

**AGREEMENT FOR CONSTRUCTION AND OPERATION OF A PROCESSING FACILITY**

**BETWEEN THE**

**CITY OF LEE'S SUMMIT**

**AND**

**SUMMIT TRANSFER, LLC**

**DATED: \_\_\_\_\_**

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**Acceptable Materials** – means materials that will be Processed by the Contractor and diverted from the waste stream or removed to a landfill in accordance and in compliance with all applicable law and regulations and which may be amended from time to time by action of the Director of Public Works to permit Waste that is lawful under Applicable Law, including MDNR regulations and City standards.

**Actions** – judicial and administrative proceedings, whether or not initiated by a governmental entity, corporate entity, or person or any other third party.

**Alternate Fee** – means a royalty payment to be paid to the City in the event a Lease Payment ever ceases under the Lease and the City allows this Agreement to continue in effect if: (i) the original party serving as the Contractor is no longer the Contractor hereunder; or (ii) the City has allowed the original Contractor to continue as Contractor under this Agreement; and (iii) the Lease has been terminated or is transferred or assigned to an entity other than Contractor other than as provided herein.

**Applicable Law** – means any and all regulations, statutes, enactments, Executive Orders, ordinances, or rules of any kind that are applicable and govern any part of the operation or provision of services by Contractor under this Agreement or its occupation and/or use of the Premises. This specifically includes, but is not limited to, the Environmental Laws, Occupations Safety and Health Standards contained in CFR, Title 29, Section 1910, Safety and Health Regulations for Construction contained in CFR, Title 29, Section 1926, “E-Verify” requirements, “prevailing wage laws”, zoning, nuisance, health and building Codes of the City and the County of Jackson., whether or not enumerated herein, and as amended from time to time.

**CERCLA** – means the Comprehensive Environmental Responsibility Compensation and Liability Act, 42 U.S.C.A. §9601 et seq. (West 1983 & Supp. 1989), as amended, and similar State laws, as amended, and the regulations promulgated thereunder.

**Change in Law** – means (a) the adoption of any Applicable Law after the Effective Date, or (b) any change in any Applicable Law or in the interpretation or application thereof by any Governmental Authority after the Effective Date which, in the case of both clauses (a)-(b), impacts the Processing Facility, and/or Contractor’s operations hereunder, including changes arising out of any laws or regulations relating to climate change, greenhouse gas management or reduction. “Change in Law” excludes (1) any change in or new Applicable Law proposed or pending (in the current legislative session as of the Effective Date), passed or adopted but not yet effective as of the Effective Date or which was later enacted in similar form (except for new or increased Governmental Fees that become effective after the Effective Date, which shall be reflected as an adjustment in Contractor’s Gate Rates consistent with this Agreement); and (2) any existing and applicable Law or regulation.

**City** – means the City of Lee’s Summit, Missouri.

**City Council** – means the City Council of the City of Lee’s Summit, Missouri.

**Claim** - means any and all demands, requests and/or rights for indemnification, contribution or defense, claims, counter-claims, cross claims, actions, suits, investigations, causes of action, hearings or proceedings.

**Code** – means the City of Lee’s Summit Code of Ordinances, as amended from time to time.

**Collection Vehicle** – means trucks such as residential and commercial recycling collection Vehicles, roll-offs, open body trucks, trailers, etc. that collect Waste or Recyclable Materials but shall exclude commercial packer trucks or similar vehicles as commonly used by commercial residential or business trash haulers for solid waste collection or as used by such business to transport waste.

**Commercial Hauler** – means a person or entity required to be licensed by the City or any other governmental entity to collect and/or dispose of solid waste not generated by him/her or it whether residential or business solid waste is being collected or disposed.

**Commingled Recyclable Materials** – means all Recyclable Materials mixed with other recyclables or waste and delivered to the Processing Facility.

**Compost** – means a product manufactured through the controlled aerobic, biological decomposition of biodegradable materials. The product has undergone mesophilic and thermophilic temperatures, which significantly reduces the viability of pathogens and weed seeds (in accordance with EPA 40 CFR 503 standards) and stabilizes the carbon such that it is beneficial to plant growth.

**Construction and Demolition Waste** – means waste materials from the construction and demolition of residential, industrial, or commercial structures, but shall not include materials defined as clean fill by the State of Missouri.

**Contract Administrator** – means the solid waste superintendent of the City as that position exists on the Effective Date of this Agreement acting personally or through any assistants authorized by the Director of Public Works of City or any employee to whom the solid waste superintendent’s duties are transferred by action of the City Council or City Manager.

**Contractor** – means Summit Transfer, LLC and any approved assignees, transferees or other successors in interest to Summit Transfer approved by the City Council. Contractor shall be permitted to utilize a fictitious name, provided the same shall be duly registered with the Missouri Secretary of State’s office, in the course and scope of its operations under this Agreement.

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

**Director of Finance** – means the City’s appointed official or employee who acts in the capacity of Chief Financial Officer and oversees the finances of the City.

**Director of Public Works** – means the person appointed as department head of the Department of Public Works of the City.

**Disposal** – means the final disposition of Waste by burial at a state permitted landfill.

**Disposal tonnage or Throughput tonnage or Throughput** – means the tons of Waste delivered by or on behalf of Contractor from the Property to any other facility or location including but not limited to landfills or transfer stations and that are not diverted out of the waste stream to an End Market.

**Effective Date** – means the date when the last of the Parties has signed this Agreement as set forth in Article XII.

**End Market** – means the market that the Contractor uses to sell or transfer Recyclable or other divertible Materials.

**Entity** – means an individual, partnership, joint venture, corporation, limited liability company, trust, association, unincorporated organization or any Governmental Authority.

**Environmental Laws** – means any Applicable Law, as in effect and as amended from time to time, relating to air quality, water quality (including surface water, stormwater, groundwater, drinking water, and wastewater discharges), Hazardous Substances, Waste, Green Waste or Yard Waste, Household Hazardous Waste, Food Waste, Medical and Infectious Waste, Mixed Waste, Recyclable Materials, Organic Material, Landfill Gas, Leachate, Financial Assurance and similar environmental matters, including, but not limited to:

1. The Comprehensive Environmental Response, Compensation and Liability Act (U.S.C. Title 42, Chapter 103, and CFR, Title 40, Chapter 1, Subchapter J.) generally known as CERCLA,
2. The Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.),
3. The Resource Conservation and Recovery Act (U.S.C., Title 42, Chapter 82, Code of Federal Regulations (CFR) Title 40, Chapter 1, Subchapter I
4. The Federal Water Pollution Control Act or Clean Water Act (U.S.C., Title 33, Chapter 26, CFR, Title 40, Chapter 1, Subchapter D,
5. The Clean Air Act (U.S.C. Title 42, Chapter 85, and CFR, Title 40, Chapter 1, Subchapter Cas well as the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.),
6. The Oil Pollution Act (33 U.S.C. § 2701 et seq.)
7. The Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), and relevant federal regulations, and the Missouri Laws and Regulations:
8. Solid Waste Law: Missouri Code of State Regulations (CSR), Title 10, Division 80, Missouri Revised Statutes (RSMo), Sections 260.200 to 260.345,
9. Spill Bill, CSR Title 10, Division 24, and RSMo, Sections 260.500 to 260.550,
10. Clean Air Law: RSMo, Chapter 643, and
11. Clean Water Law: RSMo, Chapter 644.

12. Missouri Hazardous Waste Management Law: RSMo Sections 260.350 to 260.433, CSR Title 10, Division 25.

**EPA** – means the United States Environmental Protection Agency.

**Excluded Load** – means a load or partial load rejected at the Processing Facility due to the inclusion of Excluded Material.

**Excluded Material** – means materials which cannot be lawfully transported to transfer stations or landfills, including radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, biohazardous, regulated medical, or other hazardous waste as defined or otherwise listed under Applicable Laws, including, without limitation, putrescible waste that does not leave the Premises within twenty-four (24) hours of receipt, automotive, marine, household and all other types of batteries, dangerous waste, propane tanks, tires, motor oil bottles, bottles used for home needle disposal, or containers that held or hold hazardous materials.

**Gate Rates** – means those rates, fees, or charges, whether expressed as per ton, tipping fees or other charges, charged to any person, entity or corporation including Contractor itself using or arriving at the Premises or any entity that brings, deposits or delivers to the Premises materials for disposal, recycling, demolition and construction debris or other services provided by or on behalf of Contractor on the Premises regardless of how paid or shown on Contractor’s records and which are on file in the Office of the Director of Public Works.

**Governmental Authority or Authorities** – means either individually or collectively any federal, state, local or other governmental, regulatory or administrative agency.

**Hazardous Waste** – means any waste or combination of wastes, as determined by the Hazardous Waste Commission by rules and regulations, which, because of quantity, concentration, or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illnesses, or pose a present or potential threat to the health of humans or the environment, any substance that is listed or regulated, whether presently or in the future, under Environmental Laws as a “hazardous” or “toxic” substance, including “hazardous substances” as defined in 42 United States Code section 9601 (14) and “hazardous waste” as defined by the State of Missouri or local jurisdiction and as amended from time to time.

**Highest and Best Use of Materials** – means the preferred management of solid waste materials in this Agreement, which is creating and keeping materials and products for a use as high on the zero waste hierarchy as possible and in the useful loop and to an end market as long as possible. The zero waste hierarchy prioritizes solid waste management from most preferred to least preferred, beginning with redesign, reduce, reuse, recycle/compost, material recovery and ending with landfilling and incineration as allowed by Applicable Law.

**Household Hazardous Waste or “HHW”** – means any unwanted household product labeled as flammable, toxic, corrosive, or reactive. The most common products include aerosols, anti-freeze, asbestos, fertilizers, motor oil, paint supplies, photo chemicals, poisons, and solvents. HHW



materials do not include commercially generated waste. HHW materials may be further defined by the State of Missouri or the Mid-America Regional Council-Solid Waste Management District HHW Regional Program.

**Household Hazardous Waste Facility** – means the household hazardous waste facility located on a portion of the Resource Recovery Park and within the boundaries of the premises to be leased by Contractor under the Lease. If the HHW Facility is relocated by Contractor, it shall mean the relocated Facility.

**Lease** – means an agreement for Contractor to lease or rent from the City a portion of the Resource Recovery Park to construct, and maintain the Processing Facility, compost area, public disposal area, recycling and other services as approved from time to time and described in Section 5.2 of this Agreement.

**Lease Payment** – means the payment made to the City by the Contractor based on the terms provided in the Lease.

**Leased Premises or Premises** – means that area of the Resource Recovery Park that is leased to Contractor to provide services and construct and maintain buildings and structures that are necessary for provision of services and performance under this Agreement.

**Market Neutrality Rates** – means that the rates charged by Contractor to any customer or user of the services provided by Contractor under this agreement are the same for all customers or users regardless of volumes or other contracts with Contractor or an entity or someone acting for or on Contractor’s behalf provided the customer or user meets the criteria or standards for such rate. This includes in-kind services or services provided to departments or divisions or entities of or under the control of Contractor.

**Material Recovery Facility (the “MRF”)** – means any facility in which recyclable and recoverable material is removed from the waste stream to the greatest extent possible, as determined by the MDNR and the City and pursuant to MDNR and City standards, for reuse or remanufacture. This term shall also include MRFs other than the Processing Facility located on the Premises.

**Major Holiday** – means New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

**MDNR** – means the Missouri Department of Natural Resources.

**Non-Recyclable Material** – means certain solid waste that may be in the materials delivered to the Processing Facility but which: (a) are not listed and described in this Agreement as Recyclable Materials; (b) have been contaminated through the introduction of Excluded Material; or (c) are materials delivered to the MRF that have excessive moisture content (typically understood to be greater than 12%).

**North Recycling Center** – means the premises located at 1951 NE Douglas, Lee’s Summit, MO 64064.

**Old Corrugated Container (“OCC”)** – means loose or compacted corrugated containers as specified by Institute for Scrap Recycling Industries (ISRI) specifications.

**Party or Parties** – means each of the City and Contractor are a “Party” and, collectively, are the “Parties.”

**Solid Waste Permit** – means the permit issued to the City and the Contractor by MDNR to own and operate the Processing Facility, composting, recycling and similar services related to environmental services with the MDNR permit number of \_\_\_\_\_ (The Parties agree the permit issued under this defined term shall be included in this Agreement as of the date the permit is issued.)

**PDA Phase** – means the initial construction period during which Contractor designs, obtains governmental approvals, and constructs at its sole cost the Solid Waste Processing Facility and continues to operate a public disposal area (PDA) under City Contract #2019—032.

**Processing** – means the sorting, volume reduction (for example, wood grinding), baling, containment, or other preparation of Recyclable Materials delivered to the Processing Facility, and the marketing and transport/delivery of materials to end markets and separation of Recyclable Materials from other waste for transport to a location off Premises as allowed by Applicable Law.

**Solid Waste Processing Facility or Processing Facility (PF)** – means the structure to be built by Contractor at Contractor’s sole cost for the purpose of accepting, sorting, and transferring Acceptable Materials and to be located at the Resource Recovery Park on a specific parcel of land as approved in a lease with the City and a Special Use Permit to be obtained by Contractor and located within the City of Lee’s Summit, Missouri.

**Recycle, Recycled and Recycling** – means and refers to the process of collecting, sorting, cleansing, treating, and/or reconstituting Recyclable Materials and Mixed Wastes and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products that meet the quality standards necessary to be used in a marketplace and as changed from time to time.

**Recyclable Materials** – means the Acceptable Materials delivered to the PF in either Commingled Recyclable Materials or Source-Separated Recyclable Materials by or on behalf of Contractor, the City or third parties, and includes any of the following: glass, fibrous material (including paper, cardboard, newspaper), wood, green waste and organic material, food waste, concrete, construction and demolition debris, plastic, ferrous and non-ferrous metal, aluminum, used motor oil and filters, and any other items or materials that are divertible or recyclable and capable of lawfully being reintroduced to the economic market place or reused.

**Residual Material** – means any materials that, after processing, cannot be sold or marketed for Recycling or reuse, or marketed from the Leased Premises by Contractor.

**Resource Recovery Park** – means the City of Lee’s Summit’s solid waste management facility located at 2101 SE Hamblen Rd., Lee’s Summit, MO 64082.

**Self-Haul or Citizen-Haul Waste** – means all Municipal Solid Waste and Beneficial Reuse Materials that are delivered to the Processing Facility and Leased Premises other than by a commercial hauler, which collects trash in what is commonly referred to as a “packer truck” or similar vehicle. Self-Haul or Citizen-Haul Waste may include but is not limited to personal solid waste materials transported from a residence for personal disposal and delivered by pickup truck, passenger vehicle, trailers, or similar transport vehicles.

**Solid Waste Permit of MDNR Permit** – means the permit issued to the City and the Contractor by MDNR to own and operate the Processing Facility, composting, recycling and similar services related to environmental services with the MDNR permit number of \_\_\_\_\_ (The Parties agree the permit issued under this defined term shall be included in this Agreement as of the date the permit is issued.)

**Source-Separated Recyclable Materials**– means Recyclable Materials separated by category at the source and delivered to the Processing Facility of a MRF.

**South Recycling Center** or SRC– means the recycling area located at the Resource Recovery Park and utilized by Contractor to collect public drop-off recyclable materials.

**Special Use Permit (SUP)** – means the special use permit and all related zoning approvals including the preliminary development plan and final development plan that are approved pursuant to the City’s Unified Development Ordinance for all operations in performance of this Agreement on the Leased Premises by the City and/or Contractor.

