executed written amendment between the City and Contractor.

10.13 Statutes and Other Citations.

All statutory or other citations of law referenced in the Contract shall refer to the statute or citation referenced, as it may be amended or superseded from time to time.

10.14 Days.

Any references to a number of days in this Contract shall mean calendar days unless this Contract specifies business days.

10.15 Forum Selection Clause; Consent to Jurisdiction.

The Parties irrevocably consent and agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two (2) forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums on grounds of venue or *forum non conveniens*, and the Parties expressly consent to the jurisdiction and venue of these two (2) forums. The Parties further agree that service of original process in any such

lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Section 5.04 of this Agreement.

10.16 Waiver of Jury Trial.

Contractor hereby waives trial by jury in any legal proceeding in which the City is a party and which involves, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to this Contract or the relationship created or evidenced hereby. This provision is a material consideration upon which the City relied in entering into this Contract.

10.17 Notices.

All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under this Contract shall be in writing and shall be deemed to have been duly made (a) when received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (*e.g.*, Federal Express or United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile; and (d) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested. In each case notices shall be sent to the addresses set forth in Section 5.04 of this Agreement.

[Remainder of page is intentionally blank, signatures to follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first above written.

THE CITY OF PHILADELPHIA,
acting by and through its
Department of Streets

THE CITY OF PHILADELPHIA,
acting by and through its
Procurement Department

BY: _____
Carlton Williams
Streets Commissioner

BY: _____
Trevor Day
Procurement Commissioner

APPROVED AS TO FORM:
Marcel S. Pratt
City Solicitor

BY: _____
J. Barry Davis
Chief Deputy City Solicitor

CONTRACTOR

BY: _____
PRESIDENT/VICE PRESIDENT

BY: _____
SECRETARY/TREASURER

SEAL

EXHIBIT A
PERFORMANCE BOND

EXHIBIT B
ECONOMIC OPPORTUNITY PLAN

EXHIBIT C

DESIGNATED TRANSFER STATIONS AND DISPOSAL FACILITIES

I. Designated Transfer Station(s)

- (1) 58th Street Transfer Station
2209 South 58th Street
Philadelphia, PA 19143
- (2) ECOvanta Facility
2209 South 58th Street
Philadelphia, PA 19143

II. Designated Disposal Facility(ies)

Contractor has designated the following Disposal Facility(ies) for the disposal of Municipal Solid Waste under this Agreement. Upon incorporation of a Disposal Facility listed below into the City's Act 101 Plan, such Disposal Facility shall become a Designated Disposal Facility.

- (1) Plymouth Renewable Energy Facility
1155 Conshohocken Road
Conshohocken, PA 19428
- (2) Delaware Valley Resource Recovery Facility
10 Highland Avenue
Chester, PA 19103

Alternate Designated Disposal Facilities for 58th St Transfer Station

Covanta Lancaster
1911 River Rd
Bainbridge, PA 17502

Covanta Camden
600 Morgan St
Camden, NJ 08104

Conestoga Landfill
420 Quarry Road
Morgantown, PA 19543

Rolling Hills Landfill
583 Longview Road
Boyertown, PA 19512

EXHIBIT D

MAXIMUM DAILY QUANTITY

Maximum Daily Quantity in Tons Per Day (TPD):

<u>Name</u>	<u>Maximum Daily Quantity</u>
1. 58 th Street Transfer Station	665 tons per day
2. Delaware Valley Resource Recovery Facility Or Plymouth Renewable Energy Facility	270 tons per day

EXHIBIT E

DISPOSAL FEES

Disposal Fees for Municipal Solid Waste

Fiscal Year 2019 Disposal Fee shall be \$ 65.50 per ton for the first 120,000 tons per year of Municipal Solid Waste accepted at the 58th Street Transfer Facility and \$64.00 per ton for each ton delivered above 120,000 tons per year.

Fiscal Year 2019 Disposal Fee shall be \$58.50 per ton for direct delivery of Municipal Solid Waste by Transfer Trailer to the Delaware Valley Resource Recovery Facility.

Fiscal Year 2019 Disposal Fee shall be \$57.00 per ton for direct delivery of Municipal Solid Waste by Compactor Truck to the Delaware Valley Resource Recovery Facility.