**Tare Weight** – means the weight of a specific Collection Vehicle or container when empty.

**Term** – means the duration of this Agreement as defined in Section 2.1.

**Tenant Property Damage** – The failure of Contractor, its employees, or those working on behalf of Contractor to exercise ordinary care in the use of the Premises that causes material and permanent injury thereto over and above ordinary wear and tear.

**Third-party** – means entities other than the Parties.

**Tip Floor** – means the location within the Processing Facility where inbound Collection Vehicles deposit the loads of materials to be sorted and transferred or recycled.

**Unpermitted Material** – means materials that Processing Facility and the Contractor as it utilizes the Leased Premises may not receive under Applicable Law or this Agreement.

**Waste** – waste shall mean unwanted or discarded materials in a solid or semisolid state, including but not limited to garbage, ashes, refuse, rubbish, agricultural wastes, yard wastes, recyclables,

discarded appliances, special wastes, industrial wastes and demolition and construction wastes and any other types of waste allowed to be received at the Leased Premises under the City's Solid Waste Permit. Waste does not include (i) Hazardous Substances; (ii) Medical and Infectious Waste; HHW and (iii) other material that is not allowed by Applicable Law to be received at a lawfully permitted facility or premises to which it is delivered, but does not include hazardous waste as defined in RSMo Sections 260.360 to 260.432, recovered materials, overburden, rock, tailings, matte, slag or other waste material resulting from mining, milling or smelting.

**Wood Waste** – means solid waste consisting of wood pieces or particles which are generated from the manufacturing or production of wood products, harvesting, process or storage of raw wood materials or construction and demolition activities.

**Visual Pre-Sort** – means the process of visual inspection to identify Excluded or Non-Recyclable items in the materials delivered to the Processing Facility, which occurs while materials are being tipped out of the trucks or after being tipped on the tipping floor or otherwise removed from delivery vehicles.

**Yard Waste** – means leaves, grass clippings, yard and garden vegetation and Christmas trees. The term does not include stumps, roots or shrubs with intact root balls.

## ARTICLE II. TERM

### 2.1 Term of the Agreement.

This Agreement shall be effective at 12:00 AM, Central Time on the Effective Date, and shall expire upon expiration or termination of the Lease. Upon the Effective Date of this Agreement, the Contractor shall have a right of entry and use of City facilities as provided for in this Agreement and the Lease and not before.

This Agreement may be extended according to the same terms governing extension of the Lease. It is the intention of the Parties that this Agreement shall be in full force and effect during the term of the Lease.

At the expiration of the term, regardless of reason, Contractor shall have a duty to surrender the Premises and all improvements to the City in good condition and repair and consistent with Contractor's obligations under the Lease and this Agreement. Notwithstanding the foregoing, no termination of this Agreement shall release the Contractor from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or date of surrender if it be later. The City shall have the right to require Contractor to perform monitoring tests to examine the condition of the Leased Premises to ensure the site is left in a completely clean condition.

The Contractor shall have a duty to remove at the expiration of the term or any extensions thereof or sooner, from the Leased Premises all of its personal property. A mutually agreed to time of removal of same may be negotiated and approved by the Director of Public Works prior to the end of the term or extension thereof. If termination is the result of a breach of Contractor's fault, failure

to remove personal property from the Leased Premises, City may retain ownership of such personal property or dispose of it as City sees fit. Notwithstanding anything stated to the contrary in this Agreement or the Lease, City shall have the right to require Contractor to remove all such personal property at Contractor's expense and if Contractor fails to do so, the City may be reimbursed for all of its costs in removing same.

## **2.2 Expiration of Rights to City Facilities Upon Termination or Forfeiture of Lease.**

Notwithstanding the provisions of Section 2.1 of this Agreement, if for any reason Contractor forfeits its right to occupancy of the Premises under the Lease or this Agreement is terminated as provided for herein, Contractor shall forfeit and not be entitled to any right of occupancy or use of the Premises. Less ordinary wear and tear, Contractor shall leave the Premises and improvements in as good a condition as it existed on the Effective Date of this Agreement and any improvements constructed or altered by Contractor in a condition that meets City ordinances or state or federal laws. This obligation includes the removal of all Contractor equipment, property (including but not limited to all recyclables, waste, composted, and vehicles) and debris of Contractor within fifteen (15) days of the end of the Term or termination of this Agreement regardless of reason.

## **2.3 Continuing Obligations after Termination for any or no Cause**

Contractor's obligations to: indemnify and hold the City harmless; assist and comply with all applicable laws; provide information and reports; avoid committing Tenant Property Damage; avoid creation of nuisances; avoid creation of liens; pay financial obligations of Contractor unless specifically referenced and released in this Agreement or the Lease; and satisfy all obligations specifically set out herein as surviving the end of this Agreement, shall continue in full force and effect for at least five (5) years or any statute of limitations applicable to the actions of Contractor involved, whichever is greater. Termination of this Agreement whether on its own terms or by action of a party or third party shall not relieve Contractor of obligations surviving the end of the Agreement as set out in this Agreement.

## **2.4 Compliance with All Applicable Laws, Regulations, Codes and Ordinances**

The rights of Contractor under this Agreement and the Lease are specifically contingent upon compliance with Applicable Laws, regulations, Codes, and ordinances whether or not specifically enumerated herein, as amended from time to time. Contractor is permitted an opportunity to cure as otherwise stated herein and in compliance with applicable law. For purposes of a right to cure that is available under law, regulation, or ordinance to any other person or entity in similar condition or factual situation to Contractor, the provisions of Article IX shall control. If a time period to cure a violation is not set out in Article IX, the City in its discretion shall set such time period provided such time period is not set in an arbitrary fashion and is not materially different from such time periods afforded by City to others similarly situated or is within a time period set by another governmental agency or entity to correct or cure the noncompliance. It shall not be necessary for a final adjudication of noncompliance to exist before rights under this Section may be exercised by the City.

## **2.5 Alternate Fee**

In the event for any reason payments under the Lease to the City cease, and the City Council decides to allow this Agreement to continue in full force and effect, absent a City Council decision otherwise, Contractor shall pay an equal amount in cash and/or perform in-kind services to or for the City as were being paid or performed under the Lease at the time the payments ceased to be made or services performed, as agreed upon by the Contractor and City.

## **ARTICLE III. GENERAL INTENT OF AGREEMENT AND PAYMENT TO CITY**

### **3.1 Obtaining Permits and Approvals, City Assistance, Commencement of Operations**

3.1.1 By entering into this Agreement, and as set out in Article IV, Contractor shall assume all responsibility and pay all costs associated with obtaining any and all permits and approvals, regardless of what entity is authorized to issue same, for the design, construction, remodeling, maintenance, repair, and operations of the Processing Facility and other improvements on the leased premises to be utilized by Contractor. City shall assist to the extent it is able in obtaining such permits and approvals. However, the Parties acknowledge that when the City is the entity granting approvals or permits, it is acting in its sovereign capacity and not as a Party to this Agreement. When acting in its sovereign capacity, the City is governed by and must comply with applicable policies, regulations, ordinances, federal and state laws and the Missouri State Constitution. Actions taken lawfully by the City in its sovereign capacity are not to be construed as breaches of this Agreement by City. If Contractor is unable to perform because of any denial of a permit or approval by City in its sovereign capacity, which does not involve a breach by Contractor of this Agreement or the Lease, Contractor shall be excused from performance of this Agreement in total. Should Contractor wish to perform in part, the parties shall enter into negotiations to mutually agree on how such partial performance shall be carried out and their respective responsibilities and duties, including, but not limited, to payments to City, scope of services to be delivered, and Premises to be occupied by Contractor. If mutual agreement is not reached within ninety (90) days of the City's final action in its sovereign capacity which is not the result of a breach of this Agreement or Lease by Contractor, then this Agreement shall be deemed terminated and the provisions herein and the Lease governing a no-fault termination shall control the rights, responsibilities and duties of the parties. However, nothing herein shall require the City to reimburse any costs incurred or paid by Contractor except as specifically set out in the Lease or this Agreement.

3.1.2 As more fully set out in Article IV, Contractor shall promptly begin and take all actions, and pay all costs and expenses, necessary to obtain designs, permits, and approvals that will allow the Contractor to perform under this Agreement expeditiously following the execution of this Agreement and the Lease. Upon agreement of the Contractor and City, Contractor shall reimburse to City costs and expenses which shall include costs incurred by the City directly related to the approval or permit sought such as the consulting engineer's costs. The Contractor shall begin operation no later than thirty (30) days following any occupancy permit being issued for any structure on the Premises for the services to be provided in, on and out of that structure, and if no occupancy permit is required for an activity, then commence operations of an activity or service for which no other approvals or permits are required no later than thirty (30) days following the last approval or issuance of a permit necessary for any particular activity or service within its scope

of services to be provided under this Agreement. As a part of this Agreement, Contractor is to continue certain services presently provided under Contract No. 2019-032 with the City. Nothing herein shall excuse Contractor for performance under its current contract with the City to provide services for the Public Disposal Area and on other areas of the Premises under Contract No. 2019-032 until that same service is begun under this Agreement or the services termination under Contract No. 2019-032 as agreed to in writing by the City Manager.

### **3.1.3 City Assistance.**

The City shall provide solid waste and Public Works Department staff assistance to the Contractor in completing applications and submissions for any approvals or permits necessary to the performance of this Agreement or the Lease to the extent the City's solid waste and Public Works staff have knowledge and expertise that is relevant to said approvals or permits. By way of example only, the City Public Works and solid waste staff shall attend meetings regarding the anticipated Special Use Permit. Said City staff shall also be available for discussions with MDNR and other regulatory bodies. If outside experts, consultants or engineers under contract with the City are required or requested by the City, Contractor shall pay those costs but City shall make such experts, consultants and engineers it has under contract available for use by Contractor at the contracted for rate. Contractor may consult and utilize the City's current engineering consultant (SCS Engineering) for the Resource Recovery Park, as appropriate or necessary to maintain compliance with state, federal laws and permits, and pay any resulting fees as agreed upon by the Contractor and the City, or the City's then-current engineering consultant.

### **3.2 Construction of Processing Facility and Improvements to Structures and Land**

Construction of the Processing Facility shall commence within thirty (30) days of obtaining the last approval by any entity necessary to allow such construction to begin. The design of the Processing facility shall be subject to approval by the City's Director of Public Works in addition to any other City approvals required for construction. Any and all improvements to the Structures or the land within the leased Premises shall be constructed in accordance with all Applicable Laws, including City standards for Public Works projects and any zoning or development approvals. All structures including the Processing Facility shall be constructed in accordance with best practices and City and State Codes, design approvals, and the Lease and this Agreement. All improvements, structures and Premises shall be maintained, replaced and repaired by Contractor at its sole cost in accordance with the Lease, Applicable Laws, and/or to allow for functionality and performance as required herein. No nuisances of any kind may be permitted including failure of or damaged structures, or dangerous conditions of land, structures and improvements.

### **3.3 Operation of Processing Facility and other Operations on the Premises.**

Upon the full permitting and the completion of construction of the Processing Facility and attendant structures, Contractor shall commence operations under this Agreement within thirty (30) days. Contractor shall operate the Processing Facility and all other activities within the Leased Premises at its sole cost, and in a manner so as not to violate any Applicable Laws or permits, in accordance with the Lease, and as specified in Article VI of this Agreement. To the extent caused by an act or omission of the Contractor, employees, or those working on behalf of Contractor,

Contractor shall be responsible for any and all violations of Applicable Laws arising out of its presence or operations of any kind on the Premises. At no time shall Contractor operate the Processing Facility or engage in any activity on the Premises so as to create a nuisance under State, federal or local laws.

The Processing Facility, other structures and Premises are to be operated and utilized by Contractor in such a manner as to provide, at a minimum, those services set out in this Agreement with sufficient staff to receive Acceptable Materials as allowed in this Agreement and for the days and hours as allowed in this Agreement. Stacking or backup of traffic attempting to enter the Premises onto Hamblen Road shall not be allowed, and Contractor shall take all reasonable efforts to prevent stacking or backup of traffic.

The Processing Facility and other activities on the leased Premises shall never exceed an average of 200 tons of throughput per day as calculated on a monthly basis based upon the number of days the Processing Facility is open during the given month. This average of throughput shall be automatically increased by two (2.0%) annually at the same time the rent contained in the Lease is adjusted. Subject to changes in population and acts of God and/or other natural disasters that would require increased throughput. Changes in the average daily throughput shall be reviewed in good faith annually by the City and Contractor, and upon agreement in writing of both, subject to approval of the City Council, the average daily throughput may be increased or decreased. Throughput shall include that Waste which is sent to a landfill or to an MRF or transfer station other than the Processing Facility without Contractor sorting and disposing of the Waste through an End Market. Processed yard waste and brush, recyclable materials and diverted materials, such as crushed concrete shall not be considered throughput. In the event Contractor believes that the average throughput per day, calculated monthly, shall exceed the tonnage allowed under this Section, Contractor shall inform the Director of Public Works of the expected overage in writing and the basis for the same. Upon receipt of this notice by the Director of Public Works, the City shall approve or disapprove of the proposed overage, which shall not be unreasonably withheld by the City.

### **3.4 Provision of Equipment not Fixture**

Contractor shall supply at its sole cost and expense, except as set out in the Lease, sufficient equipment that is not a fixture and including as a part of the Processing Facility or other structure itself, to provide the services set out in this Agreement during the hours of operation agreed to or amended from time to time. All such equipment shall be deemed to be included within the term “personal property” of Contractor as such term is contemplated in Article II of this Agreement. All equipment provided shall meet state, federal, local laws, and regulations and be lawful to be operated. Upon expiration or termination of this Agreement or Lease, Contractor shall be entitled to remove such equipment at its sole expense subject to rights of third parties. However, failure to remove said equipment as permitted under this Agreement shall not relieve Contractor of the costs and expense of removal and disposal of equipment should City find it necessary to so remove and dispose of same for breach or termination of this Agreement, the Lease or any violation of Applicable Law.

### **3.5 Changing Regulatory Environment**



Contractor acknowledges that given the Term of this Agreement, it is expected that Applicable Law will change and may require more stringent requirements than those specified as of the Effective Date of this Agreement. Notwithstanding the foregoing, and subject to its other rights in this Agreement, Contractor shall comply with Applicable Law as it applies to Contractor's obligations under this Agreement, without exception.

### **3.6 City Oversight of Design, Construction, and Operation of Processing Facility and Provisions of Services, Reporting Requirements**

#### **3.6.1 City Administrative Oversight, Administrative Approvals, Recordkeeping**

3.6.1.1 Oversight. Unless specifically stated herein, administrative oversight of this Agreement and the Lease shall be provided by the Director of Public Works or their designee. Such oversight shall include approval of design and permit applications for construction of any improvements including the Processing Facility, right of inspection during construction, the right of inspection during reasonable hours of operation once structures are completed and operational, receipt of all reports required, review of operations for compliance with this Agreement and the Lease, responding on behalf of the City to any notices of violation issued by any entity as a result of Contractor's activities on the Premises, or immediate vicinity. The oversight as provided for herein, shall not conflict with the Lease and this Agreement. Administrative Oversight does not include any code enforcement actions by the City through a different Division or Department. Failure of the Director of Public Works or any other City agent or employee to provide notice of a potential breach or violation of this Agreement, the Lease or any applicable law shall not excuse the Contractor from compliance therewith.

3.6.1.2 Recordkeeping. Contractor shall keep accurate and detailed books of account and records in accordance with generally acceptable accounting principles consistently applied regarding any and all transactions conducted involving Transaction Records. The Transaction Records shall include all records, receipts, journals, ledgers and documents reasonably necessary to enable the City or its auditors or accountants to perform a complete and accurate audit of Contractor's operations including waste and type received by source, throughput, destination of any Waste leaving the Premises. Contractor shall retain the Transaction Records for a period of not less than five (5) years after the end of the calendar year covering such Transaction Records. Contractor shall comply with MDNR requirements for maintenance of Transaction Records. Upon request by the City, Contractor shall provide to the City within three (3) business days, copies of the Transaction Records, in physical or digital format, unless a physical format is required by an applicable law, rule, regulation, or court, which shall be indicated in the request by the City, including without limitation, reviewing the daily transaction receipts for all Waste delivered to the Premises.

The Contract Administrator shall provide the Contractor within thirty (30) days of the Effective Date any specific types of reports or records that Contractor shall supply to the City for reporting purposes as well as any form the City requires Contractor to use. As reasonably required, different, amended, or new records or forms may be required during the term of this Agreement provided

the Contractor is given at least ninety (90) days written notice of the form and the information to be recorded.

### 3.6.2 Data and Permit Reporting Requirements

3.6.2.1 Contractor shall be responsible to prepare, and to the extent permissible or required under Applicable Law, submit, all required monthly, quarterly, and annual reports as required under any Permits under which Contractor is operating.

3.6.2.2 Contractor shall provide the City, within five (5) business days of receipt by Contractor, written notice of any Action or Claim by a Governmental Authority or Third Party that relates to the Processing Facility or operations on the Premises. Contractor shall provide the City, within a reasonable time after knowledge by Contractor, with written notice of any other matters related to the Processing Facility or any operations on the Premises that reasonably could materially interfere with Contractor's performance of its obligations in this Agreement. Contractor's obligation hereunder extends to the activities of all Contractor's subcontractors, affiliates or partners. This obligation shall survive the termination of this Agreement for any reason.

3.6.2.3 Contractor shall copy City on any communications, to a Governmental Authority and provide City with a copy of such communication, to the extent City is not already copied, related to the following: (i) any permit compliance, monitoring and reporting, renewals, modifications and revisions; (ii) alleged non-compliance anywhere on the Premises or outside the Premises dealing with operations on the Premises, including efforts to resolve and achieve compliance; (iii) submittals related to Remediation or work to address Environmental Conditions; and (iv) Financial Assurances Instrument (FAI), as required by MDNR or insurance policies or coverage.

3.6.2.4 At a minimum, Contractor shall supply the following reports directly to the Contract Administrator in Microsoft Excel format: Monthly reports including: Number of customers, out of state customers, unsecured loads, recycling drop-off center customers, free store customers, free store item count, daily waste tonnage and average daily tonnage throughput, scrap metal tonnage, construction and demolition materials diverted, concrete/block/brick tonnage, appliances, tires, yard waste customers, yard waste by cubic yard, brush customers, brush by cubic yard, electronics by gaylord, cardboard tonnage, plastics #1 & 2 tonnage, paper and paperboard tonnage, aluminum and tin can tonnage, mattresses/box spring each, glass tonnage. Contractor shall also provide any customer feedback.

### 3.7 **Market Neutrality – Fee Structure**

3.7.1 The Parties acknowledge that market neutrality of fees is a significant consideration in the City awarding and entering into this Agreement. Fees charged, whether collected or not, for all services or arrangements of any kind including any in-kind services by Contractor shall be market neutral as defined in this Agreement. At all times, Contractor shall keep a current listing of its complete fee structure for operations at the Premises in the Office of the Public Works Director. No fees except those on the fee structure on file shall be charged or collected by Contractor for services at the Premises.

3.7.2 Fees charged may be changed by the Contractor no more than once a year starting with one year after the commencement of any services with ninety (90) days' notice to the Director of Public Works and an opportunity by City Council, the City Manager, and the Director of Public Works to comment and object to the fee change. Comments and objections must be provided to the Contractor within thirty days of notice to the City as provided for in this Agreement. If any comment received is an objection to a proposed rate, the Contractor shall provide in writing an explanation of the rate within ten days of receipt of the comment and/or objection to the Director of Public Works and the City Manager. Council shall be provided at least seven working days to review such material. If the objection is not withdrawn, Contractor may address the full Council in open session and a vote on whether or not to allow the proposed rate shall be had with a majority of the Council necessary to approve the proposed rate change.

In order to control waste flow, Contractor shall be allowed to change the fee charged to users who are charged per ton for usage of the services under this Agreement without the prior approval of the City as long as said fees are based upon current market conditions. Users who are charged per ton shall be limited to users who have the ability to "tip" or dump the materials from vehicle or trailer they are transporting the materials into the facility.

### **3.8 Payments to City – Lease Payments**

Payment of consideration to the City from Contractor for the privilege of operating under this Agreement shall be as set forth in the Lease.

### **3.9 No Authority to Contract**

Neither Party has any authority to execute any contract or agreement on behalf of the other Party, and neither Party is granted any authority to assume or create any obligation or liability on the other Party's behalf, or to behind the other Party in any way, unless specifically authorized herein.

## **ARTICLE IV. PERMITTING AND CONSTRUCTION OF PROCESSING FACILITY AND IMPROVEMENTS ON AND TO CITY PROPERTY**

### **4.1 Contractors Obligations and Responsibilities**

4.1.1 Contractor shall design, obtain all permits, construct, repair, maintain, replace if necessary and operate a Processing Facility as approved through regulatory approvals by state and local agencies or entities and the Director of Public Works at Contractor's sole cost as outlined in Article III of this Agreement, including obtaining any required regulatory approvals by any governmental agency or official.

4.1.2 Contractor shall provide within and in the immediate vicinity of the Processing Facility all processing equipment required to sort, separate, and prepare for disposal at a state permitted landfill all Acceptable Material that is not capable of being diverted to an End Market identified by Contractor, used or transferred on site for a permitted use, and any Residual Materials.

4.1.3 Contractor shall, as referenced herein and otherwise stated in this Agreement, at all times when engaged in any construction, removal, maintenance, replace as necessary or repair of buildings or structures, have in place a payment/materials bond issued by a Surety Company duly authorized to issue payment/materials bonds in Missouri and eligible to provide bonding for federal projects and satisfactory to the City Attorney in a form approved by the City if such is required by the laws of the State of Missouri or if the City would require such a bond by a contractor engaged in a project of any kind. Contractor shall ascertain the necessity of such a bond by contacting the Director of Public Works of City prior to commencement of any work.

4.1.4 If required by law, Contractor shall pay what is commonly referred to as “Prevailing Wage” rates of pay to workmen if such is required by Missouri law for any activity, construction, repair, replacing or maintenance of any structure or improvement that occurs or is located on the Premises or its immediate environs. If federal funds are used by Contractor in the performance of this Agreement, then Contractor shall comply with the “Davis Bacon Act” to the extent it is applicable. Contractor shall have the responsibility and liability for compliance with the labor laws of Missouri and the federal government, for ascertaining the applicability of labor laws, and shall hold the City harmless from any violation thereof. Company shall defend and indemnify the City for any claims or lawsuit arising out of Company’s failure of the above.

#### 4.2 Local Government Regulatory Approvals

As noted in this Agreement, the City is a landowner, holder of various permits, and sovereign municipality under Missouri law. As such, its actions in granting regulatory approvals are actions of a governmental body and are themselves governed by the law in effect for the function in which it is engaged. Regulatory approvals and the manner of seeking approval are set out in City Codes and policies. Different City officials and bodies are granted different authority to issue permits and approvals. Contractor acknowledges that this is so, and that the City may not contract away its governmental powers. To the extent Contractor takes any actions to advance its design, plans or operations in advance of local government regulatory approvals, it does so at its own risk even if it has obtained consent from an employee or official of the City prior to regulatory approvals being granted or denied. Contractor shall not take any actions in advance of regulatory approvals if such regulatory approval is necessary before a given action. Contractor is not entitled to any special or different consideration in obtaining approvals as a result of its status under this Agreement in any action the City may take as an exercise of its governmental powers than any other third party would be entitled to receive. Contractor acknowledges that it must obtain at a minimum the following local regulatory approvals from City:

##### 4.2.1 Zoning Approvals

Zoning approvals will be required for Contractor to be able to prepare and use the Premises for its operations. These may include platting, rezoning, more than one variance, and a Special Use Permit. The Parties anticipate that Contractor will apply for at least a SUP to allow its planned operations and construction of improvements under the City’s Land Development Code. Contractor agrees to comply in all of its operations and activities of any nature on the Premises with the SUP and other applicable zoning ordinances in addition to all other applicable laws. The City is acting in its capacity as a sovereign when granting or denying a Zoning Approvals. A

violation of the SUP or any Development Code provision shall be deemed a breach under this Agreement and subject to Article IX remedies in addition to Code Enforcement actions available to the City as a sovereign. However, nothing in a zoning or other regulatory approval shall broaden the Contractor's scope of services of use of the Premises beyond that authorized by this Agreement.

#### 4.2.2 Site Plan Approvals

The City requires site plan approvals before alterations to some properties and before commencement of new construction of any structure. In some instance, disturbance of land requires a site plan approval if the disturbance is of sufficient area. Contractor shall at its sole expense obtain site plan approvals for all of the construction, changes and improvements on the Premises required by City Codes. Contractor shall not commence construction, improvements, grading of land or removal of any structure without a site plan approval by the City where one is required in advance of such acts.

#### 4.2.3 Building, Utility and Right-of-way Permits

The City has in place building, utility, and right-of-way Codes and policies which require permits before construction, renovation, repair, removal, maintenance and altering of structures of all kinds or connection of the Premises to utilities and rights-of-way. Contractor shall obtain any and all such approvals and permits at its sole cost and comply with all such permits and approvals at its sole cost.

### 4.3 State and Federal Regulatory Approvals

4.3.1 A number of State and Federal Regulatory Approvals have been granted to the City for the purposes of operating the Resource Recovery Park including:

- Solid Waste Permit 109520
- Storm Water and NDPES Permit MO-0110876
- Air Construction Permit 1122002-008A Flare
- Air Construction Permit 072015-003 Crushing and Composting

Contractor acknowledges that City is required by Applicable Law at times to obtain such approvals independent of Contractor Operations and at times inclusive of Contractor Operations. The City is ultimately responsible to the issuing entity for compliance with these regulatory approvals. Contractor shall take no actions that are out of compliance with, or which may or do result in a notice of violation of such regulatory approvals as they exist at the time of this Agreement or as amended or issued from time to time. To the extent caused by an act or omission of the Contractor, or where Contractor allows a condition, caused by an act or omission of Contractor, to exist in violation of such approvals, Contractor shall at its sole cost remedy the violation and reimburse any and all costs incurred by City including fines, penalties, engineering and attorney costs.

4.3.2 City is the holder of a number of regulatory permits including a Solid Waste Permit # 109520 for the Resource Recovery Park property and is eligible to obtain a permit or regulatory approval to construct a Processing Facility and monitor the Contractor's operations on the Premises. The City shall be the Owner of the facility for any MDNR permit issued for all operations on the

Premises and the Contractor shall be listed as the Operator. As stated throughout this Agreement, Contractor shall be solely responsible for all costs of obtaining any and all State and Federal regulatory approvals to carry out the scope of its operations on and use of the Premises. City shall be consulted before any approvals are applied for and be informed upon issuance of approvals. Should City object to any approval requested by Contractor, the Parties shall engage in discussions as to the reason for the objection and attempt to reach mutual agreement as to what approvals should be requested and when. If the regulatory approval request is necessary for the Contractor to engage in its operations as set out in Section 5.2, City's consent shall not be unreasonably withheld. If the approval is necessary for a new activity or expansion of a current one over and above the services set out in 5.2 of this Agreement, the Parties may negotiate the manner of obtaining the approval and if any other portions of this Agreement or the Lease shall be amended including any increase in lease payments.

#### **4.4 Design and Construction of Processing facility, Other Structures and Improvements**

4.4.1 Contractor shall pay all costs of designing, developing, constructing, repairing, replacing, maintaining and equipping the Processing Facility as well as all operations of Contractor on the Premises unless equipment or structures are being provided by City in the Lease. All work and actions shall be in accordance and in compliance with all regulatory approvals, the consent of the Director of Public Works and applicable laws. Any equipment being provided by the City is being provided as is, where is and as found.

4.4.2 It is understood between the Parties that Contractor intends to alter, remove, design, and construct and improve other City owned structures and portions of the Premises for its operations. All such alterations, removal, design, construction, maintenance, and repair of any such structures and improvements shall be at Contractor's sole cost and in accordance with the Lease and this Agreement, all Applicable Law, including, City's building Codes and Public Works standards of design on file with the Director of Public Works. Contractor must obtain any and all required permits and regulatory approvals for such alterations, removal design, construction, maintenance, replacement and repairs allowed under this Agreement and the Lease.

4.4.3 To the extent arising out of Contractor's activities, Contractor shall not suffer or permit any construction liens or other liens to be filed against the Premises, nor against Contractor's leasehold interest in the Premises except any financing approved by the City, nor allow any such liens against Contractor's interest in any improvements, by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Contractor or anyone holding the Premises or any part hereof through or under Contractor. Notwithstanding the foregoing, if any such construction liens or materialmen's lien shall be recorded against the Premises, or any improvements thereon, Contractor shall cause the same to be removed; provided, however, that Contractor may in good faith contest any such construction lien. If Contractor shall fail to discharge or secure such lien as herein provided, City shall have the right to file a bond securing such lien and Contractor shall pay the cost of such bond to City within 30 days. The filing of any such lien claim against the interest of City in the Premises shall also be an event of default hereunder subject to the cure period provided Article IX of this Agreement. Contractor hereby agrees to indemnify, defend and save City harmless from all costs, loss and liability arising from any lien, including reasonable attorney's fees.

#### **4.5 Taxes, Surcharges, Levies and Other Assessments**

The City makes no representation as to the taxability of any of Contractor's use of the Premises or structures and Contractor acknowledges it has had the opportunity to review such issue with competent legal counsel. Contractor shall not allow any surcharges, levies or other assessments to be made against the Premises, unless authorized in this Agreement or the Lease. If a surcharge, levy or assessment is made as a result of Contractor's design, construction, maintenance, replacement or repair of any facility or part of the Premises or as a result of any activities or operations, Contractor shall satisfy and pay such surcharge, levy or assessment within thirty (30) days of receipt and shall inform City of the existence or filing of such surcharge, levy or assessment, provided however, Contractor may at its option and sole cost challenge the surcharge, levy or assessment until a final review of same by an administrative or judicial body is made. Upon final determination of the validity of the surcharge, levy or assessment, Contractor shall pay the same together with any interest or penalties within thirty days of such determination. Failure to do so may be construed as a breach under Article IX of this Agreement and the Lease.

### **ARTICLE V. GENERAL OPERATIONS AND MAINTENANCE OF ALL CITY FACILITIES UTILIZED BY CONTRACTOR**

#### **5.1 General Provisions and Contractor's Performance and Other Obligations with Respect to Solid Waste Acceptance, Storage and Disposal**

Each of the provisions of this Article shall apply to the Contractor's operations at the Premises during all time periods that the Contractor is operating thereon pursuant to this Agreement. Contractor shall provide all labor, supervision, equipment, materials, supplies, and all other items necessary to perform its obligations under this Agreement at its sole cost. All activities of Contractor hereunder shall comply with Applicable Law.

Subject to other provisions in this Agreement, and the Lease, Contractor accepts all City property and structures "AS IS, WHERE IS, AND AS FOUND" condition and state of repair as of the Effective Date of this Agreement or the Lease, whichever first occurs. City makes no representations or warranties, express or implied, with respect to the existence, extent or absence of Environmental Conditions on the Premises or any structures or the condition and state or repair of the structures and Premises, subject to the terms of Section 4.6 of the Lease.