Fiscal Year 2019 Disposal Fee shall be \$63.50 per ton for direct delivery of Municipal Solid Waste by Transfer Trailer to the Plymouth Renewable Energy Facility.

Fiscal Year 2019 Disposal Fee shall be \$59.00 per ton for direct delivery of Municipal Solid Waste by Compactor Truck to the Plymouth Renewable Energy Facility.

Disposal Fees for Residual Waste

Fiscal Year 2019 Disposal Fee shall be \$65.50 per ton for direct delivery of Residual Waste to the Plymouth Renewable Energy Facility and Delaware Valley Resource Recovery Facility. If Residual Waste is accepted for transportation by Covanta at a location within the City but not at a Designated Transfer Station, the Disposal Fee will be \$65.50 per ton.

Escalation Rates

Fiscal Year 2019-2025 Disposal Fees shall be escalated for each year, over the prior Fiscal Year's rate, using the following formula:

Using the month of April as the base index for the Consumer Price Index (CPI) All Urban Consumers – US City average.

Acceptance of Municipal Solid Waste will be either at the Plymouth Renewable Energy Facility and Delaware Valley Resource Recovery Facility.

For Residual Waste delivered to 58th Street Transfer Station, the material must meet the residual waste requirements of both the PADEP and the respective Site Permits.

Note:

The entire Disposal Fee for each Ton of City Municipal Solid Waste delivered to the Contractor's Transfer Station(s) or Disposal Facility(ies) shall be the amount stated above which

Exhibit A

includes the applicable Act 101 of 1988 Recycling Fee and Act 90 of 2002 Growing Greener Fee. If these fees are changed or eliminated the Disposal Fee shall be amended.

EXHIBIT F

PERMITS FOR TRANSFER STATIONS AND DISPOSAL FACILITIES

EXHIBIT G
GUARANTY

EXHIBIT H

**RULES AND REGULATIONS FOR DESIGNATED TRANSFER STATIONS,
DISPOSAL FACILITIES, AND E-WASTE FACILITIES**

The Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall be open to accept delivery of Municipal Solid Waste as follows:

- (1) For general disposal:
 - a. Monday through Friday and on Saturdays following a Holiday from 7:00 a.m. to 6:00 p.m.
 - b. Clean Block Program deliveries on Spring and Summer Saturdays from 6:00 a.m. to 6:00 p.m., provided 24 hours' notice is given by the City.
- (2) For limited disposal at Designated Transfer Stations, provided notice is given before 4:00 p.m. on the previous day:
 - a. From 10:00 p.m. to 6:00 a.m. during weekdays, provided approval has been received from PA DEP.
 - b. Saturdays from 6:30 a.m. to 7:30 p.m.
 - c. Sundays from 10:00 a.m. to 6:00 p.m. during emergency situations or when needed (e.g. major snowstorm, natural disaster, labor disruption); provided approval has been received from PA DEP.

The Designated E-Waste Facility(ies) shall be open to accept delivery of E-Waste as follows:

- (1) Monday through Friday, 7:00 a.m. to 3:00 p.m.
- (2) Saturdays, upon request.

EXHIBIT I

E-WASTE SCOPE OF WORK

This Exhibit represents the Scope of Work for the collection and disposal of Electronic Waste or E-Waste. All terms and conditions of the Agreement apply to this Scope of Work and are to be interpreted as defined in the Agreement unless otherwise specified herein.

1. Acceptable E-Waste Materials.

Materials acceptable for E-Waste disposal are identified as follows:

- Televisions
- Monitors
- Computer/Laptops
- Peripheral Devices
- Electronic Toys & Games
- Answering Machines
- Audio Equipment
- Mp3 Players
- Cameras
- Cassette Players/Recorders
- Printers
- Projectors
- Cell Phones/Telephones
- Record Players
- Calculators
- Radios/Stereos
- Typewriters
- Computer Mice/Keyboards
- VCR/DVD/Blu-Ray Players
- Copiers/Fax Machines/Printers
- Video Cameras
- Diagnostic/Sensing/Control Equipment
- Household electrical items including but not limited to: toasters, microwaves, blenders, coffee makers, blow dryers, etc.
- Other items as agreed upon

Unacceptable E-Waste shall mean E-Waste not processed in the normal course of business by the Contractor, including electrical devices containing radioactive material such as smoke detectors, fire extinguishers, liquids, and Freon-containing devices.