Subject to normal wear and tear, Contractor shall maintain all City buildings, facilities, surfaces, and structures within the Premises or adjacent area used for traffic into and out of the Premises in good condition and repair, suitable for use by the public, and in accordance with Prudent Solid Waste Practices, Codes of the City, Public Works Design and Construction Manual, the Lease provisions, and any permit or regulatory approval requirements, but with normal wear and tear excepted.

Subject to normal wear and tear, at the end of this Agreement for any cause or the Lease, Contractor shall leave the all surface, improvements, structures and the Premises in good condition and repair and working order, with the understanding that Contractor shall comply with: (a) its obligations

and duties for removal of equipment and other items from the Premises; and (b) its obligations under the Lease for surrender of the Premises. On or before the Effective Date, the parties shall document the existing condition of the Premises and structures and surfaces as constructed or improved that will be used as a baseline to compare with the condition of the Premises at the end of this Agreement and Lease including but not limited to photographic records. Contractor shall not be required to make any repairs, alterations, or improvements as contemplated herein within 120 days of the termination of this Agreement and/or the Lease, whichever is sooner unless notice has been given by City to Contractor in writing prior to 120 days before termination of this Agreement of any repairs or any repair is required for health, safety, or welfare of the premises.

## 5.2 Scope of Services.

5.2.1 Contractor shall provide at a minimum the following services at no cost to the City and at Market Neutral Rates on file in the Office of the Director of Public Works to Third Parties, and in accordance with the approvals or permits granted by any governmental entity, and the standards, prohibitions and requirements of this Agreement and the Lease as well as all Applicable Law:

- A Public Disposal Area for individual trash disposal (PDA) with at least the same level of services as operated by Contractor on the Effective Date of this Agreement;
- MSW (Municipal Solid Waste) trash reception and transport;
- Mattress and box spring recycling program;
- Cardboard recycling program;
- Habitat for Humanity material diversion program;
- Southside Drop-off recycling center;
- Metal recycling program (including appliances);
- Tire recycling program;
- Electronics recycling program;
- Pallet recycling program;
- Brush recycling program;
- Yard waste composting program;
- Household Hazardous Waste diversion program (in association with the Mid-America Regional Council [MARC] Solid Waste Management District);
- Free store in association with the HHW Program.
- Construction and Demolition Waste program for acceptance and processing;
- Receipt and management of additional forms of Waste as agreed to by the Director of Public Works in writing provided such Waste may be lawfully delivered to the Premises under any permits or approvals by any governmental entity.

Be it known that that the following services are provided by third-parties not subject to this Agreement: mattress and box spring recycling program; tire recycling program and electronics recycling program. Contractor cannot guarantee with any certainty that these aforementioned third-party services will be provided, but will take all reasonable efforts to ensure that the same are provided. Contractor shall also take all reasonable efforts to ensure the free store in association with the HHW Program continues operation during the term of this Agreement.



Contractor shall be permitted to adjust the rates for the services referenced in Section 5.2.1 in accordance with Section 3.7.

5.2.2 At a minimum, Contractor shall do the following with respect to the Southside Drop-off Recycling Center:

The Contractor shall provide removal and recycling of any materials accepted at the South Recycling Center (SRC) located at the RRP on an as-needed basis so that there is capacity to accept recyclable materials during operational hours.

As reasonably practical in the industry, Contractor shall remove and endeavor to the best of its abilities to recycle of the following materials: Office paper, phone books, newspapers, magazines, cardboard, paperboard, aluminum cans, tin cans and commingled plastics, types 1-2. Contractor shall use its best efforts to include plastics 3-7 during the term of this Agreement, in order to be consistent with the recycling materials accepted for curbside patrons within the City limits.

The Contractor shall ensure that readable labels are placed on each bin other receptacle for the recyclable materials (“containers”) to be placed within the container. Replacement labels will be provided at the Contractors expense. Label design and type shall be approved by the City prior to adherence to containers.

At any time during the term of this Agreement, the City reserves the right to place additional containers to increase the capacity for receiving materials at the Southside Recycling Drop-off Center without incurring any cost to the City of any kind for use or removal of materials.

Any recycling containers utilized by Contractor shall be emptied or additional containers be made available so that recycling center patrons will have a container to drop off material at all times.

Recycling containers shall be emptied in the safest manner possible, which may require them being removed or engaging in “pulls” during the evening or overnight hours if allowed under any SUP issued and other City Codes. If containers are pulled during times when the facility is not open, gates at the Recycling Center will be closed and locked immediately after containers are emptied or removed. If the Center is left unattended at any time by Contractor, it shall be closed and locked until Contractor returns.

Contractor shall be responsible for emptying containers within twenty-four (24) hours of the container being filled.

There will be a minimum of one (1) staff person present at the South Recycling Center when patrons are present. At a minimum, Staff shall be responsible for the following items including, but not limited to; keeping the area clean, keeping materials separated, providing customer service, helping customers unload and answering questions, monitoring for contaminated or hazardous material, removing snow in the winter months, and monitoring and managing safety hazards, etc.

The Contractor and the City will jointly work together to advertise usage of the SRC and notify patrons when the facility will be closed due to holidays or inclement weather.

5.2.3 Contractor shall not use, or allow others to use, the Premises for any other services, operations or activities not specifically listed herein without the written consent of the City as an Amendment to this Agreement whether or not such services, operations or activities would be permitted under regulatory authority of any kind including zoning or any MDNR permit granted by any entity.

### **5.3 City's Property and Facilities**

5.3.1 Use of Premises Subject to Terms, Consents and Regulatory Approvals. Contractor's right to use City's property and facilities during the Agreement term is subject the provisions of this Agreement, any regulatory approvals or permits, and the Lease. Subject to such terms as are in the Lease, regulatory approvals and permits, and this Agreement, Contractor shall have an exclusive right to occupy and use the Premises subject to the Lease for the Term of this Agreement, to operate, use and improve the City's structures and the real estate and its associated interior rights-of way, utilities and easements as provided and allowed in this Agreement for the sole purposes of performing its duties, obligations, rights and scope of work as set out in this Agreement. Contractor's rights to use and occupy the Premises under this Agreement shall be terminable pursuant to the terms and conditions set out in this Agreement and the Lease. In the event the Lease is ever terminated or rights therein are assigned other than for financial purposes to permit Contractor to proceed with its obligations hereunder, surrendered or transferred to any other entity by any means other than Contractor, the right to occupy and use the City's Premises shall also terminate unless such surrender, assignment or transfer has been approved by the City Council. The City shall not unreasonably interfere while this Agreement is in effect with the Contractor's rights of possession and use as set forth herein or the Lease, or materially interfere with Contractor's performance of this Agreement except as specifically set out in this Agreement or if City is acting in its governmental capacity to enforce its Codes, regulatory approvals, or Applicable Laws or permits.

5.3.2 Right to Use Premises. For the Term of this Agreement, and subject to the terms of the Lease and any regulatory approvals including Zoning Approvals, Contractor shall have the right and privilege to use the City's existing structures, facilities, wells, electrical, water, pipelines and other utility lines and conduits (to the extent reasonably deemed necessary or advantageous by Contractor for Contractor to perform it obligations under this Agreement) within the Premises, and to install additional portable or permanent structures, wells, utility lines, pipelines and conduits suitable for the performance of this Agreement, maintenance of equipment, storage of supplies, employee facilities and office functions within the Premises for the sole purpose of carrying out its performance under this Agreement and no other. Any alterations or improvements shall be at Contractor's sole cost and expense. Subject to the terms of this Agreement and the Lease, Contractor shall be responsible for maintenance or replacing of all buildings, structures and other improvements located on the Premises regardless of their nature for the duration of this Agreement and Lease used in its operations. The area(s) for placement of any additional facilities or structures constructed by the Contractor on the Premises shall be subject to City's regulatory approval, and separate approval by the Director of Public Works and the approval of the Director of Public Works shall not be unreasonably withheld.

In addition, upon the granting of all final permits and approvals by the City, Contractor shall have the right to install such materials processing, sorting and baling equipment in the completed Processing Facility and to make alterations to other areas of the Premises as deemed necessary by Contractor for the purpose of operating a Processing Facility as permitted by MDNR, provided such acts are within the City's Codes, consent of the Director of Public Works and necessary to perform its obligations, duties and responsibilities under this Agreement. All costs and charges for any construction, alteration, removal, maintenance and repair of any surface, structure of facility on the Premises, or any equipment required in connection with the use and operation thereof, shall be the obligation of Contractor. Contractor shall at its expense have the responsibility of obtaining all necessary Financial Assurances Instrument (FAI), as required by MDNR, permits and approvals, including any and all necessary environmental review, for any building, facility, structure or equipment provided by Contractor. City agrees to cooperate with Contractor in obtaining all necessary permits and approvals by executing any applications or documents required in connection therewith for improvements approved by the Public Works Director, which approval shall not be unreasonably withheld.

**Contractor is expressly advised that nothing contained herein shall be construed as authorizing, nor interpreted as a representation that the City will authorize, the construction, installation or use of any structure, facility or equipment contrary to Applicable Law, including the applicable provisions of the zoning ordinance, building code, fire code or other applicable ordinances of the City, nor as a representation that the City shall grant any exception or variance from any such Applicable Law for such purposes;** provided, however, that if any authorization, permit or approval required by Contractor to perform under this Agreement is not granted by the City, the Contractor shall be excused from performing the impacted obligations to the extent Contractor is prevented by the lack of such authorization, permit or approval to perform such obligations. In addition, if any use or structure is not permitted or approved by the City in its governmental capacity that is deemed material by Contractor to the performance of the remainder of this Agreement, Contractor may terminate this Agreement with six months' notice. Contractor shall not perform any excavation activities on the Premises without the prior written consent of the Director of Public Works.

5.3.3 Electrical Connections; All Utilities. Contractor may, at its own expense, install electrical connections and lines, in addition to any such electrical connections existing on the Premises as of the Effective Date. Installation and maintenance of such additional electrical connections and lines shall be the responsibility of Contractor. Contractor shall be solely responsible for the provision of utilities, including electricity, gas, sewer and water, to all operations and activities on the Premises and payment of any utility bills relating to all operations and activities during the term of this Agreement. City shall not take or fail to take any action which would cause the cessation nor interruption of any utilities to the Premises other than in its capacity as a sovereign or a utility services provider. Contractor acknowledges that to utilize some utilities may require Contractor to install infrastructure at Contractor's cost to extend service to its operations and activities.

5.3.4 Telephone. Contractor shall maintain a telephone at the Premises at all times. All charges for telephone service installed and/or used by Contractor shall be the sole responsibility of Contractor. In the event a phone line is unavailable, Contractor shall provide a two-way radio or cellular phone at each structure or operations site.

5.3.5 Sanitary Facilities and Drinking Water for Employees. Contractor shall provide sanitary facilities for its employees on the Premises. It is Contractor's intent that such facilities will be located in the scale house on the Premises. A well-maintained chemical toilet and hand wash facility are the minimum requirements where sewer service may not environmental or fiscally be made available, and where sewer is capable of being constructed and used or where City Code could require a sanitary sewer hookup, sanitary sewer service shall be installed and provided during all operational hours. In addition, Contractor shall provide on-site potable drinking water for all employees.

5.3.6 Days and Hours of Operation. Contractor's operations will be subject to the issuance of zoning approval. Subject to that zoning approval and other regulatory approval or limitations, which shall control over maximum permitted actual days of operation, hours of operation, noise levels and traffic stacking, Contractor shall be open to the public for all operations on the Premises at least five (5) hours a day, commencing no earlier than 7:00 am and ending no later than 5:00 pm., six days a week as Contractor sees fit as long as its operations are open to the public a minimum of forty (40) hours per week and on Saturday, excluding Major Holidays and adverse weather events requiring closure, but the closure for an adverse weather event shall not last longer than 48 hours unless agreed to in writing by the Public Works Director.

If Contractor needs to be open on Sunday's, the Contractor will submit a request with reasoning, and receive written approval from the City before operating on Sunday's. If Contractor is required to work on the Premises additional hours in order to become complaint with MDNR, Contractor shall be permitted to do so with the approval of the City, which shall not be unreasonably withheld

The Contractor will not be allowed to grind or turn yard waste on Saturday's when winds are out of the south or southwest in order to minimize odors. The Contractor will be expected to be mindful of wind conditions during the week when winds are out of the south or southwest. Incoming yard waste will be covered on a daily basis with mulch or composting yard waste in order to minimize odors.

The same days and hours of operations shall also apply to the South Recycling Center.

5.3.7 Other Provisions. Contractor shall provide all other necessary facilities including, but not limited to: eye wash stations; personal protective equipment; and other items that may be required to comply with all labor safety regulations and laws including OSHA or other Applicable Laws on the Premises.

5.3.8 Permits and Financial Assurances. Contractor shall have all responsibilities and Liabilities to obtain and maintain all permits issued to the Contractor, and comply with all terms of all such permits. Subject to agency approval, Contractor shall be designated as the operator and discharger under any MDNR permit for the Premises under which services under this Agreement are to be provided or is required for use and occupancy of the Premises such as storm water discharge. Contractor shall be responsible to prepare, and to the extent permissible under Applicable Law, submit, all required monthly, quarterly and annual reports as required under any permits pertaining to Contractor's services in this Agreement. Contractor shall not seek any future permit

modifications without giving the City prior written notice and receiving written permission from the City's Public Works Director. City shall fully cooperate with Contractor and shall provide all information in City's possession and execute all documents and instruments reasonably necessary to enable Contractor to obtain all such permits necessary for it to carry out services set out in Section 5.2 of this Agreement.

Contractor shall be required to comply with all Financial Assurances required under Applicable Law or permits. Contractor shall provide City with all cost estimates for Financial Assurances at least 15 business days prior to submitting them to any Governmental Authority. Contractor shall reasonably consider any comments or concerns raised by the City with respect to the cost estimates, but Contractor's obligations with respect to the amount or form of such Financial Assurances shall not exceed those requirements imposed by Applicable Law or permits. Contractor's Financial Assurance obligations shall not be a basis for a Force Majeure Event.

5.3.9 Obligation to Keep City Informed and Provide Access. Throughout the Term, Contractor shall provide the City, within five (5) business days of receipt by Contractor, written notice of any Action or Claim by a Governmental Authority or Third Party that relates to the City Premises. Throughout the Term, Contractor shall provide the City, within a reasonable time after knowledge by Contractor, with written notice of any other matters related to the City Premises that reasonably could materially interfere with Contractor's performance of its obligations in this Agreement. Contractor's obligation hereunder extends to the activities of all Contractor's subcontractors. Throughout the Term, Contractor shall copy City on any communications, other than communications related to day to day operations, to a Governmental Authority and provide City with a copy of such communication, to the extent City is not already copied, related to the following: (i) compliance with any permit, monitoring and reporting, renewals, modifications and revisions; (ii) alleged non-compliance for any structure, building, surface, service or operations on the Premises, including efforts to resolve and achieve compliance; (iii) submittals related to Remediation or work to address Environmental Conditions; and (iv) Financial Assurance.

5.3.10 Scales. The City has a set of scales customarily used in the solid waste industry which Contractor may use for as long as they are in working order. It is Contractor's intent that the scale and its corresponding equipment will be repaired and upgraded at Contractor's sole cost. The City, and the Contract Administrator, consent to this action being taken by the Contractor. The type of scales used in lieu of the City's or as a replacement of City's must be approved by the Contract Administrator, which shall not be unreasonably withheld. Contractor shall keep a set of scales in working order and good repair at its sole cost at all times during the term of this Agreement.

5.3.11 City's Use of Premises. Notwithstanding any other provision in this Agreement or the Lease, the City shall have the right to enter and utilize the Premises during any time period of War, if an Act of War is committed in or around the City limits, or National Emergency is declared by the President, or a Declaration of Disaster or Emergency is made by the Governor or the Mayor related to weather or pathogen or terrorist acts. The City's right to enter and utilize portions of the Premises shall be limited to that area required to provide alleviation, relief or mitigation efforts for the impact of an Act of War or terrorism, or Emergency or disaster as declared. During such time, any Lease or Alternate Fee payment shall be prorated for the time period and the area the City is occupying.

If the City utilizes the Premises for storm debris removal, Contractor shall have a right of salvage and usage of whatever debris is brought to the Premises at no cost to Contractor subject to FEMA or similar federal or state restrictions that are applicable to the emergency situation and any grant funding the City may receive or be eligible for. Under no circumstances shall Contractor be financially responsible to remove or process storm debris brought by the City unless Contractor elects to salvage such debris.

#### **5.4 Hazardous Waste Exclusion Program.**

Contractor shall not allow receipt or Disposal of material other than Acceptable Material at and on the Premises. It is recognized that some non-approved materials, including Hazardous Substances or Household Hazardous Waste, and any other prohibited Waste excluded under any MDNR Permits, may occasionally be unloaded by a Customer or in the wrong location on the Premises. Contractor shall prepare and follow a Hazardous Waste Exclusion Plan which meets the requirements of Applicable Law, permits, and MDNR. The Hazardous Waste Exclusion Plan shall provide for Contractor's ability and responsibility to reject loads that are discovered to contain any Excluded Material such as Hazardous Waste. The plan shall be subject to regulatory and City approval. Contractor shall implement the approved Hazardous Waste Exclusion Plan using prudent solid waste practices as accepted within the Industry and allowed by Applicable Law and on file with the operations plan provided to MDNR. Contractor shall use suitable temporary storage on the Premises as approved in a site plan for Excluded Material discovered through the implementation of the Hazardous Waste Exclusion Plan (or otherwise) in conjunction with Contractor's operations on the Premises. Contractor shall, at its expense, arrange for the transport and disposal, and transport and dispose of such materials in accordance with Applicable Law or require that the Entity or persons which delivered such materials to the Premises, remove such materials in a timely manner and transport it to an appropriate disposal location. Contractor shall transport such materials on a daily basis to temporary storage lockers and have such materials removed at intervals required by Applicable Law, any MDNR approved operations plan or more frequently as necessary. Ownership or title to such Hazardous Substances or Household Hazardous Waste shall remain with the individual or entity that disposed of same at the Premises but in no event shall be construed as belonging to the City.

#### **5.5 Required Signage and Traffic Control.**

Subject to applicable City Codes and regulatory approvals, Contractor shall provide signage identifying the Premises, the hours of operation for all services, the Processing Facility and other programs located on the Premises, rules applicable to the City Facilities and signs at all drop-off or payment locations and the scale house listing the appropriate Gate Rates and prohibited materials. Contractor shall be responsible for all costs and activities associated with future signage as information incorporated into the signage changes or the signs need repair, replacement or relocation.

Contractor shall be responsible for providing all on-site signage necessary to safely and efficiently direct traffic from the scale houses or other entry points to the material unloading areas on the Premises.

## **5.6 Acceptance and Handling of Waste.**

5.6.1 The acceptance of waste is limited both as to type of waste and from type of vehicle. Contractor shall only accept material for processing, sorting, recycling and handling on the Premises which is Acceptable Materials from self-haul or citizen-haul from residents and businesses that are Commercial Haulers or acting on behalf of any Commercial Hauler unless the Commercial Hauler is hauling waste in what is commonly referred to as a “packer” truck or similar designed type vehicle. Contractor shall be responsible for managing waste throughput on a daily, weekly and monthly basis so that it will not violate the daily average, which is tracked on a monthly basis. The Contractor must manage customers so that it will be able to process or accept waste without creating stacking of vehicles on Hamblen Road or blocking access to driveways for third parties in violation of the standards of this Agreement. Subject to Sections 3.3 and 3.7, Contractor’s business and receipt of Acceptable Materials shall be limited so as to generate no more than 200 tons of “throughput” solid waste per day as averaged over one month.

5.6.2 Contractor will aim to divert, recyclables to be sorted on the Premises, including, but not limited to: cardboard, mix paper, plastic containers, metals, clean wood, treated wood, asphalt roofing shingles, concrete/block/brick, gypsum, brush and yard waste. The sorted materials shall be either baled or sent loose for wood chipping or composting or sale/delivery to third parties. Delivery may take place on or off the Premises in accordance with Applicable Law.

5.6.3 Acceptable Materials may be temporarily stored on the Premises provided such materials are stored in a manner in compliance with all permits, Applicable Laws, and as permitted by the SUP and the Director of Public Works. The Contractor shall in a reasonable time frame, remove the diverted materials. A plan for removal may include the sale to third parties of Solid Waste materials collected by Contractor such as metal, tires and similar items as well as waste that is processed on-site by Contractor such as construction and demolition waste, or compost. Failure to remove stored materials, except at the end of the term or expiration of the Lease and this Agreement, shall not be a breach of this Agreement unless there is no good faith effort on the part of the Contractor to follow and carry out its plan and protocols, provided the storage is in compliance with all requirements of permits and Applicable Laws.

5.6.4 Contractor shall have a plan and/or a protocol to reject waste that is not acceptable under the MDNR Operations Plan, this Agreement or applicable law and have it immediately removed from the Premises, or to separate out such waste if it is inadvertently accepted, for storing same separately and removal from the Premises within two calendar days of its discovery as not being Acceptable Material.

5.6.5 Contractor shall provide to the City a copy of Contractor’s MDNR report regarding any Excluded Material on a form provided by the City including its manner of disposal or removal from the Premises. Other reports shall be provided to the Contract Administrator as required under Section 3.6.A.2 shall be provided to the Contract Administrator in the manner and at the times as specified by the Contract Administrator.

5.6.6 Contractor shall develop and maintain adequately sized unloading areas at all drop-off locations for any Acceptable materials and recyclables so as to provide a safe and efficient

environment for vehicles to unload. Unloading areas shall be of sufficient design to provide for safe distances between unloading vehicles, accommodate the turning radius of a tractor-trailer vehicle, enable the queuing of vehicles during peak usage periods and ensure that vehicles do not have to come into contact with Waste in order to unload. Stacking of vehicles onto Hamblen Road, or which blocks access to other properties or uses by City not on the Premises, shall be prohibited as a means to providing such safe distances between unloading vehicles. Contractor shall take all reasonable steps to avoid stacking of traffic of more than one vehicle on Hamblen Road for more than fifteen minutes at any time.

5.6.7 Contractor shall control dumping at all locations that Wastes are unloaded on the Premises, inspect all Waste loads for Excluded Material in accordance with its approved Hazardous Waste Exclusion Plan, and perform other duties as may be required to operate any facility or services in compliance with this Agreement, permits, Applicable Laws, and Prudent Solid Waste Practices as noted above and generally acceptable industry practice for waste processing facilities.

5.6.8 Materials Salvaging Prohibited. Contractor shall take all steps reasonably necessary and consistent with Prudent Solid Waste Practices to prevent its employees, Customers, and any other users of the Premises from engaging in any materials salvaging activities unless specifically approved by the SUP and the Director of Public Works.

5.6.9 Soil and Concrete. At its sole discretion, Contractor may accept and stockpile soil and concrete that can feasibly be reused onsite or sold to the public provided such activity is allowed under any permit or regulatory approvals including a SUP and in furtherance of a service set out in Section 5.2 of this Agreement.

## **5.7 Litter Control.**

Contractor shall be responsible for both on-site and off-site litter control as follows:

5.7.1 On-Site Litter Control. Contractor shall use Prudent Solid Waste Practices to maintain and keep the Premises and all operations free of litter including adding additional temporary employees to collect litter. Said efforts shall be consistent with the requirements of Applicable Law. Litter consists of any Waste outside of any other unloading, designated storage areas or stockpiling areas or which is not contained at the end of an operations day in an unloading, designated storage area or stockpiling area. Contractor shall be solely responsible for maintaining the Premises in a clean and sanitary condition and shall be responsible for any public nuisance created as a result of its operations. If required, Contractor shall provide adequate personnel to collect and properly dispose of litter from the Premises as needed, and to keep the litter fences clear of Waste.

5.7.2 Off-Site Litter Control. Contractor shall be responsible for the prompt removal of litter blown off-site to surrounding properties as well as litter along those portions of public roads adjacent to the Premises or regularly used by customers of Contractor to access the Premises. Prior to entering off-site properties to pick-up litter, Contractor shall contact the landowner(s) for permission to enter. If any landowner refuses entry by Contractor, Contractor shall document such refusal and shall not enter the refusing landowner's property unless and until the landowner subsequently gives permission to either City or Contractor to enter the subject property.



## **5.8 Vector Control.**

Contractor shall use Prudent Solid Waste Practices typically used in the solid waste industry to control birds, rodents, insects and other disease carrying or breeding organisms, consistent with all Applicable Law. Contractor shall provide any chemical sprays, traps and similar measures approved by Governmental Authority to control these pests, as necessary.

## **5.9 Dust Control.**

Contractor shall comply with all requirements of Applicable Law including but not limited to dust control and mitigation so as to avoid fugitive dust leaving the Premises. As needed, Contractor shall develop and implement a dust control program for the Premises. Contractor shall provide sufficient equipment and manpower to apply water for the alleviation and prevention of dust that may occur during Contractor's daily operations at the Premises. Contractor shall post, adhere to and make all reasonable attempts to have Customers adhere to traffic speeds on all on-site unpaved roads of five (5) miles per hour or less. Contractor shall water active on-site roadways at the Premises as needed to suppress dust. Watering may be suspended during periods of wet weather, provided that visual inspection indicates that dust generation has ceased.

## **5.10 Fire Safety.**

At all times during the term of this Agreement and the Lease, Contractor must comply with all fire codes applicable to its operations and structures on the Premises.

5.10.1 Fire Control. Should any fires occur, it shall be the responsibility of Contractor to notify the fire department immediately, to use all available methods to control and extinguish such fires, and to notify the City of the event within 2 hours of Contractor's first knowledge of the event.

5.10.2. No Smoking Allowed. At no time shall smoking be allowed on the Premises.

5.10.3 Burning. No burning shall be allowed on the Premises and Contractor shall use all reasonable means and act in a manner consistent with Prudent Solid Waste Practices to prevent burning of any kind on the Premises.

## **5.11 Equipment.**

5.11.1 Contractor shall supply all equipment necessary to conduct all operations allowed by this Agreement, address Environmental Conditions and otherwise perform the requirements of this Agreement. Equipment shall be of sufficient size and quantity to safely and efficiently to conduct all operations, repair, maintain and construct structures and surfaces, and shall comply with Applicable Law.

5.11.2 Contractor is responsible for providing and maintaining equipment which will operate with a minimum of down time. Should any individual piece of equipment necessary for the daily collection, handling and removal of all waste on and from the Premises, or to address

Environmental Conditions become non-operational for a period of more than eight (8) hours, or if it is unavailable to perform necessary work at the end of the working day, Contractor shall immediately provide substitute equipment, unless the Contractor, in its reasonable discretion and consistent with Prudent Solid Waste Practices, determines that the piece of equipment is not necessary to properly complete the day's work, or, in the case of addressing or alleviating Environmental Conditions, as authorized by Applicable Law. Contractor shall promptly remove all equipment and other property not reasonably necessary for proper operations from the Premises or store same at a designated location on the Premises as approved by the Director of Public Works or his designee and as allowed by any regulatory approvals such as a site plan. Contractor shall furnish or have available at all times sufficient backup equipment or provide substitute equipment to prevent material delay in the acceptance, handling, recycling or removal of any solid waste as a result of breakdowns or peak loading conditions.

## **5.12 Labor.**

5.12.1. Sufficient Number of Employees. Contractor shall employ and have on duty, during all hours that its operations are to be open, a sufficient number of trained and competent employees to perform efficient operations, including litter control.

5.12.2. On-Site Contractor Representative; Employee General. Qualifications/Training. At least one, but no more than three, of Contractor's employees shall be designated as a representative to interact with the City and Contractor's customers, shall be on the Premises in each case during all hours of operation and shall be reachable by phone during all times outside operations hours. Contractor shall notify the City in writing of each such representative at least 30 days prior to the commencement of services under this Agreement or when such representative is changed.

5.12.3 Employee Clothing. Contractor employees and any subcontractors shall wear appropriate personal safety equipment, which may include, but is not limited to, hard hats, rain gear, steel-toed boots, back supports, hearing protection, and other appropriate equipment. Contractor is responsible at all times to enforce use of all such safety equipment by its employees and to meet all OSHA requirements.

5.12.4. Safety Program and Monthly Safety Meetings. Contractor shall develop and maintain a complete safety program for all activities on the Premises. Contractor shall provide documentation to the City, at least annually, that Contractor and Contractor's employees are adhering to this safety program. Contractor shall conduct operations, safety, and Hazardous Substances recognition training meetings at least monthly.

## **5.13 Transportation of Waste.**

5.13.1 General Obligation. Contractor shall, in accordance with the terms of this Agreement, all Applicable Law, and regulatory permits and approvals, receive, accept and safely and lawfully handle, recycle and transport all Waste delivered to the Premises and not placed into an End Market system that recycles and sells same, to a permitted disposal facility, as determined by Contractor in its discretion. Contractor shall assign or provide sufficient transfer vehicles and equipment to haul all Waste from the Premises regardless of its final destination. Contractor shall be responsible

and liable for any work associated with any Environmental Conditions arising as a result of Contractor's transportation of Waste. Consistent with the MDRN Operations Plan, Waste which is to be transported to a landfill or other disposal facility shall leave the Premises no later than twenty-four (24) hours after receipt, excluding days in which the Premises are closed or otherwise not opened, or sooner if regulatory approvals or Applicable Law requires a quicker removal time period. Residual Material shall be removed within twenty-four (24) hours. Any Excluded Material delivered to the Premises will be properly managed or removed as soon as practicable and in accordance with the Hazardous Waste Exclusion Plan and permit requirements.

5.13.2. Litter Control. In addition to its plan to control litter on-site and the immediate or adjacent area to the Premise, Contractor shall enclose, cover and/or seal all vehicles regardless of ownership used to deliver and transport Waste regardless of destination to contain all Waste and prevent spilling or scattering of Waste during transportation thereof. If any material is spilled from Contractor's or Subcontractor's vehicles, whether on private or public property, Contractor shall promptly remove such Waste from the area no later than twenty-four (24) hours after the earlier of receipt of notice from City, a complaint by a third party or Contractor's first having actual knowledge of the spilling or scattering.

## ARTICLE VI. ADDITIONAL SERVICES, OPTION TO ADD SERVICES AND EDUCATIONAL OUTREACH

### 6.1 Contractor Additional Services with Written Consent

At any time during the term of this Agreement, Contractor may propose additional services to be provided to the community or business customers from the Premises. If the City's zoning and other ordinances and regulations allow, and such services may be provided under all Applicable Law, the Parties may negotiate the addition of such services provided they are generally similar in character, nature or purpose to those services already being provided or authorized under this Agreement or any SUP in force for activities on the Premises. Negotiation may include but shall not be limited to impact on the area, public purpose being met, fees to be charged customers or others, the amount of additional rent under the Lease if any, the increase in traffic, potential reduction of use of adjacent properties by the City or others, increased storm water runoff or possible increase in odors, litter or stored items. The City Council shall approve any additional services through an Amendment to Section 5.2 of this Agreement.