2. E-Waste Disposal Fees.

The disposal rates for managing E-Waste shall be as follows:

	City of Philadelphia Delivers E-Waste to ECOVanta	ECOVanta Arranges Roll Offs	ECOVanta Collects and Hauls
Contract Year One	\$0.31/lb	\$0.35/lb	\$0.37/lb
Contract Year Two	\$0.32/lb	\$0.36/lb	\$0.38/lb
Option Year One	\$0.35/lb	\$0.39/lb	\$0.41/lb
Option Year Two	\$0.36/lb	\$0.40/lb	\$0.42/lb
Option Year Three	\$0.37/lb	\$0.41/lb	\$0.43/lb

Payment and invoicing of E-Waste disposal fees to Contractor shall be substantially the same as those procedures and terms set forth in Article 4 of the Agreement.

3. E-Waste Collection and Delivery

Under this Scope of Work, E-Waste may be delivered by the City to Contractor's ECOvanta E-Waste recycling facility, which shall be Contractor's Designated E-Waste Facility. The Designated E-Waste Facility is co-located with Contractor's Designated Transfer Station at 2209 South 58th Street, Philadelphia, PA 19143.

E-Waste may also be collected by Contractor from the City's six (6) Sanitation Convenience Centers. Upon the opening of additional Sanitation Convenience Centers, those additional collection locations shall be included by reference in this Scope of Work.

4. Quantity of E-Waste.

There is no minimum daily quantity of E-Waste guaranteed under this Agreement. Contractor has an annual volume availability of 2,000,000 lbs of E-Waste at the Designated E-Waste Facility.

5. E-Waste Collection and Disposal Rights and Obligations.

(1) At all times during the E-Waste Term of this Agreement, Contractor shall own, or control through contract or otherwise, the Designated E-Waste Facility(ies) and represents, warrants and agrees that:

(a) the Designated E-Waste Facility(ies) shall at all times during the Term of this E-Waste Agreement be properly zoned and permitted to allow the Designated E-Waste Facility (ies) to be used for the purposes contemplated by this Scope of Work and the MSW Agreement and be in compliance with all Applicable Laws; or in the case of a Designated E-Waste Facility(ies) that requires approval of Permits during the E-Waste Term, Contractor shall provide reasonable assurances that the Designated E-Waste Facility(ies) will have necessary Permits for the E-Waste Term;

(b) Contractor has sufficient Electronic Waste transfer and disposal capacity available through reservation, contract or otherwise for the sole benefit of the City in the quantities identified in this Scope of Work throughout the E-Waste Term; or in the case of a Designated E-Waste Facility(ies) that requires Permits approvals to accept Electronic Waste for transfer and/or disposal for the E-Waste Term, Contractor shall provide reasonable assurances that the Designated E-Waste Facility(ies) will have capacity for the Term;

(c) all access roadways and structures subject to vehicular traffic are designed for AASHTO H-20 loading; all roadways are a minimum of twenty-four (24) feet in width; and sufficient queuing space is available within the confines of the Designated Facility for all vehicles awaiting tipping;

(d) an accurate and functioning scale is present at each location where responsibility for the E-Waste transfers from the City to the Contractor;

(e) the scales must incorporate a fully automated, computerized weighing system,

(f) at the Designated E-Waste Facility Contractor shall provide an adequate number of clean restrooms for both its employees and City personnel; and

(g) the Designated Facility(ies) shall be equipped with adequate bumper logs to prevent vehicles from backing into disposal pits. Bumper logs shall be designed and placed to prevent damage to unloading vehicles and to facilitate efficient unloading.

(2) On an annual basis, thirty (30) Days prior to the commencement of each Agreement Year, Contractor shall certify to the City that adequate capacity remains at the Designated E-Waste Facility(ies) to meet Contractor's obligations hereunder.