### 6.2 Educational Outreach

Contractor has offered to provide some educational outreach to the Community. Contractor or the City may arrange for tours of the facility provided all safety regulations and OSHA requirements are met.

### 6.3 Northside Recycling Center

The City owns an area adjacent to the Airport and on land the Airport controls. In the event Contractor wishes to operate a Northside Recycling service, that may be negotiated between the parties with final approval being granted by the City Council provided all Applicable Laws including FAA regulations are met. Nothing however shall prevent the City from providing or entering into a contract with any other entity to provide, recycling or other services or uses of such property in the event Contractor has not requested and successfully negotiated the operation of the Northside Recycling Center with the City.

#### **6.4 Composting**

Contractor intends to provide composting services at the time of the execution of this Agreement. However, in the event Contractor and City mutually agree that Contractor shall cease offering such service, the City may offer the service itself or contract with another entity or person to provide such services on the Premises. The Lease shall be amended to allow reasonable access to the composting area by the City or contractor within the Premises.

#### **6.5 Other Diversion or Market Opportunities**

The Parties desire and are interested in reducing solid waste that is disposed of in a landfill. To that end, and to the extent not in conflict with any other provision of this Agreement and the Lease, the Parties shall cooperate in finding and allowing new and modified diversion of Waste into the recycling market stream as well as new market opportunities that Waste collected and processed by Contractor may be utilized. The City shall not unreasonably withhold its consent to such activities provided they are not in conflict with Applicable Law, any regulatory approvals and do not conflict with any other provisions of this Agreement or the Lease. The acceptance of a new stream and/or opportunity as contemplated herein may require a new pricing structure to be agreed upon by the Contractor and City.

### **ARTICLE VII. RISK ALLOCATION**

#### **7.1 Security Instrument for Facility Closure**

At all times during the term of this Agreement, Contractor shall keep and maintain a Security instrument, bond or otherwise, naming City as beneficiary pertaining to closure of the facility during Contractor's lease term as referenced in the Lease.

If MDNR requires any form of security for operations or closure of the facility, Contractor shall maintain such security during the term of this Agreement as required by MDNR. If allowed by MDNR, this bond may be used to satisfy the City's requirements for security while the bond is in effect provided said bond shall list the City as a party allowed to make a claim under said bond. Since said MDNR bond might not cover the full costs incurred by City, Contractor agrees said bond shall be two (2) times the amount required by MDNR, but in no case shall be less than \$150,000.00.

If not allowed by MDNR as contemplated herein, Contractor shall keep and maintain a Security instrument in the initial amount of \$100,000 and in a form acceptable to City, naming City as a beneficiary. The amount of the Security required by the City shall be increased by 4% per year. The City may draw upon the Security in the event Contractor defaults in its performance of its obligations under this Agreement, and fails to cure such default within the time period provided for in this Agreement, and then only to the extent of the City's provable, actual damages proximately caused by Contractor's default. The City's draw on the Security shall be subject to judicial review as provided in Chapter 536, RSMo. Should the City draw on such Security Letter of Credit, Contractor shall replace the amount drawn in a new or amended Security Letter of Credit within thirty days of such draw.

## **7.2 Insurance During Entire Term of Agreement**

7.2.1 Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own and sole expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A or above with policies and forms satisfactory to the City within ten days of the approval of their Agreement by City Council and provide proof of same before taking any actions under this Agreement or entering City property. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

7.2.2. No Representation of Coverage Adequacy. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

7.2.3 Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

7.2.4. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

7.2.5 Primary Insurance. Contractor's insurance shall be, or be endorsed to indicate, its primary, noncontributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured. Such coverage shall be at least as broad as ISO CG 20 01 04 13.

7.2.6 Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for six (6) years past completion and acceptance of the services.

Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the six-year period.

7.2.7 Waiver. All policies, except for Professional Liability, and Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.

7.2.8 Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

7.2.9 Automatic Escalation. The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Section 537.610 RSMo. applicable to political subdivisions, pursuant to Section 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity. The statutory waiver of sovereign immunity for 2021 is \$2,640,868 for all claims arising out of a single accident or occurrence.

7.2.10. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Contractor shall either cover all sub-contractors in the Contractor's liability insurance policy or execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

7.2.11. Notice of Claim. The Contractor shall upon receipt of notice of any claim in connection with this Agreement promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall also promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate(s) of insurance in an amount such that the policy aggregate becomes less than the current statutory waiver of sovereign immunity regardless of whether such impairment is a result of this Agreement. A breach of this provision is a material breach of this Agreement.

7.2.12 Evidence of Insurance. Prior to commencing any work or services under this Agreement, Contractor will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive

or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, Contractor shall promptly forward renewal certificates and declaration page(s) to the City . All certificates of insurance and declarations required by this Agreement shall be identified by referencing number and title of this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- (1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
  - (a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.
  - (b) Auto Liability – Under ISO Form CA 20 48 or equivalent.
  - (c) Excess Liability – Follow Form to underlying insurance.
- (2) Contractor’s insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
- (3) All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.
- (4) ACORD certificate of insurance form 25 (2014/01) is preferred.

All Certificates of Insurance shall name the City of Lee’s Summit as the certificate holder and send the certificate and any endorsements to:

City of Lee's Summit  
Solid Waste Division  
1971 SE Hamblen Rd.  
Lee's Summit, MO 64082

#### 7.2.13 Required Insurance Coverage for Term of Agreement.

A. Commercial General Liability. Contractor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$3,000,000 for each occurrence, \$3,000,000 Products and Completed Operations Annual Aggregate and a \$3,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97 and CG 20 37 07 04, or their equivalents. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a limit of \$3,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof and contain, or be endorsed to contain Transportation Pollution Liability insurance covering materials to be transported by Contractor pursuant to this Agreement and such coverage shall be at least as broad as policy form CA 99 48 03 06. This coverage may also be provided on the Contractors Pollution Liability policy. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Contract is the subject of any professional services or work, or if the Contractor engages in any professional services or work adjunct or residual to performing the work under this Contract, the Contractor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Contractor, or anyone employed by the Contractor, or anyone for whose negligent acts, mistakes, errors and omissions the Contractor is legally liable, with an unimpaired liability insurance limit of at least \$3,000,000 each claim and \$3,000,000 annual aggregate. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

D. Workers' Compensation Insurance. Unless prohibited by law, Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

E. Contractors Pollution Liability. Contractor shall maintain pollution liability and errors and omissions liability applicable to the work being performed, with a limit no less than \$2,000,000 per claim or occurrence and \$2,000,000 aggregate per policy. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

F. Umbrella Insurance. Contractor shall carry and maintain Umbrella/Excess Liability insurance with an unimpaired limited of not less than \$3,000,000 per occurrence combined limit bodily injury and property damage, and applies in excess of the insurance policies required in this Agreement.

## 7.2.13 Additional Insurance Required During Construction of Processing Facility and Improvements to Structures and Land of City of Lee's Summit

### 7.2.13.A Builders Risk



With respect to construction work under this Agreement, Contractor shall maintain “All Risk” Course of Construction insurance as follows:

Insured property shall include: (1) Real property in Course of Construction; (2) building materials and supplies intended to be in or on the completed buildings or structures at the construction sites, located at the sites, in storage or in transit, and whether or not owned or paid for by City or Contractor; (3) fixtures and machinery intended to be in or on the completed building or structures; (4) scaffolding, cribbing, fencing, forms and temporary trailers, while located on the construction sites, in storage or in transit.

The limit shall be the full value of the completed construction.

The City and subcontractors of all tiers shall be additional insureds.

Insured perils: All Risks of Direct Physical Damage or Loss, including flood, except as excluded.

Contractor shall be responsible for payment of all deductibles.

Exclusions may include, but are not limited to:

- a. Loss due to wear and tear, moths, vermin, termites, insects, latent defects, gradual deterioration, wet or dry rot, rust, corrosion, erosion or normal settling, shrinkage and/or expansion of buildings or foundations.
- b. Loss or damage due to contaminants and/or pollutants. However, fire losses arising directly or indirectly from pollutants or contaminants are covered.
- c. Loss of use or occupancy or consequential loss;
- d. Liquidated damages and/or penalties for delay or detention in connection with guarantees of performance or efficiency.
- e. Loss or damage caused by or resulting from infidelity or dishonesty on the part of any insured or the employees or agents of any insured.
- f. Inventory shortage or unexplained disappearance.

7.2.13.B. Property insurance or any other insurance required as a part of the Lease or financing mechanism such as a mortgage or personal loan for Contractor to perform shall be maintained and proof of insurance shall be provided to the City in the same manner as required in the Lease or financing mechanisms.

7.2.14 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days’ prior written notice to the City.

7.2.15 Material Breach. Failure at any time to maintain insurance as required by this Agreement shall be deemed a material breach and if not cured within fifteen (15) days may result in the City declaring the Contractor’s rights terminated herein or such other order as the City deems acceptable to protecting its best interests, including, but not limited to procuring insurance for itself and seeking complete and full reimbursement by Contractor either through the Security Letter of Credit to other legal means available to it.

**7.3 Corporate Guaranty.** As a condition precedent to the effectiveness of this Agreement at the time of execution or any time thereafter, or for any approved assignment or transfer of rights to become effective, if a parent company or other company exists or is created that holds more than a 15% interest in Contractor, an assignee or transferee, that parent company shall duly authorize, execute and deliver to the City a corporate guaranty on a form and in a manner acceptable to City. In no event shall this paragraph be construed as a waiver of City’s right to approve or disapprove

of any assignment or transfer of rights or duties under this Agreement to any other entity by Contractor regardless of form.

#### **7.4 Performance Bond**

A. Prior to commencing work under this Agreement, Contractor shall obtain and provide a performance bond issued by a to the City to secure performance of the services under this Agreement, and the bond, or such replacement bond as deemed acceptable to the City, shall remain valid and in effect during the duration of the Agreement. The performance bond shall be executed on a form acceptable to the City in a manner and by a surety company duly authorized to issue performance bonds in Missouri and eligible to provide bonding for federal projects and satisfactory to the City Attorney. The City and Contractor agree the amount of the performance bond is \$1,100,000 which is the approximate estimated equivalent to six months of gross business revenue for Contractor in the early stages of performance of this Agreement.

B. After the commencement of the operations of the Processing Facility itself, and Contractor provides acceptance and processing services for two (2) years, Contractor may request that the amount of the performance bond be adjusted to an amount equivalent to six months of gross revenue. City will consider such a request in good faith, taking into account whether Contractor has performed to the satisfaction of City, but has no obligation to agree to an adjustment reduction in the bond amount. The principal amount of the bond may not be reduced below One Million Dollars (\$1,000,000.00).

C. After the commencement of the Processing Phase and Contractor provides processing services for two (2) years, City may periodically require an adjustment to the amount of the performance bond to reflect six months of gross revenue from the operations of the processing facility and activity on the premises covered in the Lease. Such adjustment in the performance bond amount shall be provided within thirty (30) days of such requirement being served on Contractor in the same manner as noticed is to be provided under this Agreement.

#### **7.5. Assumed Liabilities**

Contractor presently operates a number of activities and services on the Leased premises under a contract with the City to provide public disposal and environmental services. Contractor assumes and retains any and all liabilities accepted, created, or for which Contractor would be liable under such public disposal services contract, Agreement #2019-032 with City, regardless of whether known or unknown at the time of the execution of this Agreement. In no event shall this Agreement be construed as a waiver of any rights City has under City Agreement #2019-032.

### **ARTICLE VIII. INDEMNIFICATION**

**8.1. No Indemnification by City.** The City, or any of its agents, agencies, employees or officers elected or appointed, shall not hold harmless or indemnify Contractor for any liability whatsoever.

**8.2 Indemnification by Contractor.** To the extent caused by an act or omission of Contractor, employees, or those working on behalf of Contractor, Contractor agrees to indemnify, release, defend, and forever hold harmless the City, its officers, agents, employees and elected officials, each in their official and individual capacities (collectively "Indemnitees"), for, from and against any and all claims, demands, damages, losses, fines, judgments, or liabilities, including costs,

expenses, and attorneys' fees (collectively "Claims") to which Indemnitees may become subject, under any theory of liability whatsoever, incurred in the defense of such Claims, or incurred in the establishment of the right to indemnity hereunder, caused in whole or in part by Contractor's performance or non-performance under this Agreement. The obligations under this indemnification provision shall also apply to any and all any intentional, reckless, or negligent acts, mistakes, directives, errors, or omissions of Contractor's agents, directors, officers, employees, volunteers, contractors, whether employed directly or indirectly by Contractor, and any other person for which Contractor may be legally liable.

**8.3 Survival.** This Article VIII shall survive the termination or expiration of this Agreement and the Lease.

**8.4 Intent.** The foregoing indemnities are intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 USC Section 9607(e), and any other Environmental Laws, to the extent caused by an act or omission of Contractor, employees, or those working on behalf of Contractor to defend, insure, protect, hold harmless and indemnify the City and any employee, agent, official or officer elected or appointed from liability and Loss. This requirement of indemnification shall not be construed and is not intended to be a waiver of any defense including but not limited to sovereign immunity available to the City, its employees, officers, agents and officials, nor is this indemnification intended to be an exclusive remedy or diminish any rights the City may otherwise have under Applicable Law.

## **ARTICLE IX BREACH, DEFAULT AND REMEDIES**

### **Section 9.1 Contractor Default**

Each of the following shall constitute an event of default by Contractor ("Contractor Default"), subject to the applicable cure periods in this Agreement and Lease:

9.1.1 Contractor fails to meet all performance standards and perform all obligations set out in Articles IV or V of this Agreement for a period of seventy-two hours in any consecutive five-day period, but only to the extent such failure is caused by an act or omission of Contractor.

9.1.2 Contractor fails to make payments on any financial obligations related to the financing of any improvements or construction of any facilities to City's land and structures for a period of sixty (60) days or has failed to act to avoid any enforcement of rights of any lender or third party related to such financing.

9.1.3 Contractor fails, refuses, ceases, or is unable to accept, process and remove from site Acceptable Material or Residual Materials as required under this Agreement for a period of five (5) consecutive calendar days or more or for a total of fourteen (14) days during any consecutive 3-month period, for any reason within Contractor's reasonable control and to the extent such failure, refusal, cessation, or inability as referenced herein is caused by an act or omission of Contractor. Maintaining inventory of items such as compost on site for delivery to an end market shall not be construed as a default provided Contractor is continuously making effort to market or deliver such inventory items.

9.1.4 Contractor is adjudged bankrupt, becomes insolvent, unable, or unwilling to pay its debts, or upon entry of an order for relief in favor of Contractor in a bankruptcy proceeding.

9.1.5 Contractor files a voluntary petition for relief under any bankruptcy, insolvency or similar law, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of insolvency.

9.1.6 An involuntary petition is brought against Contractor under any bankruptcy, insolvency or similar law which remains undismissed or unstayed for ninety (90) days.

9.1.7 Contractor fails to provide or maintain in full force and effect the insurance coverages and policies required under this Agreement provided such coverages and policies can be obtained on commercially reasonable terms.

9.1.8 Contractor fails to maintain the required performance bond or furnish a replacement bond or a continuation certificate of the existing bond not less than ninety (90) days before expiration of the performance bond and does not cure the same within the time period provided in Section 9.2.

9.1.9 Breach, default, or termination of Contractor's lease with the City for the City's land and buildings subject to all applicable notice and cure periods under the lease.

9.1.10 Contractor violates any orders or filings of any regulatory body having authority over Contractor or City relative to this Agreement and such violations have not been cured within the time period provided in Section 9.2, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred.

9.1.11 Contractor has been found by a court or administrative body of proper jurisdiction to be in violation of Applicable Laws directly related to the performance of this Agreement, provided that Contractor may contest any such allegation or finding by appropriate proceedings conducted in good faith, in which case, no breach or default of this Agreement shall be deemed to have occurred.

9.1.12 A report submitted by Contractor under this Agreement proves to contain a material misstatement of fact, omission, or other inaccuracy and is an attempt to practice fraud or deceit upon the City and such misstatement of fact, omission, or other inaccuracy is not corrected within the time period provided in Section 9.2 or the City is subjected to regulatory oversight or notice of violation as a result of such material misstatement of fact, omission, or other inaccuracy.

9.1.13 Contractor is found guilty of felonious criminal activity related directly to performance of this Agreement.

9.1.14 Contractor fails to pay its federal, state or local taxes of any kind related to the performance of this Agreement.

9.1.15 Contractor fails to comply with any Applicable Law or conditions of any permit held by the City related to the performance of this Agreement.

9.1.16 Contractor is adjudged by a court of competent jurisdiction to have discriminated against any person in the performance of this Agreement on account of that person's race, religion, ethnicity, gender or nationality.

9.1.17 Contractor commits any Tenant Property Damage on City's land, structures or facilities, or fails to pay any utility billings related to Contractor's operations.

9.1.18 Contractor permits a material nuisance of any kind to be present or remain on the leased premises.

9.1.19 Contractor fails to comply with any laws, regulation or specifically zoning restrictions or Code related to his performance such as a Special Use Permit.

9.1.20 Contractor fails to make the leased premises and/or facilities available to the City during any time of declared emergency, disaster, or state of War as specified in this Agreement.

9.1.21 Contractor fails to allow entry and inspection by City of the leased premises as required in the Lease or in this Agreement.

9.1.22 Contractor fails to comply or perform any required action in Articles II, III, IV and VI of this of this Agreement, including but not limited to deadlines, construction, repair and maintenance of facilities and improvements to land, and services to be provided.

9.1.23 Contractor assigns or pledges the rights and obligations under this Agreement without the prior written consent of the City Council.

9.1.24 Contractor utilizes subcontractors to perform its obligations hereunder other than the construction, maintenance, replacement and repair of improvements and facilities without the prior written consent of the City Manager and except as permitted under Sections 5.2 and 11.26.

9.1.25 Contractor fails to pay any monies due to City within 90 (ninety) days of written request. If the Contractor brings or causes to bring a legal action within 90 (ninety) days to determine the validity of a monetary obligation payment by Contractor to the City, as demanded by the City, said obligation to pay as referenced in the Lease and Agreement shall be stayed until the appropriate authority renders a decision or the City and Contractor resolve their dispute.

9.1.26 Contractor is found by a State or federal agency or tribunal in a final decision not subject to appeal to have discriminated against person(s) because of age, race color, handicap,

sex, national origin or religious creed, or to have violated the Anti-Discrimination Against Israel Act.

9.1.27 Contractor breaches the Lease.

## **9.2 Notice and Cure Periods**

9.2.1 Contractor shall be given ten (10) days from written notification by City to commence to cure any default which, in the City Manager's reasonable opinion, creates an actual and material public health or safety threat as determined based on applicable law.

9.2.2 Contractor shall be given sixty (60) days from written notification by the City to cure any default arising under Subsection 9.1.1., if such cure cannot reasonably be completed within sixty (60) days, so long as Contractor is diligently pursuing the cure, and as long as is reasonably necessary to cure the default provided it is of such a nature that it is capable of being cured, and does not result in any notice of violation or penalties to City from any entity.

9.2.3 Contractor shall be given thirty (30) days from written notification by the City to cure any default arising under Subsections 9.1.2 through 9.1.27 or, if such cure cannot reasonably be completed within thirty (30) days, so long as Contractor is diligently pursuing the cure, and as long as is reasonably necessary to cure the default provided it is of such a nature that it is capable of being cured, and does not result in any notice of violation or penalties to City from any entity.

9.2.4 Except for a default under Subsections 9.1.1, 9.1.2, or 9.1.13 the Parties agree that if the nature of a default by Contractor is such that it will reasonably require more than the cure period provided, Contractor shall not be in default so long as it promptly commences the cure and diligently proceeds to completion of the cure within ninety (90) days after notice or such other period agreed upon by the Parties in writing.

## **Section 9.3 City's Remedies in the Event of Contractor Default**

On the occurrence of a Contractor Default, subject to all applicable notice and cure periods, City will have the right to any one or more of the remedies described in this Article, in addition to any remedies now or later available to City at law or in equity.

9.3.1 Specific Performance and Injunctive Relief. By virtue of the nature of this Agreement, the urgency of timely, continuous, and high-quality service; the lead time required to effect alternative service; the involvement any of the City's MDNR Permits; the remedy of damages for a breach hereof by Contractor may be inadequate, and the City shall be entitled to injunctive relief or such other equitable or declaratory relief, including, but not limited to, specific performance.

9.3.2 Termination. In the event of a Contractor Default, and subject to the right of Contractor to cure, if not cured within the time provided for in this Agreement, the City may, at its option, terminate this Agreement and/or hold a hearing to determine whether this Agreement should

be terminated. Contractor shall be provided notice of this hearing and be permitted to reasonably participate in such a hearing as it deems necessary to defend any legal or equitable position it may have. Such a hearing shall be administered by the City Manager, who may appoint an uninterested hearing officer to hear evidence and render written findings, conclusions and recommendations to the City Manager. If the City Manager decides to terminate this Agreement, the City shall serve sixty (60) calendar days written notice of its intention to terminate upon Contractor. In the event City exercises its right to terminate this Agreement, the City may, at its option, upon such termination, either directly undertake performance of the services or arrange with other persons or entities to perform the services with or without a written agreement; provided, however, that neither the City nor any other persons or entities shall be permitted to use equipment owned by Contractor. This right of termination is in addition to any other rights of the City upon a Contractor Default including failure of Contractor to perform its obligations under this Agreement.

9.3.3 Suspension. The City may suspend the Agreement and/or the Parties' performance of their respective obligations if Contractor fails to cure a Contractor Default in the time frame specified in Section 9.2 Notice and Cure Periods until such time as Contractor can cure Contractor Default and/or resume services.

9.3.4 City's Right to Cure, Perform Services and Contract with Others for Services.

If this Agreement is suspended or terminated due to a Contractor Default or in the event Contractor fails, refuses, or is unable the services set out in Section 5.2 of this Agreement and does not cure such occurrence within the cure period provided after notice from the City, the City may (but will not be obligated to) perform the services, or engage or contract with a third party to do so, provided however, that neither the City nor any other persons or entities shall be permitted to use equipment owned by Contractor. If such expenses exceed the amounts which would have been payable by Contractor under this Agreement or the Lease, if either had been fully performed by Contractor, then Contractor shall pay the amount of such additional expenses to the City. Contractor shall, upon demand, reimburse City for all costs thereof, including any payments to a third party for performance of the services, with interest after thirty (30) days at prime rate (as established by the Bank of America "reference rate") plus two percent (2%) but not in excess of the maximum interest rate allowed by law. If Contractor fails to make such reimbursement, City may utilize whatever other security is available to it including bonds and whatever additional collection remedies are available to the City under law.

9.3.5 Performance Bond. The City may pursue action on the Performance Bond and against Contractor's surety for failure to perform.

9.3.6 Extension of Time to Cure. The City may, at its sole option, extend the time for Contractor to cure a Contractor Default beyond the time provided for in this Agreement. Any such extension must be in writing and approved by the City Manager or City Council.

9.3.7 Waiver of Default. The City, in its sole discretion, may waive any Contractor Default or may waive Contractor's requirement to cure a Contractor Default if the City determines that

such waiver would be in the best interest of the City. The City's waiver of a Contractor Default is not a waiver of future Contractor Default.

9.3.8 Dispute Resolution Process. In the event of a Contractor Default, the City may use mediation to attempt to negotiate a mutually agreeable resolution to the claim of Default. The Contractor shall cooperate in such mediation effort. The parties shall split the costs equally of mediation. Any mediation shall take place in Jackson County, Missouri. Both parties must agree to the mediator used. No party may file a lawsuit unless exigent circumstances exist without first utilizing mediation.

9.3.9 Damages. Except as provided herein, the City may, at its option, pursue or otherwise take actions, including legal actions of whatever nature, to recover damages or other relief from Contractor resulting from a Contractor Default. The prevailing Party shall be entitled to from the non-prevailing party, the respective attorney fees, costs and expenses incurred in such legal actions. The City may offset such damages against any security available to it and/or take other collection efforts as allowed by law to collect the damages.

#### **Section 9.4 City Default and Remedies**

9.4.1 Each of the following shall constitute an event of default by the City (“City Default”), subject to any applicable cure period available to the City under the express terms of this Agreement or Lease:

9.4.1.1 The City requests a service of Contractor, and fails to pay any undisputed amount owed to Contractor when and as due and fails to pay such amount within thirty (30) days after receiving written notice from Contractor that payment is overdue.

9.4.1.2 The City fails to maintain any of its permits, including, but not limited to, MDNR permits, necessary for Contractor’s operations under this Agreement.

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

9.4.2 In the event of a City Default other than under subsection 9.4.1.2 above, Contractor shall continue to perform all of its obligations hereunder until a court of competent jurisdiction has issued a final judgment declaring that City is in Default. If City fails to cure any default as provided in subsections 9.4.1.2, Contractor may suspend its performance hereunder.

9.4.3 By virtue of the nature of this Agreement, the remedy of damages for a breach hereof by City may be inadequate, and Contractor shall be entitled to injunctive relief, including, but not limited to, specific performance, provided such specific performance will not involve the violation of any Applicable Law, City Code provisions, bonding capacity by the City, or notices of violations.



9.4.4. Dispute Resolution. In the event of a City Default, the Contractor may use mediation to attempt to negotiate a mutually agreeable resolution to the claim of Default. The City shall cooperate in such mediation effort. The parties shall split the costs equally of mediation. Any mediation shall take place in Jackson County, Missouri. Both parties must agree to the mediator used.

9.4.5 Damages. Except as provided herein, the Contractor may, at its option, pursue or otherwise take actions, including legal actions of whatever nature, to recover damages or other relief from City resulting from a City Default. The prevailing Party shall be entitled to from the non-prevailing party, the respective attorney fees, costs and expenses incurred in such legal actions.

### **Section 9.5 Remedies Cumulative and Not Exclusive**

All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by a Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any agreement between the Parties or otherwise.

### **Section 9.6 No Waiver**

Absent a written waiver, no action, omission, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of its rights with regard to any existing or subsequent default or breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver thereof. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

### **Section 9.7 Force Majeure**

9.7.1 Except as provided in this *Section*, neither Party shall be deemed to be in default or otherwise responsible for any delays or failures in performance due to acts of God, acts of war, terrorism or civil disturbance, insurrection, rebellions, sabotage, acts of a public enemy, epidemic, quarantine restrictions, pandemic, endemic, governmental action or inaction, fire, storm, flood, earthquake, labor shortage, labor disputes or strike, unavailability of power, transportation embargo, physical or economic disruption of product markets, or other causes beyond the party's reasonable control. An act of Force Majeure shall be a temporary impossibility to perform and suspends the Party's duty to perform while the impossibility or impracticability exists but does not discharge its duty to prevent it from arising unless its performance after the cessation of the impossibility would be materially more burdensome than if there had been no impossibility.

9.7.2 Any excuse or suspension of performance by a Party pursuant to Force Majeure shall be only to the extent, and for a period of no longer duration than, required by the nature of the event, and the party claiming excuse from obligation shall use its best efforts in an expeditious manner to remedy its inability to perform, and mitigate damages that may occur as result of the event.

9.7.3. The Party claiming excuse shall deliver to the other Party a written notice of intent to claim excuse from performance of its obligations under this Agreement, whether partial or complete, by reason of an event of Force Majeure. Notice required by this Section shall be given promptly in light of the circumstances. Such notice shall describe in detail the event of Force Majeure claimed, the services impacted by the claimed event of Force Majeure, the expected length of time that the Party expects to be prevented from performing, the steps which the party intends to take to restore its ability to perform, and such other information as the other Party reasonably requests.

9.7.4 The partial or complete interruption or discontinuance of Contractor's services caused by an event of Force Majeure shall not constitute an event of default under this Agreement. Notwithstanding the foregoing, in the event of non-performance excused by Force Majeure, the City will have the right to perform and complete, by agreement or otherwise, the services herein or such part thereof as it may deem necessary and to contract with others to procure labor, equipment, and materials and solely incur all other expenses necessary for completion of the services; provided, however, that it may not use Contractor's equipment to provide such services.

## **Section 9.8 Provisions Surviving Termination**

In addition to specific provisions of this Agreement that state they are to survive the termination of this Agreement, it is expressly understood and agreed that the provisions Sections 2.3 – Contracting Obligations, Articles VII and VIII – Risk Allocation and Indemnification, Article X, Representations and Warranties by Contractor, and Representations and Warranties by City shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either Party from any obligation or liability to the other Party, including any payment obligation that has already accrued and Contractor's obligation to deliver services or provide other performance requirements due as of the date of termination of the Agreement.

## **ARTICLE 10. REPRESENTATIONS AND WARRANTIES**

### **10.1 Representations and Warranties of Contractor**

Contractor, by acceptance of this Agreement, hereby makes the following representations and warranties for the benefit of the City as of the Effective Date, each of which shall be deemed remade as of the Effective Date, unless Contractor specifies in writing otherwise, and shall be updated if changed during the course and term of this Agreement within thirty (30) days of the occurrence causing the change or notice to Contractor that a change will or has been made:

#### **A. Corporate Status**

Contractor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri. Contractor is qualified to transact business in the State of Missouri and has the power to own and lease its properties and to carry on its business as now owned and operated and as required by this Agreement. Contractor understands and acknowledges that failure to maintain this corporate status in good standing with the State of Missouri is a breach of this Agreement.

B. Corporate Authorization and Binding Obligation

Contractor has the authority to enter into and perform its obligations under this Agreement. The officers or members of Contractor have taken all actions required by law, its articles of incorporation, bylaws, or otherwise, to authorize the execution of this Agreement. The person signing this Agreement on behalf of Contractor has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of Contractor to comply with each of the provisions of this Agreement, except as such enforceability may be limited by Applicable Laws of general application affecting the rights of contracting parties, bankruptcy, insolvency or other similar Applicable Laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles.

C. Agreement Will Not Cause Breach

To the best of Contractor's actual knowledge, neither the execution and delivery by Contractor of this Agreement, nor the performance of Contractor of its obligations hereunder:

1. Conflicts with, violates or will result in a violation of any existing Applicable Law; or
2. Conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing contract or instrument to which Contractor is a party, or by which Contractor or any of Contractor's properties or assets is bound; or
3. Will result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the properties or assets of Contractor which will interfere materially with Contractor's performance hereunder.

D. No Litigation

To the best of Contractor's actual knowledge, after reasonable investigation, there is no pending or threatened, Action, suit, proceeding or investigation, at law or in equity, before or by any court or Governmental Authority, commission, board, agency or instrumentality decided, against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of Contractor or any surety guaranteeing Contractor's performance under this Agreement, which has not been waived by City in writing.

E. No Adverse Judicial Decisions

To the best of Contractor's actual knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Agreement or subjects this Agreement to legal challenge.

F. Ability to Perform

Contractor possesses the business, professional, and technical capabilities to operate the Processing Facility and all activities and services listed in this Agreement as its responsibility to perform. Contractor further possesses or knows of no impediment to it obtaining the permits and Regulatory Approvals to perform this Agreement, and Contractor possesses the equipment, capacity, financial and employee resources required to perform this Agreement in toto. In addition, Contractor states that neither it or any of its subcontractor(s), to the best of Contractor's actual knowledge, is currently in violation of the Anti-Discrimination Against Israel Act, Section 34.600, RSMo, and shall comply with said Act for the duration of this Agreement.