6. Excess E-Waste; Unacceptable E-Waste.

(1) Contractor may not reject any delivery of Electronic Waste by or on behalf of the City, unless the delivery occurs outside of the normal operating hours.

(2) If the City, or any person on behalf of the City, delivers Unacceptable E-Waste to the Designated E-Waste Facility(ies), the City shall be promptly notified of such delivery. The City may reload and remove the Unacceptable E-Waste or the City may request Contractor to dispose of such Unacceptable E-Waste. The City shall pay the actual, reasonable and necessary costs incurred by Contractor with respect to the proper disposal of such Unacceptable E-Waste. In no event shall the City be responsible for the handling and disposal costs of any Unacceptable E-Waste Waste delivered to the Designated Facility(ies) unless it can be clearly demonstrated that such waste was delivered by the City or caused to be delivered by the City.

(3) Nothing in this Scope of Work shall be construed to mean that the City guarantees the composition or quantity of any Electronic Waste as it pertains to the proportion of any material contained therein. The obligations of Contractor hereunder shall not be diminished due to any variation in the composition of any Electronic Waste which is picked up by the Contractor or delivered to the Designated Transfer Point(s) and/or Designated E-Waste Facility(ies).

(4) Any E-Waste that is delivered to the Designated Facility(ies) and/or Processing Facility(ies) by or on behalf of the City that is rejected without a permitted rejection right under this Agreement shall constitute "Wrongfully Rejected E-Waste". Such Wrongfully Rejected Waste shall be transported to and disposed of at an alternate location provided by Contractor or, if Contractor fails to provide an alternate location, to a site determined by the City. The City shall use reasonable efforts to transport and dispose of any Wrongfully Rejected E-Waste in the most economical manner practicable, consistent with Applicable Laws and then current market conditions so as to mitigate the amount of damages payable by Contractor hereunder.

(5) Contractor shall pay the City as damages the actual cost incurred by the City for the transfer, waste processing, and marketing of Wrongfully Rejected E-Waste. The City shall deliver an invoice to Contractor promptly following determination of amounts due for Wrongfully Rejected E-Waste, and payment shall be due within thirty (30) Days of receipt of such invoice.

7. Receipt of and Title to Electronic Waste.

(1) Responsibility for and title to all E-Waste delivered or caused to be delivered by the City or picked up by the Contractor shall vest in Contractor at such time as the E-Waste is either (a) discharged from the City's delivering vehicle into the receiving spaces of the Designated E-Waste Facility(ies) or picked up by the Contractor at the City's Sanitation Convenience Centers. Contractor shall have the right to designate the point of discharge within the Designated E-Waste Facility(ies) of each load of Electronic Waste, provided that such designation does not detain the delivery vehicles.

(2) At all times during the E-Waste Term of this Agreement, Contractor shall operate and maintain the Designated E-Waste Facility(ies) in a manner that will permit weighing, delivery and exiting of vehicles delivering E-Waste pursuant to this Agreement in not more than sixty (60) minutes.

(3) Title to Unacceptable E-Waste shall not vest with Contractor.

8. Hauling of Electronic Waste by or for Contractor.

(1) Any hauling of Electronic Waste by the Contractor shall be done with fully enclosed equipment so that the possibility of spilling or scattering is kept to a minimum. Should any of these occur, Contractor shall be responsible, at its sole cost and expense, for prompt and timely cleanup of any such materials.

(2) The Contractor is required to comply with all State licensing requirements for transfer vehicles.

(3) In the event of a spill or loss of payload at the City's Sanitation Convenience Centers and/or during transit to the Designated E-Waste Facility(ies), Contractor shall immediately arrange for the clean-up and transportation of the payload to the Designated E-Waste Facility(ies) at Contractor's sole cost and expense, shall pay any resulting fines, assessments, penalties and damages resulting therefrom, and shall indemnify and hold harmless the City from any liability in connection with the foregoing.

9. Weighing Devices.

(1) The number of pounds of E-Waste delivered to the Designated E-Waste Facility(ies) by or on behalf of the City shall be determined by either (1) obtaining an incoming and an outgoing weight for each delivery truck, roll-off container, or transfer vehicle on certified scales located at the Designated E-Waste Facility(ies) and, if necessary based on the proposed cost proposal, (2)

obtaining a net weight for each type of material delivered on each delivery truck, roll-off container, or transfer vehicle on certified scales located at the Designated E-Waste Facility(ies) and/or the Processing Facility(ies) after each delivery is sorted by material. The Contractor shall be required to have the weight scales certified at any time but no more often than once a quarter, or upon request of the City. The Contractor shall furnish evidence of a maintenance agreement for the scales providing quarterly inspection and service maintenance. All costs and expenses associated with the installation, inspection, certification, and maintenance of the weight scales shall be borne exclusively by the Contractor.

10. E-Waste Disposal Reporting.

(1) **Monthly Delivery Reports.** By the 10th Day of the month following a month where the Contractor is required to accept E-Waste, Contractor shall provide the City with a report of each of the previous Month's scale transactions at each scale at the Designated E-Waste Facility(ies) or for each vehicle load picked up in accordance with this Agreement. This report will include a monthly computer file in a DBF format or other format designated by the City containing the following information in a file structure acceptable to the City: (a) names of Designated E-Waste Facility(ies) and/or Sanitation Convenience Centers; (b) date; (c) time of arrival and departure in military time; (d) sequential ticket number; (e) commodity code; and (f) net weight of materials. With reasonable notice, the City may require that additional information be provided.

(2) **Monthly Compliance Reports.** In addition to any other reports required by any other provision of this Agreement, Contractor shall furnish to the City monthly written reports, together with such statements, documentary data or other information as the City may require, relative to any matter pertaining to Contractor's compliance with any provision of this Agreement. The data included in the detailed report shall be sufficiently detailed to facilitate analysis and shall be acceptable to the City. The monthly report shall include, without limitation, (a) any changes in the Designated Facility(ies) and/or the Processing Facility(ies) operating plans including anticipated outages scheduled for the next month, (b) quantity of Electronic Waste transported from the Designated Transfer Point(s) to the Designated Processing Facility(ies), and (c) quantity of Electronic Waste received at the Designated Facility(ies) and/or the Processing Facility(ies). The monthly report shall be submitted on the 20th Day of the month following the month for which the report is submitted.

(3) **Annual Reports.** Contractor shall submit to the City an annual report within sixty (60) Days following the end of each Agreement Year that incorporates a summary of monthly operations reports for the preceding Agreement Year.

(4) **Late or Inadequate Reports.** In the event that Contractor files a report required under this Agreement after the date that it is due or files an inadequate report (the adequacy or inadequacy of such report being in the sole discretion of the City), payment of all amounts due to Contractor for the period covered by the late or inadequate report may be deferred until all late or inadequate reports are submitted or corrected to the satisfaction of the City. The City shall retain the last payment due under this Agreement until Contractor has provided all reports required in this Section.

11. Rules and Regulations.

The rules and regulations applicable to this E-Waste Scope of Work will be substantially the same as those set forth in Section 3.12 of the Agreement.

12. Event of Default.

An Event of Default under this E-Waste Scope of Work shall mean a material breach of the Contractor's obligations or warranties hereunder. If said Event of Default continues for more than thirty (30) days after the City gives Contractor written notice thereof, the City may terminate the E-Waste Agreement. An Event of Default under this E-Waste Scope of Work shall only be an Event of Default as to the E-Waste portion of the Contract and shall not be an Event of Default under the Municipal Solid Waste Contract. Should the E-Waste portion of the Contract be terminated by the City following an Event of Default, said termination shall apply only to the E-Waste Scope of Work and not to the Municipal Solid Waste Contract.

EXHIBIT J

ILLEGAL DUMPING & KEEP PHILLY BEAUTIFUL COP PROGRAMS

To help the City of Philadelphia combat illegal dumping and to bolster educational programs and other initiatives the City deems appropriate, Covanta will offer to the City \$0.25 per ton for every ton that City delivers to the Covanta 58th Street Transfer Station or disposed directly by the City using trailers at Covanta Plymouth and/or Covanta Delaware Valley. Covanta will make Funds available on a quarterly basis for programs associated with this initiative, and the City will use the funds at their discretion into programs established and chosen by City.