G. Contractor's Investigation

Contractor affirmatively states that it has made an independent (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder and has taken these matters into consideration in its agreement to provide these services in exchange for the use of the Premises, the City's provided equipment and structures if any, and opportunities to engage in the services under the terms of this Agreement and the Lease.

H. Conflict of Interest

Contractor warrants and represents to the best of Contractor's actual knowledge no member of the City Council or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby.

I. Representatives of the Parties

Contractor has designated and submitted to the City, in writing, the name, title and contact information of a responsible officer who shall serve as the representative of Contractor and who shall have authority in all daily operational matters related to the Agreement. The City may rely upon action taken by such designated representative as action of Contractor unless for actions not taken within the scope of the Agreement. Unless otherwise specified in this Agreement, any action authorized or required by the City may be taken by the City Council or by an official or agent designated by the Council or City Code.

J. Financial Ability, Disclosures, No Material Changes

Contractor has sufficient financial resources to perform all aspects of its obligations hereunder. Contractor shall provide to the City, upon request, audited or accountant prepared financial statements which present fairly, in accordance with generally accepted accounting principles, the financial resources of Contractor. There has been no material adverse change in Contractor's or Contractor's parent company's financial circumstances since the date of the most recent financial statements.

K. Contractor's Statements

Contractor's proposal and any other supplementary information submitted to the City that the City has relied on in negotiations and entering into this Agreement, do not, to

the best of Contractor's actual knowledge and : (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

L. Non-discrimination

L.1 Contractor and its subcontractors shall not discrimination against any person, directly or indirectly, in any way because of age, race, color, handicap, sex, national origin or religious creed.

L.2 Contractor and its subcontractors, to the best of Contractor's actual knowledge, are not now in violation of, and shall comply during the duration of this Agreement, with the "Anti-Discrimination Against Israel Act".

M. E-Verify

Contractor is presently in compliance and will continuously comply with Section 285.530, RSMo, as amended from time to time, and has and will continue to provide to the Contract Administrator a sworn affidavit affirming it does not knowingly employ any person who is an unauthorized alien and has and will continue to provide documentation affirming its enrollment and participation in a federal work authorization program with respect to the employees working for Contractor and its subcontractors in performance of any part of this Agreement. Acceptable documentation will consist of a signed and notarized Work Authorization Affidavit and the electronic signature page from the E-Verify program.

N. Debarment and Suspension Status:

Contractor certifies that

(i.) it is not currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from transactions by any government agency, nor is Contractor an agent for any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transaction by any governmental agency; and

(ii) it has not within a three year period preceding this Agreement been convicted of or had a civil suit judgment rendered against it for commission of fraud or criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property; and

(iii) it is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses listed above; and

(iv) has not, within the three-year period preceding this Agreement had any governmental transactions (federal, state or local) terminated for cause.

O. Debts owed to City

Contractor certifies that it is not and shall not become overdue or in default to the City subject to all applicable contractual, notice and cure periods for any contract, debt, or any other obligation to the City including real and personal property taxes.

P. Business License

Contractor shall at all times during the term of this Agreement have in place licenses imposed by law and ordinance and pay all charges and fees, which include a current City of Lee's Summit Business License.

10.2 City Representations and Warranties

A. Organization and Existence

The City is a duly organized and existing Constitutional Charter City which is a political subdivision and municipal corporate entity under the State of Missouri Constitution, the laws of the State of Missouri and City adopted Charter. It is entitled to act and exercise all powers, governmental and proprietary, necessary to enter into this Agreement and perform the actions, responsibilities and duties required of it.

B. Execution, Delivery and Enforceability

City has full power to enter into, and to carry out its obligations under, this Agreement. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary action required on the part of City. This Agreement constitutes the valid and legally binding obligations of City, enforceable against City in accordance with its and their terms, except as such enforceability may be limited by Applicable Laws of general application affecting the rights of contracting parties (including those applying to enforcement against public entities), bankruptcy, insolvency or other similar Applicable Laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles, unless applicable law or constitutional prohibition applies.

C. No Violation

To the best of City's knowledge and after investigation, the execution and delivery of this Agreement, nor the compliance by City with any provision hereof, nor the consummation of the transactions contemplated herein by City shall: (i) violate or conflict with or result in a breach, of any Applicable Law applicable to City; or (ii) conflicts with violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other Governmental Authority, or any agreement or instrument to which city is a party or by which City or any of its property or assets are bound that are included within the Premises and Lease, or constitutes a default thereunder.

D. No Litigation

To the best of City's knowledge, after reasonable investigation, there is no Claim, at law or in equity, before or by any court or Governmental Authority, Third Party, commission, board, agency or instrumentality decided, pending or threatened against

City wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by City of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of City with the exception of obtaining regulatory approvals for the operations contemplated hereunder.

**E. No Adverse Judicial Decisions**

To the best of City's knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Agreement or subject this Agreement to legal challenge.

**F. No Consents**

No consent or approval of, filing with or notice to any Entity is required to be obtained or made by City in connection with City's execution, delivery and performance of this Agreement, or the consummation of the transactions contemplated hereby, which, if not obtained or made, would prevent City from performing its obligations hereunder or thereunder except those specifically mentioned herein such as governmental regulatory approvals.

**G. Appropriations Clause**

To the extent any performance of any obligation by City is reliant on an expenditure of City funds, it is subject to annual appropriation by Council. Failure to appropriate funds shall not be deemed a breach of this Agreement or the Lease.

## ARTICLE XI. GENERAL PROVISIONS

### **11.1 Compliance with Applicable Law**

Contractor shall give all notices and comply with all Applicable Laws whether defined herein or not, including but not limited to statutes, federal acts, county or city ordinances, rules and regulations bearing on or impacting the services, the performance of any duty or responsibility, including but not limited to hours of operation, waste that is acceptable, construction, grading, demolition, building modifications, repairs and maintenance, and other activities.

### **11.2 Rights to Terminate, Without Cause, For Cause**

A breach of this Agreement or the Lease as set out specifically in this Agreement and the Lease by either party, shall constitute cause for City or Contractor to terminate this Agreement and the Lease if the breach is not cured as provided in Article IX or specifically set out elsewhere within this Agreement. Either Party may terminate this Agreement without cause upon providing 180 days' notice to the other party in writing as provided for in this Agreement. Any compensation or duty due either Party resulting from any termination, whether for cause or without cause, are those contained and provided for specifically within this Agreement and the Lease.

### **11.3 Assignment by Contractor or City**

- A. Unless provided for herein, Contractor shall not assign, transfer or, subcontract all or any portion of any right or obligation under this Agreement without prior written consent from the City Council. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, by the City, which release, in the case of operational subcontracts will not be unreasonably withheld, conditioned or delayed. However, if the Lease allows for assignment, transfer or subcontracting all or any portion of its rights and duties, such assignment of this Agreement by the Contractor may only be made to the entity to which the Lease is assigned, transferred or subcontracted out to.
  
- B. City may assign, transfer or, subcontract all or any portion of any right or obligation under this Agreement without prior written consent of Contractor. Should City do so, Contractor may terminate this Agreement and such termination shall be deemed a breach.

**11.4 Notices; Party Representatives**

**A. Notices**

All notices and submissions required under this Agreement shall be delivered to the respective Party in the manner described herein to the address stated in this Agreement or such other address as either Party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first-class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (5) five days after mailing first class or certified U.S. mail.

If to Contractor:           Summit Transfer, LLC  
   c/o Rody Taylor  
   1280 SE Century Dr.  
   Lee’s Summit, Missouri 64081

With a Copy to:           Chinnery, Evans & Nail, P.C.  
   c/o Casey G. Crawford  
   ccrawford@chinnery.com

If to City:                    City Manager  
   220 SE Green Street  
   Lee’s Summit MO 64063

With a Copy to:           City Attorney  
   220 SE Green Street  
   Lee’s Summit MO 64063



The City may in its sole discretion agree to other means of notice by action of the Director of Public Works.

**B. Party Representatives**

(i) Authority to act on behalf of the City except where authority is reserved to another through actions of the Council or the City Charter is hereby delegated to the Director of Public Works as defined herein. Except as expressly indicated to the contrary, all references to approval rights or approvals by the City in this Agreement shall require that the City provide written approval of such item by the Director of Public Works or other official or Council.

(ii) Authority to act on behalf of the Contractor is delegated to: Richard “Rody” Taylor. Such person’s statements, representations, actions and commitments shall fully bind Contractor. All oral directions or instructions and notices given by City to such named representative shall bind Contractor as if delivered to Contractor personally.

**11.5 Inspection by The City**

In a non-emergency situation, the City shall have the right to observe and review Contractor’s operations and equipment during normal business hours, and to enter Contractor’s premises for the purposes of such observations and review at any time with 24 hours notification, during normal business hours.

**11.6 Relationship of the Parties**

The Parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Lease and any regulatory approvals required, Contractor shall have the exclusive control over the manner and means of conducting the services performed under this Agreement, and all persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Contractor nor its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers’ compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

**11.7 Governing Law**

This validity, interpretation and effect of this Agreement will be governed and controlled in all respects by the laws of the State of Missouri, without regard to the principles of conflicts of law and except to the extent that certain matters are preempted by federal Law.

### 11.8 **Jurisdiction**

The Parties submit to the jurisdiction of the Circuit Court of Jackson County, State of Missouri or, if original jurisdiction can be established, the United States District Court for the Western District of Missouri, Western Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement.

### 11.9 **Venue**

Venue for all actions arising out of this Agreement or the Lease shall be in the Circuit Court of Jackson County, Independence, Missouri. If the action is one for which original jurisdiction is in a federal court, venue shall only be the Western District Federal Court seated in Kansas City, Missouri. The Parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

### 11.10 **Binding on Successors**

This Agreement shall be binding on and shall inure to the benefit of the Parties to this Agreement and their permitted successors and assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

### 11.11 **Parties in Interest**

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the Parties to it and their representatives, successors and permitted assigns.

### 11.12 **Duty of Contractor Not to Discriminate**

As set out in Section 10.1.L, Contractor as the result of this Agreement and City, state and federal laws, policies and regulations, has an affirmative duty to not discriminate as defined in Section 10.1.L and to require all subcontractors to also not discriminate in like manner throughout the term of this Agreement.

### 11.13 **Acknowledgement**

It is acknowledged that each Party was, or had the opportunity to be represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that an Agreement shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

### 11.14 **Exhibits**

Each Exhibit identified in this Agreement, is attached hereto and incorporated herein and made a part hereof by reference. The Lease shall be **Exhibit A** to this Agreement.

### **11.15 Entire Agreement**

This Agreement, together with the Lease, affixed exhibits, schedules or other documentation, attached to this Agreement constitutes the entire understanding between the City and Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral.

### **11.16 Article and Section Headings**

The article and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

### **11.17 Reference to Days**

All references to days herein are to calendar days, including Saturdays, Sundays and Holidays, except as otherwise specifically provided.

### **11.18 Interpretation**

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting. The documents to be interpreted and which comprise the two contemplated agreements of the Parties, those being this Agreement and the Lease, shall have precedence of applicability and control for purposes of interpretation and in the event of a conflict, in the following order with number one being controlling over all others:

1. The Lease;
2. This Agreement;
3. Exhibits attached to the Lease;
4. Exhibits attached and specifically incorporated into this Agreement;
5. The Request for Qualifications; and
6. The Response to the Request for Qualifications

Any conflicts shall be resolved by applying the terms and intent of the documents in this set order.

### **11.19 Amendment**

This Agreement may only be amended, modified, altered, or changed in writing, signed by both the Contractor and the City following approval by the City Council unless specifically provided elsewhere in this Agreement.

### **11.20 Severability**

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under Applicable Law. However, if any provision of this Agreement or the Lease or the application of any provision to any Party or circumstance will be prohibited by or

invalid under Applicable Law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other Parties and circumstances. However, if either Party believes that the severed provision materially alters its consent to this Agreement, that the provision was material to its execution of this Agreement, and its ability to obtain its bargained for purpose or consideration, it may terminate this Agreement with six months' notice and such termination shall not be deemed a breach. The Lease will govern any payment due Contractor for improvements to the Premises.

#### **11.21 Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

#### **11.22 Attorneys' Fees**

No Party shall be entitled to any attorneys' fees from the other unless specifically provided for herein.

#### **11.23 References to Laws**

All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies which succeed to or assume the functions they are currently performing.

#### **11.24 Actions of City in its Governmental Capacity**

Contractor understands and acknowledges that the City is a Charter City and a municipal corporation of the State of Missouri and as such exercise's sovereign powers. Notwithstanding anything to the contrary contained in this Agreement, Contractor acknowledges and agrees that nothing in this Agreement mandates or requires the City to issue any permit or future permit or to undertake any action that would waive or limit such entities' present or future regulatory or permitting powers or authority and that, except as explicitly indicated, for all purposes under this Agreement, Contractor acknowledges and agrees that its use of the Premises and its listing as the operator under the City's MDNR Permit shall remain subject to the periodic or annual review, as applicable, of other Governmental Authorities.

#### **11.25 Personal Liability**

This Agreement is not intended to create or result in any personal liability for any member or owner of Contractor, unless provided for explicitly, or for any City public official, employee or agent, nor shall the Agreement be construed to create that liability.

#### **11.26 Subcontractors**

Contractor shall not engage any subcontractors for services provided under this Agreement without the prior written consent of the City. Contractor affirmatively states that it will perform at least 80% of the services contemplated herein with its own forces. Excluding composting, mulching and concrete crushing, Contractor will not subcontract out more than 20% of the work to perform services without the express written consent of the Director of Public Works. If more than 50% of the work to be performed for services is to be subcontracted out, the City Council must consent. It is expressly understood that Contractor will use its own contractors and subcontractors to perform grading, construction, design, remodeling, repair and maintenance of the structures on the Premises. It is also expressly understood that Contractor intends to use its own subcontractor or contractors to haul waste from the Premises regardless of destination. These expressly allowed uses of subcontractors and its own contractors shall not count against the limit on subcontracting set out in this Paragraph.

**11.27 Time of the Essence**

Time is of the essence of each term of this Agreement. This Agreement involves the City's ability to obtain MDNR permission to have on the Premises the activities contemplated herein to be carried out by Contractor and the ability to obtain such consent is directly related to the timing of Contractor carrying out its responsibilities under this Agreement. Without limiting the generality of the foregoing, all times provided for in this Agreement for the performance of any act shall be strictly construed.

**11.28 No Impairment of Rights.**

This Agreement does not, and is not intended, to impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties except as specifically set out herein and as permitted by law.

**11.29 Approvals by City.**

Unless specifically provided to the contrary herein, all approvals or consents of the City may be given by the City Manager or his or her designee without the necessity of any action by the City Council. The City Manager, in his/her discretion, may seek the advice, consent or approval of the City Council for any action that requires consent or approval by the City Manager pursuant to this Contract

**ARTICLE XII- EFFECTIVE DATE**

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

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed in their respective names by their duly authorized signatories, all as of the date first above written.

[remainder of this page left intentionally blank]



**SUMMIT TRANSFER, LLC,**  
a Missouri limited liability company

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

STATE OF MISSOURI            )  
  ) ss.  
COUNTY OF JACKSON        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, a notary public, appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that he is the \_\_\_\_\_ of Summit Transfer, LLC, and is authorized to sign documents on behalf of said entity and that said instrument was signed on behalf of said entity by authority of its Articles of Organization and acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in my office the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires: