

Kodiak Island Borough Solid Waste Advisory Board Regular Meeting

Monday, September 19, 2016, 5:15 p.m.

Kodiak Fisheries Research Center

Mission Statement: To assist and advise the Borough Assembly in identifying solutions to solid waste management by collecting and reporting varied viewpoints, sponsoring public outreach, and developing specific projects with a focus on waste reduction, reuse, and recycling.

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1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. APPROVAL OF PREVIOUS MINUTES
a. [7.11.2016 SWAB Draft](#)
5. VISITOR'S COMMENTS
6. DISCUSSION ITEMS/ACTION ITEMS
a. Review Solid Waste Contract and RFP
[RFP - KIB Solid Waste Collection and Recycling Draft 091616](#)
[Contract - KIB Solid Waste Collection and Recycling 091616](#)
7. VISITOR'S COMMENTS
8. BOARD MEMBER'S COMMENTS
9. NEXT MEETING SCHEDULE
10. ADJOURNMENT



**SOLID WASTE ADVISORY BOARD
REGULAR MEETING MINUTES
JULY 11, 2016@ 5:15 PM
Kodiak Fisheries Research Center**

1. Call to Order

Chair Szabo called to order the Regular Meeting of the Solid Waste Advisory Board at 5:17 p.m. on July 11, 2016 at the Kodiak Fisheries Research Center.

2. Roll Call

J. Clay conducted a roll call and a quorum was established. The following members present were Chair Nick Szabo, Jeff Stewart, Steven Neff and Jennifer Culbertson. Nathan Svoboda joined the meeting at 5:25 PM. Scott Arndt was absent.

Also present was Non-Voting Ex-Officio KIB Staff Bob Tucker, Director of Engineering and Facilities, Mike Shrewsbury and Matt O'Connell of Alaska Waste, Bob Gray of USCG Environmental Division and Dennis Symmons of Kodiak Island Borough Assembly.

3. Approval of Agenda

STEWART moved to approve the agenda.

VOICE VOTE ON MOTION CARRIED UNANIMOUSLY.

4. Approval of Minutes

STEWART moved to approve the minutes of June 6, 2016.

VOICE VOTE ON MOTION CARRIED UNANIMOUSLY.

5. Visitor Comments None.

6. DISCUSSION/ACTION ITEMS:

A. Elements of Solid Waste Contract

Bob Tucker presented the board with a revised Solid Waste RFP which Dan Pitzler, the contractor reviewing the RFP, had made changes and recommendations. He asked the board to review and offer their suggestions. Board discussion ensued.

Other topics discussed:

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- Bob tucker updated the Board on the Landfill Scale Shack Project.
- Leachate Treatment Plant Operations
- New Rain Sheet at the Landfill
- New Positions at the Landfill for Scale Shack and Leachate Treatment Plant Operator

7. Visitor Comments:

Mike Shrewsbury – Alaska Waste was in the process of swapping out all the containers at the airport that are not bear resistant.

8. Board Member Comments:

Jeff Stewart – He asked for further information on the bears and dumpsters at the Landfill.

Nathan Svoboda – He inquired about the letters sent to three local grocers regarding their unused food practices. There were no responses.

Steven Neff – Since the incinerator was shut down, he questioned what was being done with biohazard materials and the cost. The Borough was referring public to call a company called Entech out of Anchorage. They send the appropriate container and you mail it back to them.

Bob Gray – Discussed with the board contaminated soil and how the USCG treats it using a dirt burner.

Jennifer Culbertson – Explained to the board the airport situation with bears and dumpsters that need to be bear resistant. The High School students have been making aluminum bear resistant lids to go onto the existing dumpsters. She was looking for funding to continue to buy materials for the students to continue.

Dennis Symmons – The SWAB Advisory Board runs a tight ship. Everyone was very involved and took their position on the board seriously. Loved the fact they asked interesting questions.

9. Meeting Schedule:

The next regular meeting was to be announced.

10. Adjournment

STEWART moved to adjourn meeting.

VOICE VOTE ON MOTION CARRIED UNANIMOUSLY.

The meeting was adjourned at 6:30 PM.

SUBMITTED BY:

Jenny Clay, Secretary
KIB Engineering/Facilities Department

Date: _____

APPROVED BY:

Nick Szabo, Chair
Solid Waste Advisory Board

Date: _____

DRAFT



**KODIAK ISLAND BOROUGH, ALASKA
REQUEST FOR PROPOSALS FOR
SOLID WASTE COLLECTION
AND RECYCLING SERVICES**

August 2016



For More Information Contact:

Kodiak Island Borough
710 Mill Bay Road
Kodiak, AK 99615

Phone: 907-486-9343 (until RFP is released)

By Fax or Email Only after RFP is Released:

907-486-9394 or btucker@kodiakak.us

**KODIAK ISLAND BOROUGH RFP FOR
SOLID WASTE AND RECYCLING
COLLECTION SERVICES
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1.0 General Information

The Kodiak Island Borough (KIB) is seeking a qualified contractor to provide solid waste collection and recycling services after the expiration of the Borough's existing collection contract. The KIB plans to execute a new 7 year service agreement by **August 24, 2017**. In conjunction with the procurement of collection services, the KIB has developed a Solid Waste Management Plan (SWMP). The SWMP details all the system background information of the KIB as well as the strategic approach adopted by the Borough Assembly for managing waste over the next twenty years. **IT IS STRONGLY RECOMMENDED THAT ANY POTENTIAL PROPOSER REVIEW THE SWMP PRIOR TO THE SUBMISSION OF THEIR PROPOSAL.**

The SWMP can be accessed at the Borough's website (www.kodiakak.us). **Proposals will be due on March 8, 2017**. The Request for Proposals (RFP), Draft Agreement, and any Addenda will be posted on the Borough's website. Note that the SWMP calls future collection of recycling; however, the specific details for the recycling program are currently being developed by the Borough. The KIB retains the right to change the scope of services and add regular collection of residential and commercial recycling.

In addition, other background information is posted on the website. If you have any problems reading the files on the website, please email the Borough's Engineering and Facilities Director Robert Tucker at btucker@kodiakak.us or fax her at 907-486-9394 to have a copy forwarded to you in a compatible format for your computer.

Proposers are encouraged to check the website at least weekly from the release of the RFP until the final award of contract(s) by the Borough Assembly. The KIB will post Addenda on the website as they are issued and Borough staff will email all procurement documents to firms that have officially expressed interest in participating in this procurement process. If you have not already officially expressed interest, please email Mr. Tucker at btucker@kodiakak.us to submit the appropriate form to make sure that you are fully involved in this process.

2.0 Scope of Services

The KIB has adopted the following objectives to be included in this RFP, service agreements and/or used as selection criteria (not in priority order):

- Ensure safe and reliable service at a competitive price
- Minimize the KIB's contract administration burden on staff
- Work with the KIB to solve solid waste and recycling problems together

Below is a summary of the scope of services. These services are more fully described in the Draft Agreement in Appendix A. In the event that there is a conflict between the summary below and Appendix A, Appendix A shall take precedence over this summary.

The scope of services include two main types of services: (1) solid waste collection; and (2) recyclables processing and other recycling services. KIB may elect to award one or both of these services.

2.1 Solid Waste Collection Service

Contractor will provide collection service to residential and commercial customers. Roll carts and Dumpsters currently in use will be available to the contractor to use in providing service: contractor will be responsible for providing rollofs, and will be responsible for maintenance and replacement of roll carts, dumpsters, and rollofs throughout the term of this contract. At the end of the contract term, roll carts and dumpsters in services will be retained by KIB.

2.1.1 Residential Roll Cart and Dumpster/Roll Off Service

Contractor will provide roll cart service to every single-family household for solid waste within the roll cart areas, and provide roll off or dumpster service in the areas outside the roll cart areas. Currently, the majority of the containers outside the cart area are 20 cy rollofs, with a few dumpsters in areas with space constraints (see listing in Appendix B). All containers in the bear aware areas shall be bear-resistant. **A map of the bear aware areas is provided in Figure 1.** Businesses and multi-family dwellings that generate small quantities of waste that opt for a cart will also be serviced.

[Insert Figure 1, Bear Aware Areas]

Contractor will ensure that all containers are labeled with message and use instructions approved by the KIB for any new cart user. Basic operating instructions will be hot stamped onto carts. Any new or replacement roll carts provided shall be warranted for 10 years of service.

Currently, roll carts in service are a mix of 32-, 65, and 96 gallon sizes and residents are currently charged different rates for each container size. In your proposal, you will be asked to provide a single monthly rate that would be paid by all residential customers (for weekly service of a roll cart of any size or rolloff/dumpster service) with those rates to go in effect on the day that service commences. At time, residents with roll cart service may request a change in cart size to either a 65- or 96-gallon cart as appropriate for their situation. Thereafter, residents will be allowed to change their cart size at no charge once per year. If residents want to change more frequently, they will be charged a \$20 exchange fee for this service.

Multi-family (apartment) complexes will receive commercial container service from the contractor with one exception. Multi-family complexes with 5 or less units (apartment dwellings) will be eligible for roll cart service; however, complexes with greater than 5 units will be required to obtain container service from the contractor if space for container storage is available.

Garbage will be collected weekly. Routing of collection vehicles should maintain existing route days, however, route days may be changed for some customers if meaningful efficiencies can be achieved. **A map of the existing refuse route days is posted on the Borough’s website.**

2.1.2 Commercial Dumpster (Front Load) Service

The contractor shall collect all garbage set out for disposal by commercial customers in acceptable front load collection containers. The contractor shall provide, when requested, all customers with assistance in determining container needs for garbage (and future recyclables). The contractor shall provide bear resistant dumpsters in designated bear aware areas.

Contractor-provided containers shall be delivered by the contractor to requesting commercial customers within five (5) business days of the customer’s initial request. Receptacles shall be clearly identified by displaying the contractor’s name and telephone number prominently and conspicuously on the container. Receptacles must be clean and serviceable when delivered to the customer.

2.1.3 Roll Off (Drop Box) Service

The contractor shall provide roll off containers to commercial customers, and on-call to residential customers (e.g., cleanup or remodel), in accordance with the service level selected by the customer. The contractor shall provide and maintain roll off containers as required throughout the term of this contract.

Both customer-owned and contractor-owned roll off containers shall be serviced. The contractor is not required to service customer containers that are not compatible with the contractor’s equipment.

The contractor shall maintain a sufficient roll off container inventory to provide delivery of empty containers by the contractor to new and temporary customers within three (3) business days after the customer’s initial request.

The contractor shall provide dispatch service and equipment capable of collecting full roll off containers (and replacing it with an empty roll off if requested) on the same business day if the customer’s initial request is received before 10:00 a.m., and no later than the next business day if the customer’s initial call is received before 4:00 p.m.

2.2 Recyclables Processing and Other Recycling Services

The Kodiak Island Borough (KIB) has adopted aggressive goals for increasing diversion from the waste stream disposed of in the landfill. To achieve these goals, the KIB is seeking a qualified contractor to provide recycling services in order to divert / reduce the volume of recyclable materials disposed of at the KIB Landfill. The contractor will, in cooperation with the KIB, promote and raise awareness along with increasing participation in the voluntary recycling / diversion program by reaching out and educating the Kodiak community.

KIB may elect to continue using its existing provider of recycling processing and other recycling services. If so, it will not execute the recycling processing and other recycling services described in Section 2.2 of this RFP.

2.2.1 Recyclables Processing

Currently, The Borough offers limited recyclables processing and other recycling services through a contract with Threshold Recycling Services, Inc. located on Von Scheele Way in Kodiak. Generally, these are the services that would be provided by the contractor should KIB elect to award these services.

Contractor shall agree to process an average of, a minimum of 650 tons a year, while guaranteeing diversion of this material to an established market or processor. The contractor shall have adequate equipment and site capacity to accommodate fluctuations in this average, especially during the peak seasons, which may require capacity to process and/or store.

Contractor will process, market, and ship recyclable materials off-island. Processing will include, but is not limited to, screening of non-recyclable materials and waste disposed with recyclable materials, baling or packaging materials for shipment, and shipping of materials to markets or high grade processors. The KIB has determined the following list of materials have viable markets and therefore need to be processed by the contractor:

- 1) Corrugated Cardboard
- 2) Mixed paper and Paperboard
- 3) Newspaper
- 4) Plastics (including but not limited to #1 PETE and #2 HDPE, plastic sheeting / film)
- 5) Non-ferrous metals including but not limited to aluminum, aluminum containers
- 6) Bi-metal containers
- 7) Electronic waste

The contractor may also propose expanding the recycling / diversion efforts by collecting / recycling of other waste streams not listed above, such as used cooking oil, used motor oil, fluorescent light tubes, used batteries, and used toner / printer cartridges. Please specify in your proposal if you intend to expand the services provided in the first year.

From 2010 through 2014, the KIB Recycling Processor shipped the following quantities of materials, in tons, off-island for recycling:

Table 2-1

<u>Annual Summary 2011</u>			<u>Annual Summary 2012</u>			<u>Annual Summary 2013</u>			<u>Annual Summary 2014</u>		
	Pounds	Tons									
#1 PETE Plastic	13,039	7	#1 PETE Plastic	18,990	9	#1 PETE Plastic	18,300	9	#1 PETE Plastic	17,534	9
#2 HDPE Plastic	35,346	18	#2 HDPE Plastic	27,054	13	#2 HDPE Plastic	16,968	8	#2 HDPE Plastic	15,703	7
Mixed Paper	316,756	158	Mixed Paper	283,221	142	Mixed Paper	285,309	143	Mixed Paper	287,995	14
Newspaper	61,704	31	Newspaper	60,824	30	Newspaper	70,071	35	Newspaper	21,677	11
Office Paper	108,406	54	Office Paper	118,552	59	Office Paper	170,454	85	Office Paper	142,657	71
Plastic Film	26,214	13	Plastic Film	29,496	15	Plastic Film	27,019	14	Plastic Film	34,736	17
Cardboard	659,741	330	Cardboard	757,214	379	Cardboard	822,654	411	Cardboard	819,994	410
Aluminum	15,720	8	Aluminum	14,381	7	Aluminum	15,659	8	Aluminum	13,939	7
Bi-Metal Cans	16,596	8	Bi-Metal Cans	16,912	8	Bi-Metal Cans	17,422	9	Bi-Metal Cans	16,542	8
Total: 1,333,800 667			Total: 1,326,644 663			Total: 1,443,856 722			Total: 1,415,071 708		

2.2.2 Central Recyclables Processing Facility

The contractor will establish a centralized base of operations where all recyclables collected from the community will be sorted / stored for shipment off-island for recycling. The facility will be operated in compliance with all applicable State and Federal regulations.

2.2.3 Recycling Drop-off Centers

The contractor will provide facilities that are readily accessible by the public to drop off recyclables (Drop-off Centers). With the exception of electronic waste, all materials shall be accepted free of charge. The contractor's proposed fee for electronic waste recycling shall be provided in the rate proposal form included in Appendix D. A minimum of four (4) locations, not including the central processing facility described in Section 2.1 will be provided, located both within and outside the Kodiak urban area. The contractor will be responsible for maintaining / cleaning the drop-off centers. The contractor will regularly inspect the centers; centers must be inspected a minimum of three (3) times per week. One of the centers, located within the urban area, must be staffed by contractor personnel to assist the public five (5) days per week, two (2) of the five days must be Saturday and Sunday (excluding observed Borough holidays); the staffed drop off center must be open to the public a minimum of six (6) hours per day between the hours of 8 am and 8 pm.

Upon one month's notice from KIB, contractor will begin accepting glass at the processing facility. Once full, bins shall be transported to the KIB Landfill and unloaded at a location specified by KIB. The contractor will be compensated for transportation of glass to the landfill at a rate to be negotiated with KIB.

2.2.4 Recyclables Collection Service

The contractor shall provide a fee-based recyclables collection service to business / commercial / residential customers. The contractor will pick up the recyclables at the business / residence as determined by the contractor and customer and deliver the materials to the contractor recycling facility.

The contractor shall provide prices for pickup service in the rate proposal form included in Appendix D.

2.2.5 Community Outreach and Education

The contractor shall provide community outreach / education programs to promote recycling in the community, and educate the public regarding recycling sustainable practices. The contractor shall provide the following services:

- One event per school annually.
- Two community events, annually.
- Website with real time notices of future events, information about available services, and contact information.
- Flyers in all local newspapers at least monthly.
- At least one radio add weekly.
- Make presentations to the Assembly quarterly.

- Donate bins with pickup annually at spring cleanup event.
- Participate in regularly-scheduled Solid Waste Advisory Board meetings.

Contractor shall provide an annual price for providing community outreach and education services in the rate proposal form included in Appendix D.

2.2.6 Recyclables from KIB Landfill

The KIB is planning to process recyclables such as cardboard and electronic waste diverted / removed from the KIB Landfill Baler tipping floor. The contractor will be required to receive the recyclables processed by the KIB Landfill staff. The cardboard will be separated, sorted, and then baled. The electronic waste will be separated, sorted, containerized (placed in either plastic totes or bulk cardboard containers (Gaylord boxes)). The cardboard bales and totes / boxes will be transported weekly, by the contractor, from the KIB Landfill Baler to the contractor central recycling facility. The contractor shall accept cardboard at its processing facility at no cost to KIB. KIB will pay the rate charged for delivery of electronic waste. The contractor will transport the materials from the landfill at no additional charge to the KIB.

2.2.7 Quarterly Quantity Benchmark Submittal and Presentation to the KIB Assembly

A quarterly report, submitted one month following the end of the Calendar Quarter, summarizing the recycling activities will be submitted to the KIB Engineering and Facilities Department. For the purposes of reporting, quarters will be July-September, October-December, January-March, and April-June. As an example, the July-September report will be due the last day of October. The report will include the volume and type of recyclables processed and then shipped off-island, the shipping method, and the destination of the recyclables. The report will also include a summary of the community outreach / education program activities.

The contractor shall present a summary of its quarterly activities to the KIB Assembly at the second monthly meeting the following the end of the Calendar Quarter. For example, presentation of the July-September summary will occur at the second Assembly meeting in October. The summary shall include, but not be limited to the volume of recyclables processed and then shipped off-island, community outreach and education efforts, and overall status.

2.2.8 Future Recycling Options

At present, the KIB and its contractor do not provide regular weekly recycling collection services to either residential or commercial customers: only limited subscription service is provided. It is anticipated that with the adoption of the SWMP, future collection of recyclable materials may be integrated into the services provided by the contracted waste hauler. The SWMP discusses a range of recycling and other waste diversion activities that KIB may seek to implement within the designated contract period beyond those outlined in Section 2.4. Those activities are described in the following sections of the SWMP:

- Section 4.5
- Section 5.1.3
- Section 5.2.1
- Section 5.3

- Section 6.4
- Section 7, Table 20, Scenario C

As part of their response to this RFP, KIB would like proposers to describe any resources, expertise, and background they possess relevant to the recycling and other diversion activities discussed in the SWMP sections noted above. This information should be included as an appendix to the main proposal submitted by prospective service providers. Comments on the recycling and other diversion activities are welcome as well, and may be included in that appendix. Cost estimates for these services are not being requested at this time. The cost of any recycling services requested by KIB will be negotiated with the contractor.

The recycling information will be considered in evaluating the proposer's overall ability to meet the existing and potential solid waste management service requirements of the KIB. As portrayed in the SWMP sections noted above, those services could include but are not limited to, the following:

- Regular collection of commingled recyclables (excluding glass) from residential and commercial customers.
- Separate collection of yard waste.
- Operation of a composting facility / technology.

2.2.9 Payment and Reporting

Payment for recycling will be a monthly flat rate. The contractor will be responsible for monthly invoicing to KIB Engineering/Facilities Department.

Contractor shall provide the KIB with certified scale records indicating the weight of recyclable materials shipped off the island to market or processor with their monthly invoice. Weight records shall be in a format acceptable to the KIB to include a print out of each certified scale entry invoiced. Typical information to be included in an Excel spreadsheet format includes, but is not limited to: material type, weight, shipping date, shipping manifest number, shipping manifest, amount paid or received from market or processor, and source of the recyclable material. Shipping manifest, amount recycled and residual amount disposed of will be used to verify invoiced amounts.

The contractor shall provide documentation that satisfies KIB and will provide easily understandable and reproducible forms of back up information that is accurate and minimizes review time by KIB. The contractor shall provide any additional information to KIB which may be reasonable in support of any payment request. Monthly invoices and backup shall be delivered to KIB no later than the end of the following month and shall be paid within thirty (30) days from the date of the invoice unless KIB notifies the contractor in writing of its reason for not making payment of the sums requested. Invoicing older than 30 days will not be paid by the KIB. The contractor will be responsible for monthly reporting and disposal of all residual waste materials not recycled.

Contractor will allow KIB representatives or its agent access to inspect facilities and records supporting the invoiced amounts during normal operating hours to assure compliance with the terms of the contract. In order to ensure the integrity of the amounts invoiced to the KIB for payment, any contractor that provides similar recycling services to other customers will be required to account for all materials processed. The KIB will reserve the right to inspect these records used to generate the monthly invoices as well as any other support documents that validate the claim for payment.

2.3 Customer Service

Contractor shall have on-island office staff or service available to accept customer calls and complaints at all times. Phone lines must be dedicated customer service phone lines with the contractor's business name listed as a business in the telephone directory.

2.4 Disposal

All waste collected under this contract shall be disposed of at the Kodiak Island Borough Landfill/Baler Facility. The contractor will be responsible for the payment of all disposal invoices to the KIB.

2.5 Service Invoicing

Invoicing of all customers will be the responsibility of the contractor. The customer will be invoiced for collection services, waste disposal, container rental, taxes and fees, and any additional selected services. All invoices will include service address, coverage of dates invoiced, and the rate for the customer's level of service.

Some of the key terms in the Draft Agreement are summarized below. The Draft Agreement makes reference to a number of Exhibits that are not currently included in the Exhibits to the Draft Agreement. These Exhibits will be based on the submittals from Proposers and will be inserted after award of the contract. If there are any discrepancies between this RFP and the Agreement, the requirements in the Agreement take precedence.

The initial term of the Agreement will be for seven years. At the end of the fifth year, the KIB will consider extending the initial 7-year term of the Agreement for 3 additional years. If the KIB decides NOT to extend the agreement, this will provide enough time for the KIB to evaluate alternatives, redesign its system, conduct a new procurement and have enough time for a smooth transition to a new system thereafter. The maximum term of this agreement will be for 10 years.

The contractor's rates for solid waste will be adjusted on July 1 in the second full calendar year of the contract, and each following July 1, based on the change in a cost of living adjustment formula, including a fuel index and the consumer price index for the Anchorage metropolitan area (CPI-U). The contractor will pay KIB for disposal of solid waste at the KIB Landfill. Collection rates will be adjusted each year in accordance with a disposal cost adjustment method. The Agreement also includes a contingency for acts of God and other uncontrollable circumstances. Details regarding the calculation of the cost of living adjustment and disposal cost adjustment formulas are provided in the Draft Agreement (Section 13).

The KIB will have the right to approve the assignment of the Agreement. Any change in ownership without prior written approval from the KIB is cause for voiding the agreement.

2.6 Borough's Options

The KIB may, at its sole option:

- Issue addenda to the RFP, including extending or revising the time line for submittals, and modifying the terms of the RFP and/or Draft Agreements.
- Withdraw, reissue or modify the RFP and Draft Agreements.
- Withdraw the recycling processing and other recycling services part of this RFP (Section 2.2).
- Request clarification and/or additional information from any Proposer at any point in the procurement process.
- Arrange site visits of facilities of any or all Proposers to evaluate those.
- At its sole discretion, negotiate with more than one Proposer simultaneously for the services in this RFP.
- At its sole discretion, request Best and Final Offers (BAFOs) from one or more Proposer(s), sequentially or concurrently, for the services in this RFP and related tasks proposed. It is the Borough's intent NOT to solicit BAFOs for the original scope of services. BAFOs may be used to request additional price clarification for a revised scope of services based on enhancements proposed by one or more of the Proposers.
- Accept a proposal that may not offer the lowest cost but offers the best overall proposal based on the company's qualifications, technical proposal, and willingness to accept contractual terms as well as its rate proposal.
- Discontinue negotiations after commencing negotiations with a selected Proposer, if progress is unsatisfactory in the sole judgment of the KIB, and commence discussions with another qualified Proposer.
- Execute an Agreement with a Proposer on the basis of the original proposals and/or any other information submitted by the Proposers during the procurement process.
- Reject any or all proposals, waive irregularities in any proposals, accept or reject all or any part of any proposals, waive any requirements of the RFP, as may be deemed to be in the best interest of the KIB.

2.7 Proposer Responsibilities

It is the responsibility of each Proposer to do the following before submitting the proposal:

- Examine this RFP, including all enclosures and the Agreement, thoroughly.
- Become familiar with local conditions that may affect cost, progress, performance, or services described in this RFP, including inspection of the KIB's terrain, streets and alleys.
- Consider all federal, state and local laws, statutes, ordinances, regulations and other applicable laws that may affect costs, permitting, progress, performance, or services.
- Clarify, with the KIB, any conflicts, errors, or discrepancies in this RFP.
- Agree not to collaborate or discuss with other Proposers the content of the proposal or the rates proposed.

Before submitting a proposal, each Proposer will, at the Proposer's own expense, make or obtain any additional examinations, investigations, and studies, and obtain any additional information and data that may affect costs, permitting, progress, performance or furnishing of the service and that the Proposer deems necessary to prepare its proposal.

2.8 Consequence of Submission of Proposal

The submission of a proposal will constitute a binding representation and warranty by the Proposer that the Proposer has investigated all aspects of the RFP and its proposal; that the Proposer is aware of the applicable facts pertaining to the RFP process; its procedures and requirements; that the Proposer has read and understands the RFP and has complied with every requirement; that without exception the proposal is premised upon performing and furnishing the services and equipment required by this RFP and the Agreement and such means, methods, techniques, sequences or procedures as may be indicated in or required by this RFP and the Agreement; and that the RFP is sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the project.

The submission of a proposal shall not be deemed an agreement between the Proposer and the Borough. The proposal is a contractual offer by the Proposer to perform services in accordance with the proposal. Specifically, the following provisions apply:

- The KIB shall not be obligated to respond to any proposal submitted nor be bound in any manner by the submission of a proposal.
- Acceptance of a proposal by the KIB obligates the Proposer to enter into good faith negotiations based on the proposal submitted and ultimately to enter into an Agreement with the KIB for the performance of the services chosen by the KIB in its sole discretion.
- The Agreement shall not be binding or valid unless and until it is executed by the KIB and the selected Proposer, and any conditions precedent to its effectiveness have been satisfied.

2.9 Proposal Costs

The cost of investigating, preparing and submitting a proposal is the sole responsibility of the Proposer and shall not be chargeable in any manner to the KIB. The KIB will not reimburse any

Proposer for any costs associated with the preparation and submission of proposals or expenses incurred in making an oral presentation, participating in an interview, or negotiating an Agreement with the KIB.

2.10 Procurement Schedule

The KIB has set the procurement schedule shown in Figure 2. This schedule may change at the KIB’s discretion.

Figure 2 - Procurement Schedule

Proposal Process	Milestone
1. Issue RFP and Agreement	Wed September 21, 2016
2. Proposer comments due to KIB	Wed October 19, 2016
3. Issue Addenda/revisions (internal)	Tue November 8, 2016
4. KIB comments to Project Team (internal)	Wed November 23, 2016
5. Finalize RFP and Agreement (internal)	Wed December 14, 2016
6. Issue Final Addenda and/or RFP/Agreement	Wed December 21, 2016
7. Proposals Due	Wed March 8, 2017
8. Clarifications and Interviews	Wed March 29, 2017
9. Complete Proposal Review and Evaluation	Wed April 19, 2017
10. Assembly Issue Intent to Award	Thu May 4, 2017
Contract Award	
1. Commence Negotiations	Thu May 11, 2017
2. Assembly Award Contract	Thu August 10, 2017
3. Final Agreement executed	Thu August 24, 2017
4. Startup of New Services	Sun July 1, 2018

2.11 Process Integrity Guidelines

These guidelines impose restrictive administrative controls on the procurement process to help ensure both the reality and the perception of a fair and open process. Each Proposer is individually and solely responsible for ensuring compliance with the following specific guidelines. This responsibility extends to the Proposer’s employees, agents, consultants, lobbyists, or other parties or individuals engaged for purposes of developing or supporting the Proposer’s proposal.

1. **Conflicts of Interest and Disclosure:** Proposers shall comply with all KIB ordinances and State requirements regarding conflicts of interest and financial disclosure.
2. **Forbidding Collusive Activities:** Collusive activities among Proposers are expressly forbidden and will likely result in immediate disqualification of any involved parties. If two or more Proposers are developing a joint proposal, the joint Proposers must notify the KIB in writing no later than thirty (30) days prior to the deadline for submission of proposals. This notification will be kept confidential until after submission of all Technical and Rate proposals.
3. **Forbidding Entertainment, Gifts, Etc.:** Each Proposer is separately prohibited under these guidelines from promotional outreach, hospitality, entertainment, gifts, or other like activities directed toward KIB staff, elected or appointed officials, or proposal reviewers.

After the KIB issues the RFP, Proposers shall warrant that no such gratuities have or will be offered or given by the Proposer, or any agent of the Proposer, to any KIB staff, elected or appointed officials, proposal reviewers, or to a consultant in order to secure the contract or favorable treatment concerning the RFP process. The Proposer shall disclose and describe any relationship or arrangement with the KIB or a consultant that could be deemed inconsistent with these guidelines, or with any state or local laws, prior to the submission of its proposal.

4. **Award Guarantees:** Proposers shall list anyone from the KIB or associated with the KIB, or anyone who has called the contractor to guarantee the contract would be awarded to them, if a percentage of the contract value were provided to them.
5. **All-inclusive, Written Proposals:** Any information and materials to be utilized by the KIB during the proposal evaluation and selection process must be included as part of the original Technical and Rate proposals or submitted in response to a specific written request from the KIB.
6. **Only RFP Information:** Only KIB-provided information and materials in the RFP and Addendum, which are provided in writing to all Proposers and are posted on this project's portion of the KIB's website (at <http://www.kodiakak.us>) are to be utilized in developing the proposal. Any Proposer's reliance on other information and materials may result in non-responsive proposals due to inaccurate or incomplete information.
7. **Written Inquiries:** After the release of the RFP, all RFP-related communication with the KIB prior to the award of contracts must be in writing to the KIB by email to:

Email: btucker@kodiakak.us
8. For emails, please include the letters "Kodiak SW RFP" prominently in the Subject line. Any questions received will be sent to all Proposers (absent the name of the firm submitting it) with a response from the KIB. These may be sent as informal clarifications of the RFP documents, or as formal RFP Addenda.
9. **Contact Constraints:** Contacting any KIB staff member, Borough elected or appointed officials, appointees of Assembly to advisory committees, or proposal reviewers will result in disqualification of the Proposer. This includes disallowing contact through another person (as a messenger) or former assembly member, contact via any form of media such as e-mail or telephone, or in person.
10. **Disqualification:** Any evidence that indicates a Proposer has failed to comply with the specific Process Integrity Guidelines, or has otherwise substantially diminished the KIB's ability to award contracts in a timely manner and free of contention, will result in that Proposer's disqualification and forfeiture of the Proposer's proposal bond. The KIB reserves the sole right to disqualify any Proposer at any point in the process prior to contract award for failure to comply with this document.

The Process Integrity Guidelines referenced in this section apply to all firms that ultimately submit a proposal. Any evidence which indicates a Proposer has failed to comply with the specific Process Integrity Guidelines, or has otherwise substantially diminished the KIB's ability to award contracts in a timely manner and free of contention, will result in that Proposer's

disqualification.

3.0 Background

This section includes background information that provides customer information and waste quantity and disposal information. This data is provided for informational purposes only. The KIB does not certify the accuracy of the information provided. Proposers should not rely solely on this section for developing proposals and service costs. Proposers are responsible for an independent assessment of the KIB's needs and of the Proposer's ability to provide services to meet those needs. The KIB will not be liable for any losses due to the Proposers' reliance on the operational information in this RFP.

3.1 Geographic and Demographic Information

There are two political entities on Kodiak Island; the Kodiak Island Borough is the general government unit for the archipelago known as Kodiak and; the City of Kodiak. Both have a mayor and legislative body. The Kodiak Island Borough extends over 180 miles by 70 miles with a total land area of approximately 5000 square miles and encompasses approximately 200 islands. In 1989, additional lands were annexed on the Alaska Peninsula from Cape Douglas to Wide Bay.

Moderate seasons, cloudy skies, and moderately heavy precipitation characterize climatic conditions. Average yearly rainfall is 70 inches with an average of 77.5 inches of snowfall. Wind is a significant presence in the community. Winds average 10-20 miles per hour, and it is not unusual or uncommon for Kodiak to experience wind gusts exceeding 50 miles per hour.

Kodiak Brown Bears also have a significant presence in the community. Trash day along the roll cart areas offers a number of opportunities for bears (and other vectors) to get in garbage because waste that is placed on the curb is in non-bear resistant roll carts. In the areas of the Borough that do not have curbside pick-up there are roll-off containers being used that are bear resistant. However, they are not very customer friendly. The KIB's concern regarding the bear population in the community, especially for the outlying areas of the Borough on the road system, will need to be particularly considered by a Proposer. In response, KIB has designated bear aware areas that require the use of bear resistant containers. In addition, Proposer will be expected to provide bear-resistant roll carts to elderly customers upon request. The bear aware areas are shown in Figure 1. Areas requiring bear resistant containers may be adjusted during the term of the contract should circumstances change.

KIB is authorized to operate as a public utility as defined by AS 42.05.701 (2)(f) for the purpose of furnishing refuse services under Certificate of Convenience and Necessity No. 222. The KIB also operates the Class I landfill; the only landfill permitted in Kodiak to accept solid waste for disposal that serves a population of nearly 13,000. This population is small and stable with minimal growth forecasted over the next 30 years. Therefore, the solid waste collected and disposed of is expected to be relatively flat. The KIB provides collection, disposal and recycling services for residential, commercial, and industrial/institutional needs along the road system within the City of Kodiak, the Borough beyond the city limits, United States Coast Guard

(USCG) base (disposal only; USCG has their own collection contract) and Port of Kodiak. The KIB Landfill is operated in accordance with all federal, state, and local regulations and statutory guidelines.

3.2 Residential Solid Waste Collection

Solid waste is generally collected in two methods. Individuals can self-haul their solid waste directly to the Landfill; however the primary method of collection is by a solid waste collection company under contract to KIB to collect solid waste from residential, commercial, industrial, and institutional entities along the regularly maintained public road system connected to the City of Kodiak. The general area of service extends along the road system from Chiniak, the Rocket Launch Facility past Pasagshak to the KIB Landfill. Approximately 3,000 KIB residents are served by the collections contract. The USCG base maintains a separate and different collection contract from that of the KIB.

There are two methods of residential collection: 1) non-mandatory curbside pickup within Kodiak City Limits, and one outlying roll cart area. 2) public rolloffs or dumpsters inside and outside Kodiak City Limits. Bulky item pick up is available for residential customers as a for-fee on-call service. Bulky items include water heaters, major appliances, furniture, and similar household items from residences. Only households within the City of Kodiak and the road system between the Landfill and Salomie Creek are eligible for the bulky item pick up service.

The contractor hauls and delivers all collected garbage, construction/demolition debris, and bulky household items to the KIB Landfill. The collection contractor’s trucks are weighed before emptying MSW loads on the tipping floor.

Billing for solid waste collection fees from residential and commercial customers is the responsibility of the contractor. The KIB Landfill is operated as an Enterprise Fund; the rates that the public shall be charged for collection and disposal of garbage are established by the contractor. The contractor shall establish the rates in accordance with the Draft Agreement, KIB’s establishment of the per-ton rate for disposal, and any applicable fees and taxes (at this time, there are no fees or taxes assessed). A portion of the fees collected by the contractor are returned to the KIB for the per-ton rate that is used to cover operational and disposal costs at the Landfill.

The current per-ton rate for disposal and collection rate schedules are provided in Appendix B of this RFP.

3.3 Recycling Collections and Processing

Recycling is completely voluntary and includes cardboard, mixed paper, paperboard, newspaper, plastic #1 & #2, and aluminum cans. There are a finite number of dumpsters available for cardboard collection; KIB pays the collection contractor for these dumpster rentals and tips. Currently, cardboard dumpsters are taken to Threshold Recycling, Inc., a non-profit group partially funded by KIB to manage recycling. The KIB has a contract with Threshold to ship recyclables off-island.

3.4 Current Commercial Solid Waste Collection Service and Amounts Collected

Commercial establishments have three types of services available to them: roll carts (charged at the residential rate), dumpsters, and roll off containers, at varying sizes and collection frequency. The KIB is reimbursed for the disposal component of the rate by the actual tons delivered by the solid waste collection contractor times the per-ton disposal rate established by KIB.

The current KIB solid waste management system is funded from two primary sources: collection rates charged to residents and businesses plus disposal rates charged at the landfill. The total commercial customer account count is rather stable at 221. On average, commercial accounts are collected a minimum of once per week via a variety of container sizes. The current commercial collection account details are provided in Appendix B of this RFP as along with the current per-ton disposal rate and collection rate schedules.

4.0 Required Information

This section describes the information that Proposers should include in their proposals for the procurement process.

Proposers must submit information in sections numbered as follows:

1. Company Profile
2. Management Experience
3. Customer Service
4. References
5. Safety Information
6. Litigation and Regulatory Compliance
7. Technical Proposal
8. Proposed Rates
9. Insurance
10. Exceptions to Contract

Documentation

Instructions on completing the rate proposal forms in Appendix C are included on each of the forms themselves. The combination of the responses outlined in this section (including the Rate Proposal Forms in Appendix C) are considered to be the Minimum Content Requirements Proposers must submit for all proposals. Failure to provide all Minimum Content Requirements in this section may be grounds for rejection of proposal.

Proposers are required to provide this information in the same order as it is described below.

Proposers are required to submit 3 copies (1 unbound and 2 bound) of this proposal and one electronic copy on thumb drive or CD. (Use MS Word or PDF for written technical proposal and Excel for the rate proposal.) For nationwide firms, responses should pertain only to the local operating division that will provide service to the KIB.

The Required Information is designed to consider all aspects that will impact the quality and level of service. Criteria were formulated to consider qualifications, technical, contractual and financial factors. Selection criteria were intentionally designed to allow smaller haulers to compete, as the KIB does not want to limit competition to a few big companies.

1. Company Profile:

Proposers shall provide the following information about their firm:

- Name of the entity that would sign the agreement if the Proposer is selected
- Any other names under which the Proposer does business
- Primary contact name and title
- Secondary contact name and title
- Business office address
- Phone numbers
- E-mail address and website address (if available)
- Address where vehicles and containers would be kept for serving Kodiak
- Form of ownership (sole proprietorship, partnership, corporation, etc.)
- State of organization/incorporation
- Number of years in business
- Names and addresses of principals, corporate officers, and individuals with an ownership interest of greater than 10%
- Number of employees
- Name of local of union representing the Proposer’s employees (if any)
- Name of all entities involved in proposal
- Names of all partners in proposal if joint venture
- Federal Tax I.D. Number

2. Management Experience:

Proposers should have at least one individual on staff with at least 5 years of experience in the solid waste collection industry with projects of comparable size and complexity. Designate two (2) individuals that will serve as the primary and secondary contact persons in the event the Proposer is awarded the contract. Provide an organization chart that highlights key staff that would be responsible for providing services to the KIB.

Briefly describe relevant technical experience of individuals highlighted in your organization chart including at a minimum individuals who would be responsible for one or more of transition services during startup, daily operations, vehicle repair and maintenance, customer service, dispatch, and billing. Additionally, proposers should provide the KIB with professional resumes (including work history) for these individuals. Technical experience with recycling operations should be highlighted for relevant individuals.

Highlight experience providing comparable service under the direction of at least one other public agency and a total comparable number of accounts as Kodiak.

3. Customer Service:

Highlight how many phone lines will be available during transition and on-going, and how

quickly calls are answered and responses provided. Provide a description of how customers may interact with you via your website. Highlight how KIB billing services, customer service and dispatch are to be coordinated.

4. References.

Proposers should provide the following information for three (3) customers to whom they currently provide or have previously provided similar services including at least one public reference. At least one of the references should include the provision of recycling collection and processing services.

- Jurisdiction / Company name and address
- Contact person name and title
- Phone and fax number
- Length of service
- Description of service (i.e., number of customers, services provided, etc.).

References may be contacted by the KIB to evaluate the Proposer’s ability to maintain long-term relationships with customers and to ensure that cities and or Boroughs are satisfied with the service received. The KIB may contact other public or private individuals known to have contracted with the Proposer for additional background information.

5. Safety Information.

The KIB would like to ensure safe and reliable service is provided to Borough residents and businesses. Proposers should provide the following safety information:

- Provide an affirmative statement that the Proposer has not received a citation or failure-to-abate notice in the last three (3) years from any Occupational Safety and Health Office. If this is not the case, Proposers should provide an explanation of the circumstances surrounding any such occurrence.
- Provide a copy of the Experience Rating Form used to determine the Proposer’s experience modification factor (used to calculate the Proposer’s workers compensation insurance premium).
- Please provide a list of any accidents in the past three years in which the Proposer was involved and in which the personal injury and/or property damage amount exceeded \$10,000.
- Has your company experienced a workplace fatality within the past ten (10) years? If so, describe the circumstances that led to the fatality and actions taken by your firm to prevent future occurrences.
- Does your company have a program in place to discipline workers that perform unsafe work practices? If so, please provide describe that program.
- Does your company hold “tailgate/toolbox” safety meetings? If so, please describe what they include and how frequently such meetings are held.

6. Litigation and Regulatory Compliance:

The KIB would like to minimize the KIB’s long-term liability and contract administration burden on staff. To highlight how that will be done, Proposers should provide the following documentation related its company, partner or subsidiary in this venture, subcontracted hauler, or

any corporate officer:

- 1) Highlight the nature of any current or litigation within the past five (5) years that might have any bearing on the Proposer’s ability to provide service in the Borough.
- 2) List any liquidated damages, administrative fines, charges or assessments that total Ten Thousand Dollars (\$10,000) or greater during the past five (5) years related to collection services provided by the Proposer.
- 3) List any violations of conflict of interest provisions related to collection services provided by the Proposer.
- 4) List any convictions of (or plead ‘no contest’ to) any criminal activity, or significant municipal code violation, within the last 10 years.
- 5) Document if any company or any corporate officer has voluntarily or involuntarily declared bankruptcy or has been involved within the past five years in litigation: arising out of performance of a solid waste or recyclables collection contract or violation of environmental laws, regulations or permits; arising out of or connected with violation of state or federal antitrust laws; or arising from or connected with allegation of corrupt practices.
- 6) Information about any enforcement actions, order, decree, or notices of violation of any environmental laws, regulations or permits received by the Proposer or received by local facilities operated by the Proposer during the past five (5) years. For each violation, if any, please provide the following information:
 - The agency that issued the notice of violation.
 - A description of the violation.
 - The dollar amount of any fine associated with the violation.
 - The reason the violation occurred.
 - The corrective action taken to prevent re-occurrence of the violation and any measures taken to mitigate the violation.

Proposers should not have:

- Incurred any significant adverse regulatory enforcement actions.
- Committed any significant breaches of agreements with any governmental agency or found liable for any conflict of interest violations.
- Been convicted of (or plead ‘no contest’ to) any criminal activity, or significant municipal code violation, within the last 10 years.

The KIB shall determine, in its sole discretion, whether an enforcement action or breach of agreement is “significant.”

7. Technical Proposal:

Proposers are requested to provide information to address the following components of the service to be provided to the KIB. All equipment, and vehicle specifications should provide for sound, reliable service that satisfies the minimum requirements of the Agreement and contingencies.

Provide a description of the methods being proposed for solid waste and recyclables collection. This should include the collection method, number of trucks used, crew size, and service days.

Provide a description of any special equipment that is proposed for solid waste and recyclables collection. Provide a description of the age and type of vehicles that will be used in the KIB. Proposer must demonstrate their capabilities to obtain the vehicles needed. Equipment must meet the technical qualifications detailed in the Draft Agreement, including performance standards for safety, quality, painting and cleanliness of trucks and storage containers.

Provide a narrative description and schedule that highlights your transition plan, including the following activities (where applicable):

- Account verification
- Account transfer, set-up, and billing
- Problem resolution resources and procedures telephone systems
- Telephone system
- Website
- Other information technology requirements
- Vehicle acquisition
- Container removal (where required)
- Container procurement, preparation, and delivery (roll carts, dumpsters, rolloffs) for refuse (as needed) and recyclables
- A map and description for anticipated changes to days of week service is provided
- When and how you will contact customers to introduce your firm and any service changes
- Start of service

For recycling, address the following:

- Provide a description of the method(s) being proposed for the processing of recyclable materials.
- Provide a description of the proposed markets or processors that will be utilized in the execution of this agreement, any special equipment that is proposed for processing, and the area(s) where materials will be stored prior to shipment off-island.
- Provide the address where materials will be processed (facility zoning compliance).
- Provide a detailed inventory of equipment, facilities, and human resources needed to perform the tasks proposed.
- List probable subcontractors, along with their inventory of resources (labor, equipment, other) dedicated to the project.

The KIB has supported the recycling activities in the past by providing financial and operational support of this program and expects all Proposers to maintain the current level of diversion. The Proposer is required to submit a brief plan which demonstrates the ability to meet quarterly quantity benchmarks. The plan needs to include the proposed recycling activities such as community and business outreach, recycling services, and expected material quantities.

8. Rate Proposal:

The Proposer is required to submit a Rate Proposal using the worksheets included in the excel file Appendix C - Rate Proposal.xlsx in Appendix C. Proposers are required to enter their proposed unit rates. Proposers should refer to the instructions in the excel file for completing the forms.

The file will calculate an estimate of the total annual cost for collection and recycling service in a representative year. This will be the basis for comparing costs among Proposers. When complete, Proposers should rename the file with your firm name at the end of the file name (e.g., Appendix C - Rate Proposal ABC Collection.xlsx), and submit the file on a thumb drive or CD as part of your submittal.

The Rate Proposal should be consistent with the technical proposal highlighting the services to be performed. Annual costs should be reasonable and consistent with the technical proposal. Assumptions used in developing costs should be documented and should be reasonable as well.

9. Insurance:

Proposers should provide evidence of the ability to procure the required insurance described in the Draft Agreement in Appendix A. Proposers should submit certificates of insurance demonstrating that they currently carry the types of insurance and levels of coverage described in the Draft Agreement. Alternatively, Proposers may submit a letter from their insurance broker that they are able to obtain the types of insurance and levels of coverage described in the Draft Agreement.

10. Contract Exceptions:

The Draft Agreement in Appendix A is provided to inform Proposers of the KIB’s intentions regarding the roles, responsibilities, and obligations of the Proposer and the KIB. The KIB is interested in selecting a contractor that is prepared to agree to the KIB’s terms. Proposers may, if necessary, take exception to one or more business terms in the Draft Agreement. Any exception should be accompanied by proposed specific alternative language.

However, the number, and more importantly, the substantive nature of the exceptions will be compared to those noted by the other Proposers during proposal evaluation. Proposers will rate higher in this criteria if the exceptions are not significant and are not likely to extend negotiations, make contract management more difficult, or cause the KIB to incur more cost or risk. If, in KIB’s sole opinion, the exceptions are significant, the KIB may reject the proposal regardless of its other merits and proposed rates. If the KIB chooses to enter into negotiations with the Proposer, the negotiations on issues of concern to the Proposer will be limited to the Proposer comments and recommended alternative Agreement language.

5.0 Proposal Process

The details of the RFP submission process and schedule are described below.

5.1 Written Questions

Submit written questions and requests for clarification or additional information regarding the meaning or intent of the RFP content, its process and enclosures to the Borough’s Project Manager at btucker@kodiakak.us. The KIB may not be able to respond to questions received after **October 19, 2016**. Responses and RFP Addenda will be sent by email to all those who have expressed interest in this request for proposal that provided the KIB with an email address. All formal documents of this RFP process will be posted on the Borough’s website at:

<http://www.kodiakak.us>

Documents posted will include the RFP, Draft Agreement, responses to written questions and Addenda. Proposers are urged to monitor this website regularly, at least weekly once the RFP has been released.

5.2 Proposal Submission

Submit 1 unbound original and 2 copies of your proposal on recycled paper plus the electronic copy on thumb drive or CD to the KIB on or before 3:00 p.m. Alaska Time on **March 8, 2017**. Proposals should be sealed and marked “**Kodiak Solid Waste Collection and Recycling Proposal.**” Sealed proposals should be mailed or delivered (not faxed) to the Kodiak Island Borough Manager’s office:

Kodiak Island Borough
Office of the Borough Manager
Room 125
710 Mill Bay Road
Kodiak, AK 99615

To the extent allowed by law, the KIB will maintain portions of the proposal documents marked as “Proprietary” as confidential.

5.3 Clarification/Interviews

Proposers may be asked to clarify proposal information; the clarification period will begin after the proposals are submitted and evaluated. After the evaluation has been completed the top two or three proposers will be expected to submit written clarifications, if requested.

5.4 Minimum Content Requirements

All proposals should include the following:

1. Cover letter (not exceeding four pages) providing:
 - Name, address, and telephone, and email of applicant and key contact person.
 - A written statement warranting that the requirements of the project as described in this RFP, its enclosures, and all addenda, by listing all addenda and dates received hereto, have been reviewed and the Proposer has conducted all necessary due diligence to confirm material facts upon which the proposal is based.
 - A written statement acknowledging that the terms of both the proposal and the rates proposed as submitted by Proposer are firm throughout the RFP evaluation and selection

process.

- An officer or agent of the Proposer who is duly authorized to bind the Proposer should sign the cover letter. In signing the cover letter the Proposer agrees that the terms of both the technical proposal and the rate proposal as submitted by Proposer are firm for a period of 180 days from the proposal due date.

2. Responses to all information requested in Section 4. Organize your responses into the components outlined in Section 4 in the specified sections and order specified within each section. All pages of the proposal should be numbered for reference.

5.5 Accuracy in Reporting Requested Information

Information submitted as part of the proposal will be subject to verification. Inaccurate information or information that is misleading will be, at the KIB's sole discretion, grounds for disqualification of a proposal from further consideration. Should the company have been awarded any Agreement as a result of this RFP; such inaccurate or misleading information will be, at the KIB's sole discretion, grounds for default of the Agreement.

5.6 Evaluation Procedure

Proposals submitted by the Proposers will be judged through the evaluation process outlined in this section. It is intended that the selected Proposers will be chosen based on the outcome of this evaluation. The following evaluation and selection process will be used:

All Proposals received by the submission date indicated in this RFP will be catalogued. Proposals will be checked for both meeting the Minimum Content Requirements and verification of accuracy and integrity of information submitted. Proposals will be distributed to the KIB's evaluation team for detailed evaluation. Proposer(s) may be asked to attend personal interviews to discuss their proposals and/or to provide additional information in writing at the KIB's request.

Proposals that do not meet the Minimum Content Requirements will not be given further consideration. Borough Assembly will be notified of all the firms that submitted proposals and provided a list of all the firms that met the Minimum Content Requirements.

The evaluation team will then evaluate all the Minimum Content information and assign a rank to each of the Proposers. The evaluation team will recommend the highest-ranking Proposer(s) to provide the services considered in this RFP. The evaluation team will also direct the KIB's consultants to seek Best and Final Offers from Proposers, if desired by the KIB.¹ Once all of these evaluations are completed, KIB staff will then review recommendations from the evaluation team and provide the final recommendations to the Borough Assembly for their

¹ It is the KIB's intent NOT to solicit BAFOs for the original scope of services. BAFOs may be used to request additional price clarification for a revised scope of services based on enhancements proposed by one or more of the Proposers.

consideration in a work session. Borough Assembly will vote on the intent to award the contract, with that vote anticipated to occur on **May 4, 2017**, at which time negotiations will commence. It is anticipated that the Borough Assembly will vote on awarding the contract on **August 10, 2017**. Information regarding other Proposers and their submittals will be released after contract award.

The KIB’s position on all the major service and contractual issues are represented in the RFP and accompanying Agreement. If for any reason during the course of negotiations with the selected Proposers the KIB determines in its sole discretion that a reasonable Agreement cannot be awarded, the KIB reserves the right to stop considering the selected Proposer, contact the next highest ranked qualifying Proposer(s) and consider signing an Agreement with the additional selected Proposer(s). The KIB further reserves the right to enter simultaneous negotiations with multiple Proposers if the KIB decides to adjust the proposed Agreement before executing it. The selected contractor will begin servicing the community on **July 1, 2018**.

5.7 Evaluation and Selection Methodology

The following evaluation criteria are designed to evaluate proposals by considering all aspects of the Required Information that will impact the quality and level of service. Criteria were formulated to consider cost, qualifications, safety, technical factors, litigation and regulatory compliance, and contractual factors of each proposal. Each proposal will be evaluated according to these six evaluation criteria. In performing the overall evaluation of each proposal, these criteria will be given the relative weight shown in Table 3.

Table 3 – Relative Weight of Evaluation Criteria

Evaluation Criteria	Relative Weight
Rate Proposal	35%
Qualifications and References	15%
Safety	5%
Technical	25%
Litigation, Regulations & Liability	5%
Contract Exceptions	15%

5.8 Contract Award

The Contract will be awarded based on best value (as defined by the criteria in Table 3). KIB reserves the right to award a contract to the lowest responsible bidder whose proposal is the most responsive to the needs of the KIB.

The winning proposer will be required to submit to the Borough within 60 days after the formal award the following documentation:

1. Final Transition Plan
2. Customer Complaint Protocol (procedures for addressing customer complaints)
3. Customer Billing Procedures

APPENDIX A – SAMPLE COMMERCIAL COLLECTION AGREEMENT

This Appendix includes the following items:
Sample Collection Agreement to be executed between the Kodiak Island Borough and the selected contractor.

DRAFT

APPENDIX B – CURRENT ACCOUNT DATA, PER-TON DISPOSAL RATE, AND COLLECTION RATES

CURRENT ACCOUNT DATA

As of the end of 2015, the following service levels were in effect:

Residential Customers

Roll-Cart Customers	Count
32 Gallon	416
64 Gallon	726
96 Gallon	474
Customers with Dumpster Service	1,371
Total	2,987

Residential Roll-Offs and Dumpsters

There are 19 residential 20 cubic-yard, bear resistant rolloffs in service at the following locations:

Borough Area	Location	Capacity
Helo Pad	Spruce Cape Drive	20 Yard
Spruce Cape	Spruce Cape Drive	20 Yard
Puffin Drive	Puffin Drive	20 Yard
Carroll Way	Carroll Way	20 Yard
Sunset Drive	Sunset Drive	20 Yard
Three Sisters	Three Sisters	20 Yard
Chiniak School	Main Street	20 Yard
Department of Transportation	DOT	20 Yard
Pasagshak	Pasagshak	20 Yard
Sharatin	Sharatin Drive	20 Yard
Parkside	Parkside Road	20 Yard
Parkside	Parkside Road	20 Yard
Russian River	Russian Creek Road	20 Yard
Sargent	Sargent Creek Road	20 Yard
Sargent	Sargent Creek Road	20 Yard
Von Scheele	Von Scheele	20 Yard
Woodland	Woodland	20 Yard
Arctic Tern	Arctic Tern	20 Yard
Selief	Selief	20 Yard

In addition, two 5 cubic yard bear-resistant dumpsters are located at the intersection of Oak and Hillside.

Commercial Dumpsters

The number of commercial front-load containers in service follow. Service frequency ranges from one to six hauls per week.

Container Size	Count
2.0 Cubic Yard	49
2.6 Cubic Yard	45
3.6 Cubic Yard	76
4.0 Cubic Yard	35
5.0 Cubic Yard	27
5.5 Cubic Yard	86
8.0 Cubic Yard	1
4.0 Cubic Yard, bear resistant	1
Total	324

Roll-off/Hook Lift

Roll-Off and Hook lift services are provided to customers whose volumes and material cannot be serviced in a front load container. These customers consist of primarily construction companies and a few local businesses with 30 Yard Compactors. All residential roll-off containers are serviced with a hook lift truck. Service is provided for both disposal and recycling. In addition to the residential rollofs mentioned above, there are 10 10 cubic yard (cy), 9 15 cy, 6 20 cy, and 6 30 cy containers in service.

PER-TON DISPOSAL RATE

Currently, the KIB Landfill charges \$258 per ton for disposal of solid waste. A complete listing of the rates charged for different materials is available on the KIB website at <http://www.kodiakak.us/DocumentCenter/Home/View/1529>

COLLECTION RATES

The following rates became effective July 1, 2016.

Residential Roll-Cart and Residential Dumpster/Roll Off Service

Service	Monthly Rate
32 gallon roll-cart	\$40.12
64 gallon roll-cart	\$49.34
96 gallon roll-cart	\$56.83
Dumpster/Roll Off	\$58.83
Roll-cart service is provided weekly. Dumpsters/Roll Off are picked up on an as-needed basis.	

Commercial Dumpster Service

The following rates include the cost of disposal, and were effective July 1, 2016.

2 yard	2.6 yard	3 yard	3.6 yard	4 yard	5 yard	5.5 yard	6 yard	8 yard
1x/week								
\$251.40	\$338.40	\$396.40	\$467.80	\$515.40	\$595.82	\$636.02	\$676.23	\$852.14
2x/week								
\$502.79	\$676.80	\$792.80	\$935.60	\$1,038.80	\$1,191.63	\$1,272.05	\$1,352.47	\$1,704.28
3x/week								
\$754.19	\$1,015.20	\$1,189.20	\$1,403.40	\$1,546.19	\$1,787.45	\$1,908.07	\$2,028.70	\$2,556.42
4x/week								
\$1,005.58	\$1,353.59	\$1,585.60	\$1,871.20	\$2,061.59	\$2,383.26	\$2,544.10	\$2,704.93	\$3,408.56
5x/week								
\$1,256.98	\$1,691.99	\$1,982.00	\$2,338.99	\$2,576.99	\$2,979.08	\$3,180.12	\$3,381.17	\$4,260.70

Commercial Roll Off Service

The following rates exclude the cost of disposal or recycling: customers are billed the actual cost of disposal or recycling. Rates were effective July 1, 2016.

Roll-Off Size	Rate per pull
10-20 yard, non compacted	\$157.70
30-40 yard, non compacted	\$209.87
10-29 yard, compacted	\$157.70
30-39 yard, compacted	\$209.87
Excludes the cost of disposal or recycling, which is a pass-through.	

APPENDIX C – RATE PROPOSAL FORMS AND CUSTOMER LIST

This Appendix includes the following items:

- Rate Proposal Forms and instructions (in separate attached Excel file, Appendix D – Rate Proposal.xlsx).
- Commercial Customer list from July 2016.

These forms included for this review are for information purposes and contractor input. These sheets will be required to be completed as part of the Proposal. Forms that are not completed in full may result in disqualification. However, the purpose of the forms contained herein is not intended in any way to limit the type, quality or quantity of data and information supplied by the Proposer.

RATE PROPOSAL INSTRUCTIONS

Proposers Responsibility for Use of Electronic Spreadsheet

To assist Proposers in submitting their rate and cost information, the KIB is providing to each Proposer the Rate Proposal Forms in electronic format in a Microsoft Excel spreadsheet, titled Appendix C - Rate Proposal.xlsx. Proposers are required to submit rate proposals using the electronic spreadsheet on a thumb drive or CD.

The spreadsheet contains formulas and cell references that are consistent with these instructions. However, it is the Proposers' responsibility to ensure that the formulas and cell references function properly. **On each of the Forms, Proposers are required to enter information in the cells highlighted in yellow.**



EXCLUSIVE
SERVICE CONTRACT

FOR

**RESIDENTIAL AND COMMERCIAL REFUSE COLLECTION
AND RECYCLING SERVICES**

AUGUST 2016

1 COLLECTION AND RECYCLING CONTRACT | Kodiak Island Borough, AK

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CONVENTIONS USED IN THIS CONTRACT

In this Agreement words have the meanings defined in Article 20.01.

RECITALS: The Parties refer to the following facts, using terms defined in Article 20.01.

KIB is responsible for protection of public health and the environment in its jurisdiction.

KIB owns its landfill and may be liable for pollution caused by materials discarded in the landfill. This Contract helps KIB minimize its potential pollution liabilities through performance specifications, such as unpermitted waste screening protocols.

KIB’s existing contracts for solid waste collection and recycling services are expiring, and KIB conducted the competitive procurement pursuant to which this Contract was awarded in order to secure the most comprehensive services for the best price.

By entering into this Contract, KIB establishes performance standards, customers’ rights and program enforcement flexibility.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties under this Contract and the conditions under this Contract, KIB and Contractor agree as follows:

ARTICLE 1: EXCLUSIVE CONTRACT

1.01 Exclusive Right and Privilege to Provide Contract Services. KIB grants Contractor the exclusive right and privilege together with the obligation to provide Contract Service in the Contract Service Area conditioned on Contractor being at all times ready, willing, and able to meet each and every Performance Obligation.

ARTICLE 2: REPRESENTATIONS AND WARRANTIES

2.01 Contractor’s Representation and Warranties.

a. Status. Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State and is qualified to do business in the State.

b. Authority and Authorization. Contractor has full legal right, power and authority to execute and deliver this Contract and satisfy its Performance Obligations. This Contract has been duly signed and delivered by Contractor and constitutes a legal, valid and binding obligation of Contractor enforceable against Contractor in accordance with its terms.

c. No conflicts. Neither the execution nor delivery by Contractor of this Contract, the performance by Contractor of its Performance Obligations, nor the fulfillment by Contractor of the terms and conditions of this Contract:

- (1) conflicts with, violates or results in a breach of any Applicable Law;
- (2) conflicts with, violates or results in a breach of any term or condition of any

judgment, order or decree of any Regulatory Authority or any agreement or instrument to which Contractor or any of its Affiliates is a party or by which Contractor or any of its Affiliates' properties or assets are bound, or constitutes a default there under; 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.

d. No approvals required. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, Governing Body, agency or instrumentality is required for the valid execution and delivery of this Contract by Contractor, except those that have been duly obtained from its Board of Directors or other governing body.

e. No litigation. There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, Governing Body, agency or instrumentality pending or, to the best of Contractor's knowledge, threatened, by or against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would adversely affect the performance by Contractor of its obligations under this Contract or in connection with the transactions contemplated by this Contract, or which, in any way, would adversely affect the validity or enforceability of this Contract or any other agreement or instrument entered into by Contractor in connection with the transactions contemplated by this Contract.

There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or threatened, by or against KIB by Contractor.

f. Due Diligence. Contractor has made an independent investigation, examination and research satisfactory to it of the conditions and circumstances surrounding this Contract and best and proper method of providing Contract Services (including the types of Contract Services) and labor, equipment and materials for the volume of Contract Services to be provided. Contractor agrees that it will make no claim against KIB based on any good faith estimates, statements or interpretations made by any officer, employee or agent of KIB that proves to be in any respect erroneous.

g. Compliance with Applicable Law. Contractor further represents and warrants that it has fully complied with all Applicable Law, including without limitation law relating to conflicts of interest, in the course of procuring this Contract.

h. Truth and Accuracy of Application etc. Information in the following documentation provided by Contractor is true, accurate and complete:

- (1) Contractor Documentation, and
- (2) Contractor's proposal submitted in response to KIB's Request for Proposals for this Contract (together with any addendum thereto), including all clarifications to that proposal.

- i. **Contractor Documentation Updates.** Contractor will promptly amend Contractor Documentation to reflect any changes in Contractor Documentation and submit it to KIB.

ARTICLE 3: TERM OF CONTRACT

3.01 Term.

- a. **Contract Commencement Date and expiration of Term.** The Term commences on the Contract Commencement Date, **July 1, 2019** and expires at the end of 7 years after the Contract Commencement Date, *unless* extended.
- b. **Collection Commencement Date.** The Collection Commencement Date is **July 1, 2019**.
- c. **Short-term extension.** On or before 30 days prior to the expiration of the Term whether original under subsection a) or extended under subsection c), KIB, in its sole discretion, may extend the Term for up to six months.
- d. **KIB options to extend Term.** On or before 60 days prior to the following dates:
 - (1) expiration of the original Term under subsection a),
 - (2) the extended Term under subsection b), or
 - (3) a portion of the maximum allowable extended term under this subsection, KIB, in its sole discretion, may incrementally extend the Term for up to 3 years in any combination of the following number of years (such as 1 +2; 1+1+1; 2+1).

3.02 Survival of Certain Provisions. The following provisions of this Contract will survive the Term:

- (1) all **acknowledgements, representations and warranties** of the Parties in this Contract,
- (2) all **Indemnities**,
- (3) **Contractor Payment Obligations** or claims therefore,
- (4) all Contractor’s Performance Obligations and KIB’s rights with respect to **Records**, including giving KIB a copy of Records, or allowing KIB to copy, inspect and audit Records, including:
 - certificates of Insurance or other evidence of Insurance coverage (*such as endorsements extending coverage of claims made insurance policies*), and
 - Contract Service Asset Inventory and any Contract Service Asset Document (*for example, with respect to containers that KIB has the right to acquire*).
- (5) all Contractor’s Performance Obligations and KIB’s rights with respect to **Reports**; including submitting final Reports,
- (6) providing endorsements extending coverage of **claims made insurance** policies, if KIB waives the claims made requirement and allows claims made insurance policies,
- (7) any other provision that expressly states that it survives the Termination Date (*such transfer of Cart ownership to KIB*), and

- (8) any right of either Party vested and any obligation of either Parties accrued before the Termination Date.
After the Termination Date, Contractor has no other Performance Obligations or rights under this Contract.

3.03 Obligations Upon Termination or Expiration.

- a. **Contractor Removal of Refuse Containers.** If KIB does *not* exercise its option under Subsection b to acquire any or all Refuse containers, then upon expiration or termination of this Contract, Contractor will remove Refuse containers at the following times:
 - (1) after replacement Carts are provided to the Customer's Premises, or
 - (2) at the time directed by KIB.

Contractor will use Reasonable Business Efforts to reuse or recycle all removed Refuse containers. *For example, Contractor might ship Carts to the Cart manufacturer of Carts for recycling, or deliver dumpsters for metal salvage.*

- b. **Contractor Transfer of Container Ownership to KIB.** In consideration of the privileges granted under this Contract and for Contractor Service Fees previously received during the Term, within 5 KIB Business Days of KIB direction, Contractor will transfer to KIB ownership of any or all Refuse Carts and any or all Refuse Dumpsters in the following events:
 - (1) the effectiveness of any Notice of termination by KIB under this Contract, or
 - (2) the expiration of this Contract.

Comment [PD1]: Attorney confirm assumption that carts and dumpsters are retained by KIB at end of the contract.

Upon KIB request, Contractor will promptly provide KIB with the following documentation:

- (3) any or all Contract Service Asset Documents, such as manufacturers warranties, maintenance agreements, financing documents and recorded financing statements, and
 - (4) any other documentation evidencing transfer of ownership of any or all Refuse containers to KIB.
- c. **Survival.** CONTRACTOR'S OBLIGATIONS IN THIS ARTICLE SURVIVE TERMINATION OR EXPIRATION OF THIS CONTRACT.

3.04 New Contract. This Contract is a new obligation between the Parties and is a novation, substitution and replacement for any contract or agreement between the Parties entered into before the Contract Commencement Date with respect to Contract Services.

ARTICLE 4: REFUSE COLLECTION AND TRANSPORTATION TO KIB LANDFILL.

4.01 Automated Refuse Collection in Carts.

- a. **Automated or Semi-automated Cart Collection.** Contractor will Collect all Carts by automated or semi-automated manner. “**Automated**” means that Carts are lifted from their Set-out Site, emptied and set back down at their Set-out Site by mechanical means. “**Semi-automated**” means that Carts are rolled by individuals from the Carts’ Set-out Sites into position near the Collection Vehicle; lifted, emptied and set back down by mechanical means; and rolled back by individuals to their Set-out Sites.

- b. **Default Collection in Carts at Residential / Optional Commercial or Multifamily Premises.**
 - (1) **Residential.** Beginning on the Collection Commencement Date, Contractor will Collect all Refuse discarded in Carts at Residential Premises located within the City of Kodiak (or other area as designated by KIB in Notice to Contractor) weekly, on the same Regularly Scheduled Collection Day.

 - (2) **Commercial or Multifamily Collection.** Beginning on the Collection Commencement Date, at the request of the owner or occupant of a Commercial or Multi-family Premise, Contractor will Collect all Refuse discarded in Carts at that Commercial or Multifamily Premise weekly, on the Regularly same Scheduled Collection Day.

- c. **Cart options.**
 - (1) **Default Residential Service: 64 gallon Refuse Carts.** Unless Contractor must provide Roll Off Containers under Article 6.02, Contractor will provide each Residential Premise with one 64-gallon capacity Refuse Cart for the charge listed on the Service Fee Schedule, *except* if the owner or occupant of that Residential Premise directs Contractor to provide a different number or capacity of Carts under following Subsection c(2).

 - (2) **Larger / smaller, more / fewer Refuse Carts.** At any Cart Customer’s request, Contractor will provide that Customer’s Premise with Refuse Carts in alternative capacity options offered on the Service Fee Schedule (such as 32 or 96-gallon capacity Cart) at no change in Service Fee. Additional carts shall be provided upon request, with each additional cart priced at the Service Fee.

- d. **Cart Roll-out Service.**
 - (1) **Scope of Service.** At Customer request, Contractor will provide Roll-out Service for Refuse Carts.

 - (2) **Without charge / with surcharge.**
 - (i) **Without charge.** Contractor will provide Roll-out Service to the **Elderly or Handicapped individual**, if Customer certifies that no able-bodied person

resides at the Customer’s premise, which certification Contractor may confirm;

- (ii) **With surcharge.** Contractor will provide Roll-out Service to any Customer who does not meet the preceding listed criteria for the surcharge listed on the Contractor Service Fee Schedule.

4.02 Collection in Dumpsters or Compactors.

a. Residential, Commercial or Multifamily Collection. Beginning on the Collection Commencement Date, Contractor will provide all Customers whose Residential Premises are located outside the City of Kodiak with Residential Roll Offs or Dumpsters. Contractor will Collect Refuse discarded in those Residential Roll Offs or Dumpsters at least weekly, on the same Regularly Scheduled Collection Day(s) or on additional days agreed to between Contractor and Customer.

b. Dumpster Options

(1) **Default Service at Commercial and Multi-family Premises: 2.0 Cubic Yard capacity Dumpster.** Contractor will provide each Commercial Premise and Multi-family Premise with one 2.0 Cubic Yard capacity Dumpster to be Collected once weekly for the charge listed on the Service Fee Schedule, *except* in the following circumstances:

- (i) If the site is contained within the bear aware area then the Commercial Premise or Multi-family Premise will without exception receive a bear resistant Dumpster.
- (ii) the owner or occupant of that Premise directs Contractor to provide the following alternative containers:
 - A. a different capacity of Dumpster or frequency of Collection or,
 - B. one or more Carts.
- (iii) the Contractor determines in its sole discretion, that there is insufficient room at a Commercial Set-out Site to place or safely Collect one or more Dumpsters for each Customer using that Commercial Set-out Site, in which circumstance the Contractor will take the following actions, in its sole discretion:
 - A. provide one or more Carts in the capacity and number that each Customer needs to store its discarded Refuse pending Collection, or
 - B. allow one or more Customers to share a Dumpster.

Contractor will provide locks for any Dumpster promptly upon Customer request.

(2) **Service at Residential Premises outside the City:** Contractor will provide Residential Customers who receive Collection Service in Roll Off Container or Dumpsters with Roll Off Containers or Dumpsters having capacity determined by

Contractor in its sole discretion, sufficient to contain Refuse discarded by Residential Customers whose Residential Premises are outside the City of Kodiak, for the charge listed on the Service Fee Schedule (Residential Roll-off/Dumpster). If the Residential site is contained within the bear aware area then the site will without exception receive a bear resistant dumpster:

- c. **Larger / smaller Dumpsters, more / less frequent Collection.** At KIB’s request, Contractor will provide Roll Off Containers or Dumpsters in alternative number and Collection frequency options offered on the Service Fee Schedule.
- d. **Compactors.** Contractor is *not* obligated to provide a Compactor to any Customer. However, on request of the owner or occupant of a Commercial or Multi-family Premise, Contactor will Collect all Refuse placed inside each Compactor at the frequency requested by that Customer and for the charge listed on the Service Fee Schedule.

4.03 On-call, Monthly Bulky Items Collection.

- a. **Driver report / KIB request.** When Collecting any Refuse, Contractor’s drivers must immediately report to Contractor any Bulky Item he or she observes Discarded at a Dumpster Set-out Site.
- b. **On-call Collection Service and Charges.** Within 3 days of Customer or KIB request, Contractor will collect up to 4 X 5 X 6 cubic feet of Bulky Items that are discarded at a Residential Set-out Site for the surcharge listed on the Contractor Service Fee Schedule. Residents are entitled to one such pickup monthly, although if a Customer or KIB make additional requests in a calendar month, Contractor shall provide the additional service at no extra charge.
- c. **Diversions Program.** Contractor will use Reasonable Business Efforts to Divert all Bulky Items that it collects. *For example, Contractor might take materials to its Recyclables Processing Facility, or cooperate with a thrift store to pick up or accept Contractor’s delivery of furniture, or deliver appliances for metal recovery.* Contactor will transport and deliver Bulky Items it does not divert to a facility approved by KIB.

4.04 Emergency Services.

- a. **Nature of emergency services.** Within 24 hours of oral notice by KIB, followed as soon as practicable by written notice, Contractor will provide emergency services beyond the scope of Contract Services at the times and to the extent directed by KIB, including providing vehicles, drivers and other equipment and personnel to cleanup Solid Waste and other debris consequent upon natural disasters such as earthquakes, storms, floods, riots and civil disturbances, for which Contractor will be compensated Contractor's Reimbursement Costs.

- b. Reporting.** Contractor will cooperate with KIB, the State, and federal officials in filing information related to a regional, state or federal declared state of emergency or disaster as to which Contractor has provided services under this Article.
- c. Emergency Backup Service Plan.** Contractor will develop an emergency backup service plan in form satisfactory to KIB and implement that plan if, due to Uncontrollable Circumstances or for any reason whatsoever, Contractor fails, refuses, or is unable for a period of 48 hours to collect and/or at any time to transport Solid Waste or any portion thereof to the applicable Solid Waste Management Facility and KIB Manager determines there is danger to the public health, safety, or welfare.
- d. Mandatory Service Notice.** Within 7 Service Days after receiving notice (based on Contractor's drivers' observations, information and belief or otherwise) that a formerly unoccupied Premise becomes occupied or the Customer occupying the Premises have changed, Contractor will give written notice to the owner or occupant of that Premises that Service is required unless Contractor has already received a request for Service at that Premise or KIB revokes provisions of the KIB Code requiring mandatory Service.

ARTICLE 5: FUTURE PROGRAM CONSIDERATION: RECYCLABLES COLLECTION.

5.01 KIB Recyclables Program Specifications.

Contractor acknowledges that in addition to any other changes in Performance Obligations implemented under and subject to the protocol in Article 12, KIB may direct Contractor to implement a Recycling collection program. KIB may prescribe the scope of Recycling services, performance specifications and performance standards. KIB will request Contractor to submit a proposal to implement KIB's Recycling collection program under Article 12 before requesting any Person to submit a proposal or negotiating with any other Person. However, if KIB and Contractor do not reach agreement by the end of the period specified in Article 12, KIB may take either of the actions permitted within 12.02.

ARTICLE 6: ROLL OFF COLLECTION AND TRANSPORTATION.

6.01 On-call Temporary Dumpster and Roll-off Service.

- a. Container delivery.** Upon a Customer request, Contractor will deliver a Dumpster or Roll Off Container in any capacity provided on the Service Fee Schedule at the following times:
 - (1) on the same Service Day if a Customer requests Service before 10 a.m. on that Service Day;
 - (2) on the next Service Day if the Customer requests Service after 10 a.m. but before 4:00 p.m. on a Service Day, and

(3) within two Service Days, if the Customer requests Service after 4:00 p.m. on a Service Day.

- b. Collection.** Beginning on the Collection Commencement Date, Contractor will collect all Refuse and C&D Debris in a Dumpster or Roll Off Container at the frequency requested by the Customer for the corresponding charges listed on the Service Fee Schedule.
- c. Container pick up.** Contractor will pick up that Dumpster or Roll Off Container within 2 Service Days of a Customer’s request or other time agreed to between Contractor and Customer.
- d. Delivery to KIB Landfill.** If Contractor cannot divert C&D Debris from disposal using Reasonable Business Efforts (*for example, recovering metal for reuse*), it will deliver it to KIB Landfill, subject to the same obligations that Contractor has with respect to Refuse under Article 8. (*For example, as of the Contract Commencement Date, Contractor cannot deliver C&D Debris to KIB Landfill on windy days when directed by KIB.*)

6.02 Roll Off Container at KIB Landfill.

- a. Container delivery and replacement.** Beginning on the Commencement Date, Contractor will deliver a Dumpster or Roll Off Container in any capacity provided on the Service Fee Schedule, as requested by KIB, to the location specified by KIB at the KIB Landfill. Contractor will replace that Dumpster or Roll-off Container with another Dumpster or Roll Off Container of any other capacity provided on the Service Fee Schedule, within two Service Days of KIB request. Contractor will provide KIB with the Service prescribed in Article 7.08 (including container repair and maintenance), as if KIB were a Customer.
- b. Collection.** Beginning on the Collection Commencement Date, Contractor will Collect all Solid Waste in the Roll-off or Dumpster at the KIB Landfill at the frequency agreed to by KIB and the Contractor, without charge to KIB, and dispose of it at the KIB Landfill (and pay KIB disposal fee).

c. Payment by Customers.

- (1) Mandatory Service charges. If anyone notifies Contractor in writing that he or she wishes to personally store, collect, transport and dispose of Solid Waste generated on that person's Premises, (referred to as "self-haul"), Contractor may nevertheless charge that person a Contractor Service Fee commensurate with the gallon equivalent (32, 64 or 96 gallons) of Solid Waste that the self-haul Customer discards at the Dumpster or Roll Off Container located at KIB Landfill, as estimated by a KIB employee.
- (2) Contractor acknowledges that Contractor is authorized under this Agreement to charge the owner or occupant of a Premises a Service Fee, regardless of whether or

not that owner or occupant self-hauls Solid Waste and discards it in the Dumpster and Roll Off Container at KIB landfill, or utilizes Services at Customer's Premises.

Therefore Contractor acknowledges that it is compensated for providing Service under this Article even though it does not charge KIB.

ARTICLE 7: GENERAL COLLECTION AND RECYCLING PERFORMANCE OBLIGATIONS AND STANDARDS

7.01 Missed Pickups and Other Complaints.

a. Corrective action.

- (1) **Missed Pickups etc.** Absent Contract Service Exceptions, on the next Contract Service Day following telephonic or other notice to Contractor, Contractor will Collect without charge any container that Contractor should have Collected, delivered, exchanged or repaired but did *not* Collect, deliver, exchange or repair. If Contractor does not timely provide the Contract Service, KIB may provide the Contract Service itself or through a third party and Contractor will reimburse KIB's Reimbursement Costs thereof.
- (2) **Other Complaints.** Contractor will respond to all Customer inquiries and complaints (including any inquiry or complaint left with the telephone answering service) within 24 hours following notice to Contractor and handle complaints substantially as required by the Customer Complaint Protocol.
- (3) **No referral to KIB.** Contractor will not refer or forward any Customer to KIB for resolution of complaints or answers to inquiries *unless* the Customer insists, in which event Contractor will refer the Customer to the KIB Representative.
- (4) **Employee Training.** Contractor will train each of its Customer service employees to follow the Customer Complaint Protocol upon starting employment and periodically thereafter.

b. Customer Complaint Protocol. Contractor will maintain, update as necessary, and follow the Customer Complaint Protocol. Upon commencement of this Agreement and in advance of all updates, Contractor will provide KIB with a copy of the Customer Complaint Protocol for its approval which shall not be unreasonably withheld.

c. Records. Contractor will maintain a written record of every inquiry and complaint received by Contractor, including information required by KIB, and provide KIB with a copy of those inquiries and complaints that occurred in the previous month by the 15th day of each month.

- d. **KIB access to records.** Contractor will allow KIB access to complaint records at Contractor Office during Contractor Office Hours. Contractor will provide copies of any Customer complaints and the resolution of those complaints to KIB within two hours of KIB request, and other Records, promptly.
- e. **Reimbursement of KIB Cost.** Contractor will reimburse KIB’s Reimbursement Costs incurred by a KIB Related Party or Parties for the following:
 - (1) more than 2 hours in the aggregate resolving any one Customer’s complaint or answering that one Customer’s question, or
 - (2) more than 1 hour in any work week (KIB Business Days generally Monday through Friday) resolving all Customers’ complaints or answering all Customer’s questions.

KIB’s invoice for KIB’s Reimbursement Costs must indicate the following:

- (i) the name and address of the Customer,
- (ii) nature of complaint or inquiry,
- (iii) amount of time spent by KIB employee or other Person,
- (iv) hourly fees for KIB employees or fees of other Person, and
- (v) cost of materials or other disbursements, including phone and postage costs, required to resolve the complaint or answer the question.

7.02 Unpermitted Waste Screening.

- a. **Unpermitted Waste Screening Protocol.** Contractor will develop and implement an Unpermitted Waste Screening Protocol in compliance with Applicable Law and in a manner satisfactory to KIB.
- b. **Inadvertent Delivery of Unpermitted Waste.** If Contractor inadvertently delivers Unpermitted Waste to a Solid Waste Management Facility, Contractor will use its best efforts to identify the Customer that discarded the Unpermitted Waste and cooperate with the Solid Waste Management Facility in investigations. Contractor will contact any identified Customer and provide that Customer with information on safe disposal of Unpermitted Waste.

7.03 Contract Service Exceptions.

- a. **Collection Exception.** Contractor is not obligated to Collect any Solid Waste in event of any Contract Service Exception.
- b. **Non-Collection Notice.** If Contractor does not Collect any Solid Waste in event of a Contract Service Exception, Contractor must complete and leave a Non-Collection Notice securely attached to a container at or near the Set-out Site (*except* in the event of unsafe conditions, when Contractor will use best efforts to immediately notify the Customer of the unsafe condition, including leaving a Non-Collection Notice on the door of the Premise (if safe) or telephoning Customer.)

- (1) A Non-Collection Notice with respect to Solid Waste that is not properly placed inside containers, must contain the following information:
 - (i) reminder that the Customer must place Solid Waste (except Bulky Items) in a closed container;
 - (ii) notice that Contractor is authorized to charge the Customer the surcharge listed on the Service Fee Schedule each time the Customer sets out a container that is filled above the container rim and will not fully close;
 - (iii) notice that Contractor is authorized to charge the Customer the surcharge listed on the Service Fee Schedule each time the Customer sets out a container that is filled above the container rim and will not fully close;
 - (iv) notice that Contractor is authorized to charge the Customer the surcharge listed on the Service Fee Schedule each time the Customer sets out a container that has household waste that is un-bagged;
 - (v) instructions on how the Customer can subscribe to additional Refuse containers (including any additional surcharges), or request on-call Collection of Bulky Items.

- (2) A Non-Collection Notice with respect to Unpermitted Waste (such as hazardous waste) or unsafe materials must describe where Customer can dispose of the Unpermitted Waste or those materials, such as at KIB Landfill or other location designated by KIB.

Promptly upon KIB request, Contractor will inform KIB of each Customer to which Contractor gave a Non-Collection Notice.

7.04 Transition and Customer Education.

a. Contractor Transition.

- (1) **Necessity for Smooth Transition.** Contractor acknowledges that it is of the utmost importance to KIB that the transition from solid waste services provided before the Contract Commencement Date to Contract Services will proceed smoothly to the satisfaction of Customers, including the following:
 - (i) timely Collection at each Customer’s Premise,
 - (ii) accurate billing of Customers for Customer Special Service Surcharges,
 - (iii) distributing Refuse Carts or other Carts, as applicable,
 - (iv) changing pickup days or times,
 - (v) changing the scope of services or program specifications, and
 - (vi) responding to Customer complaints and inquires.

- (2) **Transition Plan contents.** Contractor will implement the Transition Plan in a manner satisfactory to KIB.

b. Compliance with Transition Plan. Contractor will timely and fully implement its Transition Plan. Contractor will direct employees to work overtime and/or add extra shifts, as necessary, without Contractor Service Fee increase, to assure compliance with the Plan. Contractor will submit to KIB written status reports in form and content satisfactory to KIB on a weekly basis, commencing no later than the Friday of the week following the Contract Commencement Date. On the first KIB Business Day each week and promptly upon KIB request, Contractor will meet with KIB to review status of Plan implementation.

7.05 Other Special Customer Services. Upon Customer request, Contractor may provide special services in addition to prescribed Contract Services following approval by KIB based on the following information:

- (1) scope of services, and
- (2) any surcharge.

7.06 Contract Service Assets.

a. Operation and maintenance yard; Contractor Office.

- (1) **Operation and maintenance yard; Contractor Office.** Contractor will secure possession and use of operation and maintenance yard and Contractor Office located on publicly maintained roads.
- (2) **KIB access.** KIB and designees of KIB may enter Contractor’s operation and maintenance facilities or Contractor Office during Contractor Office Hours on 2 hours prior telephone, text message, E-mail or facsimile notice, and investigate, observe, inspect and review Contractor's operations and Contract Service Assets. Contractor will make available a management representative or other authorized person to conduct each KIB representative through facilities. This right does not limit KIB’s right to inspect Vehicles.

b. Use and possession; acquisition. Contractor will either own each Contract Service Asset or ensure that any lease, financing documentation, rents or purchases by installment or conditional sale agreement with respect to each Contract Service Asset allows KIB use and possession of the Contract Service Asset in order to realize KIB’s rights to use and possession and, with respect to Carts and Dumpsters, acquisition or purchase. Any Contract Service Asset Document, will:

- (1) allow the Guarantor to assume Contractor’s obligations and to continue use of Contract Service Assets in performing Contract Services;
- (2) allow KIB or its designee to assume Contractor’s obligations and to continue use of Contract Service Assets in performing Contract Services.

Contractor will provide a copy of the Contract Service Asset Document upon KIB request.

Comment [PD2]: Attorney review: Assuming per 3.03 that KIB retains Refuse Carts and Dumpsters at end of existing contract, why would KIB ever purchase Carts? Also, if this is OK, shouldn't it also reference Dumpsters?

c. **Inventory.** Contractor will prepare a preliminary inventory of Refuse Carts and Dumpsters that Contractor will acquire or supply as required by the Transition Plan as Contractor Documentation. In its next Monthly Report following delivery of any Cart as required by the Transition Plan, Contractor will complete and finalize the inventory. In each Annual Report following completion of the Transition Plan, or within 10 business days upon request by KIB, Contractor will update the inventory to reflect acquisition or replacement of Refuse Carts and Dumpsters, accompanied by a representation and warranty signed by Contractor that all Refuse Carts and Dumpsters meet specifications.

Comment [PD3]: Confirm we should reference Dumpsters in this section.

7.07 Customer Billing; Bill & KIB Fee Collection.

a. **Customer service fees.** Contractor will provide billing and bill collection services at the time and in a manner satisfactory to KIB, in amounts equal to the Contractor Service Fee (subject to any Senior Discount), Adjusted Tonnage Amount and any other fees directed by KIB.

b. **KIB fees.**

- (1) **Amount.** On behalf of KIB, Contractor will charge Customers a fee or fees in the amount directed by KIB. Contractor will not separately itemize that fee or fees on invoices to Customers or any other correspondence with Customers, unless authorized by KIB.
- (2) **Recording Fees.** Upon receipt of any Customer’s payment of fees for Contract Service, Contractor will simultaneously record receipt of KIB’s fees in separate accounts within Contractor’s detailed general ledger. Those fees belong to KIB and not to Contractor.
- (3) **Remitting Fees.** Contractor will remit to KIB amounts equal to KIB’s fees at the time directed by KIB. Contractor may retain the remaining amounts received from Customers as compensation for fully and timely satisfying Contractor’s obligations under this Agreement.

7.08 Containers.

a. **Providing Containers**

- (1) **Carts and Dumpsters.** Contractor will provide a sufficient number of containers to execute this agreement. All containers shall be in service no later than the date provided in Contractor Transition Plan:
 - (i) Carts having the specifications described in Contractor Documentation as approved by KIB (including bear Carts, a cart designed to be resistant to opening by bears to be provided in bear aware areas to elderly residents upon request).
 - (ii) Contractor will label carts with message and use instructions approved by the

KIB for any new cart user. Basic operating instructions will be hot stamped onto carts. Carts will be warranted for the full 10 years of service possible under this agreement.

- (iii) Dumpsters, having the specifications described in Contractor Documentation as approved by KIB.

Roll Off Containers. Contractor will provide Roll Off Containers no later than the date provided in the Contractor Transition Plan. Contractor may provide Roll Off Containers that are not new if, in the sole judgment of the KIB Representative, they are in good repair and appearance.

- (2) **Compactors.** Contractor is not obligated to provide a Customer with a Compactor.
- (3) **Replacement Containers.** Contractor will provide additional and replacement containers (other than Compactors) as necessary to ensure that Customer always has a container.
- (4) **Container Inventory.** As part of Contractor Documentation, Contractor will provide KIB with a copy of Service Asset Documents related to container acquisition and financing and container inventory promptly upon container acquisition and thereafter promptly at KIB request. Contractor will update the Service Asset Documents and container inventory in each Annual Report and within 10 days of KIB request.

b. Changes in Service; Repair or Replacement. Contractor will exchange, remove and/or deliver containers at the time directed by KIB, and compensated by surcharges, if any, listed on the Service Fee Table, including for the following:

- (1) changes in Service,
- (2) repair of damaged containers, and
- (3) replacement of damaged or stolen containers.

c. Locks. Within one week of Customer direction, Contractor will provide locks on a Dumpster for the surcharges listed on the Contractor Service Fee Schedule.

d. Roll Cart Requirements. Contractor will label Roll Carts with message and use instructions approved by the KIB for any new Cart user. Basic operating instructions will be hot stamped onto carts. Carts will be warranted for the full 10 years of service possible under this agreement.

7.09 Customer Service Subscription and Bill of Rights.

a. Form and Content. Before commencing new Contract Service or changing Contract Service levels or frequency, Contractor will provide each Customer with a written Customer Service Subscription.

Contractor may include a waiver of damage liability and/or Customer indemnity in connection with Collection on a Customer's private driveway or pavement in form and content satisfactory to KIB.

- b. **Service Requests.** Contractor will accept Customer's requests for commencement of or changes in regular or special Service by phone, mail, fax or E-mail.
- c. **Copies.** Contractor will provide KIB with a copy of any Customer Service Subscription promptly upon request.

7.10 Recycling

- a. **General.** The Contractor will provide all labor, equipment, personnel, quarterly reports, and payment invoices in a timely manner as outlined in this Agreement. The Contractor agrees to perform all services necessary for the processing and shipment of recyclable materials within the city and borough limits. Contractor will collect and process cardboard, mixed paper/paperboard, newspaper, plastic, aluminum cans and office paper. Recyclable material does not include large metal items such as vehicles, parts of vehicles, appliances or home construction type of siding. Contractor will implement the processing methods and Recyclables collection as described in its RFP Proposal and the final addendum and cover all costs associated with Contractor's collection and handling of Recyclables.
- b. **Methods.** Contractor will adhere to the collection plan and processing methods based upon its RFP Proposal and addendum.
- c. **Equipment and Personnel.** The Contractor has identified, as shown in RFP Proposal and Addendum hereto, the equipment to be used in the collection and processing of Recyclables. This identification shall include the minimum following information
 - (1) Equipment type,
 - (2) Equipment quantities,
 - (3) Availability of backup equipment.

The Contractor has also identified in RFP Proposal the number of personnel necessary to meet the requirements of this agreement. Personnel listed shall include management, supervisory, customer service, equipment operators, collection personnel, etc. Any changes to management personnel shall be promptly communicated to KIB.

- d. **Final Disposition of Recyclable Materials.** It is the responsibility of the Contractor to ensure that collected material is processed and recycled. To this end the Contractor is to document the final disposition of the collected material as part of the quarterly reporting requirement.
- e. **Documentation.** Contractor shall maintain throughout the duration of the Agreement

plus three (3) years, documentation on all of the services provided. Contractor shall maintain records to substantiate all work performed and fees requested. Such records shall include, but not be limited to, daily records on the pounds of processed recyclables, shipment records and location of recyclable pick up locations etc. Copies or portions of this documentation may be requested by KIB to be supplied with Contractor's monthly requests for payment.

f. **Records and Reporting.**

(a) **Records.** Contractor will collect and record, at a minimum, the following information daily, indicating the day of the week and date:

(i) **Tonnage:** Tons of Recyclables - weight of each load (gross, tare and net); receipts from the recyclables processing facilities.

(b) **Reports.** Contractor will include the following information in its Quarterly Report as described in the KIB RFP and Contractors RFP Proposal: a summary of the records for tonnage, and any additional information requested by KIB.

(c) **Inventory.** Contractor will submit its inventory of Service Assets, updated annually. It shall include the following:

(i) a general description of its maintenance yards, facilities, drop off locations etc.; the Office and any other administrative and customer service offices,

(ii) Vehicles described by type (i.e. manufacture and model number for cab, chassis and body; and descriptive notation said as front end loader, compactor etc.), number, DMV license number, the age of the chassis and body; type of body (open-top, closed etc.); type of fuel used; the date of acquisition; the maintenance and rebuilt status; lease or installment purchase information.

g. **Communication.** All official communications from Contractor to KIB regarding this Agreement will be directed to the Project Manager.

h. **Recyclables Processing and Marketing.** Contractor may change its selection of Recyclables Processing Facility and notify KIB within 30 days of doing so. If the Recyclables Processing Facility is wholly or partially inoperable for any reason, including uncontrollable circumstances, Contractor will make other arrangements to process Recyclables or to transport the recyclables to the recyclables processing facility without increase of the Contractor compensation despite any consequent additional costs to Contractor.

i. **Service Standards.** Contractor will provide service in accordance with the following provisions:

(a) **Litter, Spills and Leaks.**

(i) **Litter.** Contractor will ensure that each collection vehicle carries a broom and shovel at all times for this purpose.

(ii) **Material Spills.** Contractor will transport recyclables only in covered vehicles. Contractor will prevent materials from escaping, dropping, spilling, blowing or scattering from vehicles during collection and transportation. Contractor will immediately clean up any materials that are dropped, blown, spilled, scattered, or tracked onto any alley, street or public or private place.

(iii) **Liquid Leaks.** During collection and transportation, Contractor will also prevent oil, hydraulic fluid, paint or other liquid from leaking out of vehicles. Contractor will ensure that each collection vehicle carries petroleum absorbent materials. Contractor will immediately cover leaked fluids with absorptive materials, remove those materials from the ground and apply a cleaning agent to cleanse the soiled spot. Contractor will assure that no hydraulic fluid or other liquid leaks from any vehicle onto the pavement. If a leak does occur, Contractor will immediately clean it up.

(b) **Customers' Privacy.** Contractor will strictly observe and protect customers' rights of privacy. Contractor will not reveal information identifying individual customers or the composition or contents of a customer's waste stream to any person (other than the KIB) unless upon the authority of a court of law, by applicable law or by valid authorization of the customer, and will use reasonable business efforts keep that information confidential among staff and its consultants.

This provision will not be construed to preclude Contractor from preparing, participating in or assisting in the preparation of waste characterization studies or waste stream analyses that may be required by applicable law. In addition, Contractor will not market, sell, convey, or donate to any person any list with the name or address of customers. The rights accorded customers pursuant to this section are in addition to any other privacy right accorded customers pursuant to applicable law. Contractor will use reasonable business efforts to keep information with respect to customers and customer service information (such as accounts serviced, containers, special services, recyclables inventory, sales of recyclables and contaminants) confidential among staff and its consultants, if any, as permitted by applicable law.

(c) Vehicles and Drivers.

- (i) **Leak-proof Vehicles.** Vehicles used in collection or transportation of recyclables must have watertight beds of metal or impervious material that can be cleaned.
- (ii) **Vehicle Identification.** Contractor will ensure that its name and telephone number are clearly shown on each vehicle, indicating that the vehicles are owned and operated by Contractor.

(d) Facilities.

- (i) **Offices.** Contractor will maintain an administrative office (the “Office”) located in the KIB or City of Kodiak (CoK) at the address provided in Contractor Documentation.
- (ii) **Operations Yard.** If Contractor sites its operations and maintenance facilities in the KIB or CoK, it will do so in accordance with applicable laws, including zoning laws, with ample ingress and egress for vehicles. Contractor will maintain its facility in a neat, clean and presentable manner, including regular sweeping of related grounds for litter.

(e) Pavement and Utilities. Contractor is responsible for damage to pavement and driving surfaces if collection sites are located on public or private property, other than ordinary wear and tear, if the damage is the result of vehicles exceeding the maximum weight limits allowed by applicable law or Contractor’s negligent operation of vehicles. Customer or KIB may direct Contractor to promptly repair or replace damaged driving surfaces or utilities or repair and replace them itself or through a third party, to satisfaction of customer or KIB, as the case may be. Contractor will reimburse customer for his or her costs of repair or replacement and KIB or CoK the reimbursement costs of repair or replacement. Contractor is responsible for damage to public and private utilities, whether located on public streets or property or private property, if damage is the result of the inattention, carelessness or negligence of Contractor.

(f) Damage to Property and Personal Injury. Contractor will not cause damage to property or personal injury. At its sole expense, Contractor will repair or replace to the satisfaction of the owner of damaged property, any physical damage to public or private property and will reimburse to the satisfaction of an injured individual, the cost of any personal injury caused by the negligent or willful acts or omissions of Contractor. KIB may refer all complaints of damage or injury to Contractor as a matter within Contractor’s sole responsibility. Notwithstanding any rights the KIB has for breach of contract, disputes between Contractor and Persons as to damage to private pavement or other property or to injury are civil matters between the Contractor and that person.

Promptly upon receiving notice of any damage to Customer's property by phone or other medium, Contractor will record that information and determine whether or not the damage to Customer's property was caused by the inattention, carelessness or negligence of Contractor's employees. If Contractor determines that it was responsible for the damage, within 3 days of making its determination, Contractor will reimburse Customer his or her direct costs of repair or replacement of damaged property. Contractor will provide KIB with a copy of the recorded damage log in its quarterly report.

- j. **Right to Audit.** Contractor shall maintain complete and accurate records, kept in accordance with generally accepted accounting standards, of all of Contractor's costs that are chargeable to KIB and shall retain such records for at least three (3) years after completion of the contract. Contractor shall also maintain records of customers served. KIB shall have the right, at any reasonable time, to inspect and audit those records during the course of work and throughout the three (3) year retention period. Contractor shall accommodate such review at no additional cost. Contractor shall incorporate this requirement in all contracts with third parties to which this work may be subcontracted. Regardless of location, the KIB may enter operation and maintenance facilities during Office Hours and observe, inspect and review Contractor's operations therein.

8: REFUSE DISPOSAL.

8.01 Transportation to KIB Landfill.

- a. **KIB Landfill.** Contractor will transport and deliver all Refuse that it Collects to KIB Landfill. Contractor will coordinate that delivery with Holiday Collection schedules and closures for repair and maintenance. Contractor will keep Refuse that it Collects at Residential Premises, whether in Carts, Dumpsters, or Roll Offs separate from Refuse that it Collects at Commercial or Multi-Family Premises and will not commingle that Refuse in one Vehicle.
- b. **Compliance and Cooperation.** Contractor will ensure that its vehicles can pass in and out of the door at the baler at KIB Landfill. Contractor will cooperate with KIB Landfill operator and comply with all rules in effect at the KIB Landfill, including the following:
 - (1) delivering Refuse only at the times and on the days specified by KIB;
 - (2) following directions to unload Collection Vehicles in designated areas,
 - (3) accommodating operations and maintenance activities, and
 - (4) complying with Unpermitted Waste exclusion programs.
- c. **Disposal Fees.** Contractor will pay Disposal costs, including Disposal of Refuse that Contractor Collects from Roll Offs/Dumpsters located at the KIB landfill.

8.02 Limited Disposal Defense and Indemnification.

- a. Conduct Included.** Contractor will do the following:
- (1) indemnify,
 - (2) defend with counsel approved by KIB,
 - (3) release, and
 - (4) hold harmless

KIB and KIB’s Related Parties from and against all Liabilities and Losses paid, incurred or suffered by, or asserted against, KIB or KIB’s Related Parties, but *only* to the extent that those Liabilities and Losses are caused by the following:

- (i) **Contractor negligence or misconduct.** The wrongful, willful or negligent act, error or omission, or the misconduct of Contractor;
- (ii) **Non-Customer materials.** The collection, transporting, delivery, recycling, processing, composting, disposal or other handling by Contractor of Unpermitted Waste that Contractor Collects outside the Contract Service Area or from Persons other than Customers;
- (iii) **Failure to Comply with Unpermitted Waste Screening Protocol.** The failure of Contractor to train its employees as required by Applicable Law or the Unpermitted Waste Screening Protocol, whichever is more stringent;
- (iv) **Contractor-identified Unpermitted Waste.** The improper or negligent collection, handling, delivery, processing, recycling, composting or disposal by Contractor of Unpermitted Waste that Contractor inadvertently collects but that is subsequently identified as Unpermitted Waste.

KIB acknowledges that the mere presence of hazardous waste in Refuse will not constitute negligence or in and of itself create any liability on the part of Contractor absent any of the circumstances described in items (i) through (iv) of this subsection.

- b. KIB Sole Negligence Excluded.** Contractor is not required to reimburse or indemnify KIB to the extent any Liabilities or Losses are due to the sole negligence of KIB with respect to Contract Services.
- c. Indemnity With Respect to Contract Services Only.** Contractor’s Indemnity described in this Article is limited to Liabilities and Losses resulting from and after the Contract Commencement Date.
- d. Statutory Agreement.** Contractor’s Indemnity under this Article is intended to operate as an agreement under 42 U.S.C. Section 9607(e) and any corresponding Applicable Law provisions of State, to insure, release, protect, hold harmless and indemnify KIB from Liabilities and Losses under this Article. Contractor’s Indemnity under this Article includes the specific actions or inactions of Contractor described in items numbered (i) - (ii) consecutively of Subsection a (*for example, a driver accepting a Customer bribe and illegally disposing of Unpermitted Waste that upon identification thereof, must be segregated and transported as required by Applicable Law*).

ARTICLE 9: MISCELLANEOUS PERFORMANCE OBLIGATIONS

9.01 Compliance with Law.

- a. **Compliance.** Contractor will comply with all Applicable Laws, including securing and maintaining all Permits. No Performance Obligation may be construed to relieve Contractor of any obligations imposed by Applicable Law. If a Permit issued by KIB remains in effect after the expiration or termination of this Contract, Contractor nevertheless may not operate within KIB for collection of Solid Waste formerly collected under this Contract. **THIS PROHIBITION WILL SURVIVE THE TERMINATION OF THIS CONTRACT** and KIB may seek specific enforcement of this prohibition under Article 14.04. Promptly upon KIB request, Contractor shall give KIB copies of Permits and documentation evidencing that Contractor is in compliance with its Permits within 60 days of start of contract.

- b. **References.** References in this Contract to particular provisions or requirements of Applicable Law may not be construed to limit Contractor’s obligation to comply with all provisions of Applicable Law. Those references are intended to facilitate Contractor’s satisfaction of its Performance Obligations and KIB’s administration and specific enforcement of this Contract. Those references may not be construed to constitute lack of Contractor obligation to comply with other provisions or requirements of Applicable Law that are not specifically referred to or cited in this Contract. If any provision of this Contract is more stringent than Applicable Law, Contractor will comply with that provision.

- c. **Fines and penalties.** Contractor is solely liable for all fines and penalties that are imposed on Contractor or due to Contractor’s actions, including fines and penalties that are the result of Contractor’s Violation of Applicable Law (including Permits). Contractor will not seek reimbursement from KIB or any Customer for any fines or penalties. Contractor will inform KIB within 24 hours upon receiving any violations, fines or penalties.

- d. **Contractual Obligations.** Applicable Law is incorporated in this Contract by reference as if set forth fully in this Contract as contractual Performance Obligations of Contractor to KIB. If any Applicable Law is inconsistent with this Contract, the more stringent will apply.
 - (1) **Breaches.** In addition to or in lieu of prosecuting violations of the KIB Code as misdemeanors, infractions, or other manner provided under the KIB Code, KIB may enforce Contractor’s obligations under Applicable Law (including the KIB Code) in the same manner as it may enforce Contractor’s other contractual obligations under this Contract (including specific performance and as Breaches subject to cure under Article 14.01) whether or not noncompliance with those provisions of Applicable Law has become a Violation. Neither prosecution of Contractor for noncompliance with Applicable Law or enforcement of Applicable

Law is a condition precedent to enforcing those Performance Obligations. In determining whether or not Contractor is in noncompliance with those provisions, the standard of proof applicable to breach of contract will apply. KIB has no obligation to enforce any Applicable Law.

- (2) **Violation.** Violation of Applicable Law is a Default subject to contest under Article 14.02.
- e. **KIB's Protection of Public Safety, Health, and Welfare.** Contractor acknowledges that KIB is authorized to make all necessary and reasonable rules and regulations regarding all aspects of MSW Management Services to protect the public's health, safety, and welfare. No provision in this Contract may be deemed to limit KIB's power to take any action that KIB deems necessary or appropriate in its sole discretion to protect the public's safety, health, and welfare.
- f. **Compliance with KIB Code.** Contractor must comply with the KIB Code, subject to possible adjustments in Contractor Service Fee in the event of Changes in Law. Contractor warrants and represents that it is fully acquainted with the provisions of KIB Code. Contractor must pay Liquidated Damages with respect to non-compliance with specified provisions of the KIB Code, including failure to remedy any Violation of KIB Code within five days of the date of notice of Violation, and in the event of conviction of a Violation.

9.02 Personnel.

- a. **Identification, Appearance, Conduct.** Contractor will train and require each of its personnel to present a neat, tidy and orderly appearance, (uniforms and safety vests required)
 - (1) conduct his or her self in a courteous manner,
 - (2) refrain from using loud or profane language,
 - (3) perform Collection as quietly as possible.
- b. **No Gratuities.** Contractor will not permit its personnel to demand or solicit, directly or indirectly, any additional compensation or gratuity from any Customer or member of the public.
- c. **Compliance with OSHA.** Receipt of a citation or failure-to-abate notice from the State Division of Occupational Safety and Health or other Regulatory Authority is a Breach.

9.03 Responsiveness to KIB.

- a. **Phone calls.** Contractor will return telephone calls from KIB to the individual who made that call no later than the next KIB Business Day.

- b. Meetings.** Within one week of oral or written direction by KIB, Contractor will meet with KIB during KIB Office Hours at the offices directed by KIB.
- c. E-mails.** Contractor will respond to all e-mails from KIB within 48 hours of receipt (except on weekends and Holidays).
- d. Written correspondence.** Contractor will respond to written correspondence from KIB within one week of receipt or other time specified by KIB.

ARTICLE 10: RECORDS AND REPORTING

Contractor acknowledges KIB’s right to review Records and receive reports, for reasons including:

- (1) enforcing Customers’ rights;
- (2) evaluating Contractor’s performance under and in compliance with this Contract;
- (3) exercising KIB’s rights to perform, or cause a third Person to perform; Contractor’s Performance Obligations in certain events, such as Defaults and Uncontrollable Circumstances; and
- (4) determining and corroborating the amount of any Contractor Payment Obligation.

10.01 Records.

- a. Maintenance.** Contractor will keep accurate and complete Records.
- b. Preservation and Retention.** Unless otherwise directed by KIB, Contractor will preserve and retain Records (other than Refuse Disposal Records or Delivery Data), such as Customer billing Records, for the following periods of time:
 - (1) until at least 2 years after the Termination Date, or
 - (2) any longer period required by Applicable Law.
- c. KIB Inspection and Audit.**
 - 1. Location.**
 - (i) **KIB Offices.** Upon 3 Service Days advance telephonic or written request by KIB, Contractor will use Reasonable Business Efforts to provide copies of Records to KIB and its designees for inspection, review or audit at KIB’s offices. *For example, Contractor might email or physically mail documents from a site outside KIB.*
 - (ii) **Contractor Office or Service office within KIB.** If Contractor cannot provide KIB with copies of Records within the notice period provided under subsection c.1.(i) using Reasonable Business Efforts, Contractor will make those Records

available to KIB or its designees for inspection, review or audit at Contractor Office (or if Contractor's Office is not located within 25 miles of KIB's administrative offices, at a location within KIB) during Contractor Office Hours.

2. Scope of inspection or audit: KIB may do any or all of the following:

Inspect and review Records at any time following notice under subsection c.1.(i), or audit Records once each Contract Year, including verification of any of the following:

- (i) Customer Special Service Surcharges that Contractor charged to and collected from Customers,
- (ii) any Contract Fees,
- (iii) Solid Waste tonnage Collected, Processed, Diverted or Disposed,
- (iv) Collection Customer complaint logs, and
- (v) other Records that confirm compliance with Performance Obligations.

Promptly upon request, Contractor will provide KIB or its designees with any additional information (such as primary records supporting reports) relevant to this Contract.

10.02 Reporting.

a. Annual. Contractor will submit a complete Annual Report to KIB no later than 45 days after the end of the Contract Year (or at direction of KIB, Calendar Year), for the preceding Contract Year (or Calendar Year). At a minimum, the Annual Report shall include the following information:

- (i) Number of staff by function (e.g., drivers, mechanics, administration)
- (ii) Number of vehicles by type
- (iii) Containers in service by size of container
- (iv) Location of residential Roll Off Containers
- (v) Disposal load count, weight, and cost for C&D, Commercial MSW, Residential MSW, metal, trash
- (vi) Annual summary of quarterly Recycling reports
- (vii) Recommendations

b. Monthly Meeting. Contract shall participate in a monthly meeting with KIB at a time and location of KIBs choosing.

10.03 Financial Records and Reports.

a. Maintenance of Records.

1. Content. Contractor will maintain in Contractor Office accurate and complete financial Records of the following:

- (i) customer receipts,
- (ii) payments to KIB (including Contractor Payment Obligations, such as any Contract Fee),
- (iii) costs and expenses associated with satisfying Performance Obligations, whether by Contractor or an Affiliate.

Contractor may maintain financial Records associated with Goods or Services provided by an Affiliate in the office of the Affiliate but will provide KIB with a copy of those Records within 10 days of KIB request.

- 2. **Form.** Contractor will maintain its financial Records on an accrual basis and in accordance with Generally Accepted Accounting Principles showing the results of Contractor’s operations under this Contract separately from other operations under other contracts or in other locations, as if Contractor were an independent entity providing service only to KIB.

ARTICLE 11: INDEMNITIES, INSURANCE, LETTER OF CREDIT

11.01 Insurance.

- a. **Coverage Requirements.** Without limiting its Indemnities, Contractor will secure and maintain insurance coverage meeting the requirements in this Article. KIB may require Contractor to secure and maintain larger amounts or types of coverage if it compensates Contractor the Direct Costs of the additional premium for that coverage under Article 12. Contractor may use a combination of primary and excess insurance coverage to satisfy these requirements. KIB may reduce insurance requirements if it determines that the reduction is in KIB’s best interest. Each liability policy must provide contractual liability coverage for Contractor’s Indemnities, including any necessary endorsement, schedule or other documentation.

- 1. **General Liability Insurance.** Written on ISO policy form CG 00 01 (occurrence) or its equivalent (and not CG 00 02 claims made) with limits of not less than the following:

General Aggregate:	\$4 million
Products/Completion Operations Aggregate:	\$4 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$2 million

- 2. **Liability coverage for pollution conditions resulting from transported cargo.** With a limit of not less than \$2 million per occurrence covering loss (including cleanup costs) that the Contractor becomes legally obligated to pay as a result of claims for bodily injury, property damage, and cleanup costs (including expenses required by environmental laws or incurred by federal, state, KIB or third parties) resulting from pollution conditions caused by transported cargo (including waste). For the purpose of this subsection, “pollution conditions” includes the dispersal,

discharge, release, or escape of any solid, liquid, gaseous or thermal irritant or contaminant (such as smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, and waste materials) into or upon land, any structure on land, the atmosphere, or any watercourse or body of water (including groundwater), provided the conditions are not naturally present in the environment in the amounts or concentrations discovered. Contractor's general liability policy may be endorsed to provide for this pollution liability coverage.

3. Automobile Liability Coverage. Insurance meeting the following requirements:

- (i) Written on ISO policy forms CA 00 12 or CA 00 20 (or their equivalent) with a limit of liability not less than \$2 million for each accident,
- (ii) endorsed to delete the pollution and/or the asbestos exclusion and include pollution liability (using form CA 99 48 or its equivalent) for accidental spills and discharges while transporting and/or processing materials, and
- (iii) covering all Vehicles that drive on public roads.

If Contractor is subject to federal regulations, Contractor also will maintain any other coverage necessary to satisfy state or federal financial responsibility requirements.

4. Workers' Compensation and Employers' Liability. Insurance providing the following:

- (i) Workers' compensation benefits required by Applicable Law (including the State Labor Code or by any other state labor law), and for which Contractor is responsible, and
- (ii) Employers' Liability coverage with limits of not less than the following:

Each accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

b. Insurer qualifications. Contractor will secure insurance provided by an insurer meeting the following qualifications:

- (1) is acceptable to KIB,
- (2) is an admitted company in State,
- (3) has a size category of VII or larger by A.M. Best Company, Inc., and
- (4) has a rating of A or better by A.M. Best Company, Inc.

a. Insurance Coverage Requirements for Subcontractors. Contractor will insure each Subcontractor performing Contract Services or transportation of Solid Waste by providing evidence that either:

- (1) Contractor is maintaining insurance required by this Article covering the activities of the Subcontractor, or
- (2) the Subcontractor is maintaining that insurance itself.

b. **Evidence of Coverage.** Contractor will provide certificates of insurance, endorsements, schedules and other evidence of insurance coverage requested by and acceptable to KIB at the following times:

- (1) on or before the Contract Commencement Date,
- (2) with submission of each Annual Report,
- (3) promptly upon renewal of policies, and
- (4) within 10 days of KIB’s request.

c. **Certificates of Insurance.** Contractor will provide certificates (or other evidence of coverage) containing at a minimum, the following information with respect to Contractor and any Subcontractor:

- (b) **Contract name:** Explicitly identifying this Contract (for example, UNDER DESCRIPTION OF OPERATIONS), and if necessary to secure contractual liability coverage as an “insured contract” or otherwise, including a schedule or endorsement that specifically identifies this Contract;
- (c) **Types, policy numbers, policy effective / expiration dates and limits:** Explicitly reference each type and corresponding limit of coverage required under this Contract, together with the following:
 - policy numbers,
 - effective / expiration dates, and
 - identification of each required insurance services office (ISO) policy form or confirmation of its equivalency to ISO policy forms required under this Contract (such as “auto liability ISO form CA 00 12”). Where this Contract does not require a specific ISO policy form, the certificate of insurance must specifically reference the required type of coverage (such as “pollution liability” under TYPE OF INSURANCE – OTHER) together with a summary description of its coverage (such as “pollution conditions caused by transported cargo” under SPECIAL PROVISIONS);
- (d) **30 days’ cancellation notice:** Containing the express condition that KIB must be given written notice by mail at least 30 days in advance of cancellation for all policies evidenced on the certificate of insurance. Endorsements cannot contain mere “best effort” modifiers or relieve the insurer from its responsibility to give that notice and the CANCELLATION information on the certificate of insurance must delete language such as “failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives”.
- (e) **Deductibles and self-insured retentions:** Identifying any deductible and self-insured retention. Upon KIB request, Contractor will reduce any self-insured retention as it applies to KIB or provide a letter of credit, certificate of deposit or other financial assurance acceptable to KIB guaranteeing payment of all retained losses and related costs

and expenses related to investigations, claims administrations, and legal defense. The letter of credit or certificate of deposit must be provided by a bank satisfactory to KIB; and

- (f) **Claims made:** If KIB waives the prohibition on procuring claims made policies and insurance coverage is written on a claims-made form, then evidence is required that the “retro date” is before the Contract Commencement Date. Contractor must maintain that coverage for at least 5 years after the Termination Date (or longer as required under this Contract). Promptly upon KIB request, Contractor must provide KIB with evidence of that coverage. THIS PROVISION SURVIVES THE TERMINATION OF THIS CONTRACT.
 - i. **Endorsements:** Contractor must provide copies of the following endorsements or other documentation with respect to Contractor and any Subcontractor satisfactory to KIB:
 - (a) **additional insured** endorsement to each liability policy, explicitly adding KIB and its “officers, agents, and employees” as additional insured;
 - (b) **waiver of subrogation;**
 - (c) insurance is **primary and not contributing** with any other insurance or self-insurance programs maintained by KIB and its officers and employees;
 - (d) **excluding any “insured v. insured” clause** in a liability policy with respect to KIB as an additional insured; and
 - (e) providing **dedicated limits** under a liability policy in favor of KIB as an additional insured.
 - ii. **Schedules.** Contractor must provide schedules or other evidence that liability policies of Contractor and any Subcontractor provide contractual liability coverage for Indemnities, such as listing this Contract as an “insured contract”.
 - iii. **Signature verification.** At KIB’s request, Contractor must provide documentation verifying that the individual signing or countersigning the certificates, policies, endorsements, or other evidence of coverage of Contractor and any Subcontractor is authorized to do so and identifies his or her company affiliation and title. KIB may require complete, certified copies of Contractor's insurance policies at any time.
- e. **Notice of claims.** If any Person makes a claim against Contractor or any Subcontractor exceeding the amount of any deductibles or self-insured retentions, Contractor will promptly notify KIB of the claim.
- f. **Contractor accounting.** Contractor will institute a comprehensive accounting system satisfactory to KIB to monitor all insurance requirements under this Contract, including those of each of its Subcontractors.

- g. Contractor compliance.** Contractor will comply with all requirements of its insurance policies and insurers.

11.02 Contractor Indemnity, Defense and Release.

- a. General.** To the extent allowable under Applicable Law, Contractor will
 - (1) Indemnify and hold harmless,
 - (2) defend with counsel approved by KIB, and
 - (3) release

KIB and KIB’s Related Parties from and against all Liabilities and Losses paid, incurred or suffered by, or asserted against, KIB or KIB’s Related Parties arising out of or in connection with this Contract, including in connection with any alleged failure of KIB or KIB’s Related Parties to enforce provisions of this Contract or of Applicable Law.

- b. Indemnity During Term Only.** Contractor’s Indemnity is limited to Liabilities and Losses resulting from Contract Services provided by Contractor from the Contract Commencement Date through the Termination Date. However, CONTRACTOR’S OBLIGATIONS UNDER THIS SECTION WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

- c. Reimbursement of Enforcement Costs.** If Contractor fails to pay any Indemnities and that failure results in any costs to KIB, within 15 days of KIB request, Contractor will pay KIB’s Reimbursement Costs.

11.03 Letter of Credit. Contractor will provide for the issuance of an irrevocable standby letter of credit (the “**Letter of Credit**”) for the benefit of KIB in form satisfactory to KIB by a financial institution (the “**Bank**”) having at least one of the following minimum ratings:

- (1) Moody’s A2 or better long-term (LT) Issuer Credit and B or better for Bank Financial Strength,
- (2) Standard and Poor’s: A or better for LT Issuer Credit,
- (3) Bauer Financial: 4 Stars or better,
- (4) TheStreet.com Ratings: B or better:

Contractor will provide for a letter of credit in the following amount (the “**Stated Amount**”):

- (i) During the first Contract Year (or balance of the first Contract Year if less than 12 months), the amount of gross Contractor Service Fees projected by KIB for 4 months,
- (ii) During the second Contract Year, an amount equal to the following:
 - (a) 110% of the average amount of gross Contractor Service Fees that Contractor received during any 4 months the first Contract Year, or

- (b) if the first Contract Year was less than 4 months, 110% of KIB’s projection of the amount that Contractor would have received during 4 full months.
- (iii) During the third and following Contract Year(s), an amount equal to 110% of gross Contractor Service Fees that Contractor received during the prior Contract Year.
- (5) KIB may draw on the Letter of Credit, in one or more drawings, in any of the following events as evidenced to the satisfaction of KIB:
 - (i) a Default, or
 - (ii) Contractor is unable to regularly pay its bills as they become due, or
 - (iii) Contractor fails to timely pay any Solid Waste Management Facility, fuel supplier or employee; or
 - (iv) Contractor fails to pay an Insurance deductible or self-insured retention.
- (6) The Letter of Credit may expire no earlier than the date on which the Bank receives a certificate from KIB stating the following:
 - (i) this Contract has expired, or
 - (ii) this Contract has been terminated for a period of 180 days or other preference period provided under Applicable Law with respect to bankruptcy or insolvency, or
 - (iii) Contractor has substituted an alternative letter of credit or other security document acceptable to KIB in KIB’s sole discretion, and
 - (iv) Contractor does not owe KIB any money.

THIS SECTION WILL SURVIVE THE TERMINATION OF THIS CONTRACT. The form of the Letter of Credit, including the procedures and place of demand for payment and drawing certificate attached to the Letter of Credit, must be satisfactory to KIB. The Letter of Credit must be transferable to any successor or assign KIB.

11.04 Guaranty Agreement. Any Person that provided the basis of KIB’s evaluation of the financial strength and creditworthiness of Contract in Contractor’s proposal to KIB with respect to this Contract (or other Person identified by KIB), must be a legal, valid and binding Guaranty by that Affiliate as Guarantor, satisfactory to KIB.

11.05 Assurance of Performance. In its sole discretion and in addition to all other remedies it may have, KIB may demand from Contractor reasonable assurances of full satisfaction of Performance Obligations by a specified date, in any or all of the following events:

- (1) **Labor unrest:** Contractor is the subject of any labor unrest (including work stoppage or slowdown, sick-out, picketing, lock-out or other concerted job action) in excess of 6 days;
- (2) **unable to pay bills:** Contractor appears in the judgment of KIB to be unable to regularly pay its bills as they become due, including failure to time pay the following:
 - (i) with respect to a Contractor, a tipping fee at any Solid Waste Management Facility,
 - (ii) any Insurance deductibles or self insured retention,
 - (iii) any employee’s wages, and
 - (iv) non-payment of any other bill for over 60 days; or

- (3) **monetary judgments:** Contractor is the subject of fines, penalties, or civil or criminal judgment or order entered by a Regulatory Authority, which judgment is in excess of the past 3 months' Contractor Service Fees or requires estimated expenditure by Contractor in excess of those 3 months' Contractor Service Fees.

ARTICLE 12: CHANGE IN SCOPE OF SERVICE

12.01 Change in Performance Obligations.

- a. **At KIB Direction.** KIB may direct Contractor to implement a change of Performance Obligations in the Contract Service Area following: (1) request for, submission of and review of Contractor's proposal under Article 12.02a-c, and (2) agreement of the Parties or determination of the Independent Expert under Article 12.02d. Contractor will submit its proposal within 10 KIB Business Days of receiving KIB's request for proposal (or a longer period that KIB may designate in light of the complexity or magnitude of the directed change).
- b. **Upon Contractor Proposal.** Contractor may propose to KIB a change in the scope of Contract Services under Article 12.02, such as the following:
 - (1) new developments in collection technologies that would improve Contract Service efficiency and reduce the Contractor Service Fee, pollution or environmental impact;
 - (2) a program that would increase Diversion; and
 - (3) changes in operations necessitated by a Change in Law.

12.02 Proposal.

- a. **Contents.** In its proposal, Contractor must describe its detailed plan for implementing the requested or proposed change, including the following:
 - (1) a task list and time-line implementation schedule,
 - (2) Goods or Services (including any Subcontractor) necessary to implement the change, and
 - (3) any change in Contractor Service Fee and cost substantiation therefore, including Contractor's changes in Direct Costs (taking into account both incremental Direct Costs and savings offsets) such as:
 - (i) modifying Vehicle(s);
 - (ii) adding Receptacle(s), Vehicle(s) or routes;
 - (iii) shortening or extending route time;
 - (iv) laying off or supplementing labor; and
 - (v) increasing transportation distance or time to a Solid Waste Management Facility.

KIB may withdraw the request for proposal at any time, for any reason, including receipt of a proposal from Contractor unsatisfactory to KIB.

Contractor will include documentation supporting its proposal satisfactory to KIB.

- b. **Offer.** Contractor’s proposal will be deemed Contractor’s offer to KIB to implement the directed or proposed change. Contractor’s proposal will remain binding for at least 30 days from the date submitted to KIB.
- c. **Review.**
 - (2) **Response/Comments.** Within 20 KIB Business Days of receiving Contractor’s proposal, KIB may review, approve, or disapprove the proposal and comment on it. If KIB does not respond within that time, its approval will be deemed denied. If Contractor’s proposal includes a request for change in the Contractor Service Fee that must be approved by the Assembly, KIB may review, approve or disapprove the proposal within 45 days.
 - (3) **Acceptance of Comments.** Contractor will accept or reject any comments within 15 KIB Business Days of receiving them. If Contractor accepts the comments, KIB will prepare amendments to this Contract that will implement the proposal, satisfactory to Contractor.
 - (4) **Rejection of Comments / Negotiations.** If Contractor rejects KIB’s comments, the Parties will negotiate in good faith for a period of at least 15 KIB Business Days following Contractor’s receipt of KIB comments.
- d. **Failure to agree.**
 - (1) **KIB-directed change.** If the Parties cannot reach agreement on a proposal directed by KIB by the end of those 15 KIB Business Days, KIB may take either of the following actions:
 - (i) implement the change itself or through another Person, or
 - (ii) request binding dispute resolution by the Independent Expert.
 - (2) **Contractor-initiated proposal . . . Changes in Law.** If the Parties cannot reach agreement on a proposal initiated by Contractor by the end of those 15 KIB Business Days of negotiation, the proposal is deemed rejected and this Contract will not be amended *except* that if Parties cannot reach agreement on a proposal initiated by Contractor due to a Change in Law, Contractor may request binding dispute resolution by the Independent Expert under Article 12.03d.

12.03 Independent Expert

a. Selection

- (1) **Exchange of lists.** Following the Contract Commencement Date, Parties will expeditiously select an Independent Expert to keep on retainer in the event the Parties wish to settle disagreement over Contractor’s proposal described in Article 12.02, in

the selection manner described in this subsection a.(1). If the Person selected as Independent Expert resigns or can no longer serve in capacity as Independent Expert (for example, if he or she subsequently works for either Party, creating conflicts), within 5 days of either Party's request for dispute resolution, Contractor and KIB will to the following:

- (i) prepare 2 lists (one each) of 5 independent Persons having experience in MSW Management Services as applicable in the Parties' dispute (such as automated collection in carts), in numerical order with the first preference at the top, and
- (ii) exchange and compare lists.

The Person having the lowest total rank order position on the 2 lists will be the Independent Expert. In case of a tie in scores, the Person having the smallest difference between the rankings of the 2 parties will be selected; other ties will be determined by a coin toss.

If no Person appears on both lists, Parties will repeat this procedure within the next 5 days.

- (2) **Selection by experts.** If selection is not completed after the exchange of 2 lists or 10 days, whichever comes first, then each Party will promptly select one expert having experience described above and within 5 days of selection, the 2 experts will together select an Independent Expert.

- b. Costs.** Parties will share the Independent Expert's costs and fees equally.
- c. Communications with Independent Expert.** Neither Party will communicate orally with the Independent Expert *unless* the other Party is privy thereto. Neither Party will communicate in writing with the Independent Expert *unless* it simultaneously sends copies of that communication to the other Party.

d. Determination Protocol

- (1) In addition to KIB's or Contractor's request for binding dispute resolution under Article 12.01d., either Party may request non-binding dispute resolution on any matter relating to Contract Services or, upon agreement of the other Party, binding dispute resolution.
- (2) The Party requesting dispute resolution will give the other Party and the Independent Expert a description of the disagreement and that Party's position thereon.
- (3) Within 10 days, the other Party may give the Party seeking dispute resolution and the Independent Expert a description of its position.
- (4) The Independent Expert may make one request for additional information and documentation before the later of the following times:
 - (i) 10 days after receiving the request for dispute resolution, or
 - (ii) After receiving both Parties' description of their respective positions.

- (5) Promptly upon request by the Independent Expert, either or both Parties will provide the Independent Expert with additional information and documentation and simultaneously provide the other Party with copies thereof.
 - (6) Within 25 days of receiving a request for dispute resolution, the Independent Expert will make its determination based on the submissions of the Parties, the provisions of this Contract, its experience with similar services and disagreements, and other factual determinations it may make regarding the Parties' disagreement over the proposal.
 - (7) The determination is binding on the Parties, *unless* the Parties agree otherwise.
- e. **Exercise of remedies.** Pending the Independent Expert's determination, the Parties may exercise any remedies they have under this Contract or Applicable Law.

ARTICLE 13: CONTRACTOR SERVICE FEE, CUSTOMER SPECIAL SERVICE SURCHARGES

13.01: Contract Service Fee Schedule

Contractor Service Fees adopted by KIB as of the Contract Commencement Date are appended for convenience of the Parties to this Agreement. Under Article 13 and Applicable Law, KIB may amend these Fees, and the Fees will automatically be deemed to apply to this Contract without any further action. Contractor is deemed to have knowledge of Applicable Law, including KIB resolutions and ordinances. However, for convenience of administering this Contract, the Parties may from time to time amend this Article by attaching the most recent dated current Contractor Service Fee resolution or ordinance to this Article.

In addition, if Customer requests Service at a Receptacle capacity and/or Collection frequency not provided in the Contractor Service Fees adopted by KIB, Contractor may charge an appropriate Fee for that service following KIB approval and Customer agreement.

- a. **Amounts paid by Customers for subscribed Service.** Contractor may charge Contractor Service Fees to Customers as compensation for providing Contract Services in compliance with all Performance Obligations. The Contractor Service Fee will not change *except* under Article 13.03. The Tonnage Adjustment Amount will be added to or subtracted from the Contractor Service Fee under Article 13.03B.
- b. **Amounts paid by KIB for Senior Discount.** On each July 1 (or other day designated by KIB but no less frequently than annually) KIB will pay Contractor the aggregate amount of Senior Discounts that Contractor gave Customers during the period beginning April 1 of the prior year and ending March 31 of that year (or period commensurate with another payment date designated by KIB).

**Contractor Service Fee
for
Carts**

Container	Monthly Service Fee	Senior Discount
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Roll Cart (32, 64, 96 gallon)		
Each additional Roll Cart		
Residential Roll-off/Dumpster		
Additional Set-Out Fee		

Contractor Service Fee Surcharges for Service

Activity	Contractor Service Fee (per occurrence)
On call Collection of Bulky Waste	\$20.00 per call (not item) plus Direct Cost of Disposal
Distance Charge	\$3.50 per mile beyond USCG base
Rollout Service for Non-eligible Customers – Initial 30’ or fraction thereof	\$7.36
Rollout Service for Non-eligible Customers – Each additional 30’ of fraction thereof	\$6.13
Beginning 7 months after Collection Commencement Date, replacement of Cart in excess of once / calendar year	\$25.00 plus Direct Cost of Cart
Bear lock for Customers in portion of Contract Service Area not required to have bear locks	One-time difference between Direct Cost of Cart with / without bear lock
Lock on dumpster	\$25 to install, no charge thereafter
Collection of residential material that does not fit in roll-cart	\$6.87
Residential Roll-Off / Dumpster Clean-up Costs	\$5.00
Vacant Rate	50% of monthly rate.
Vacant Rate non-compliance fee	\$220

Contractor Service Fee for Dumpsters

Dumpster Size	Pickups per Week / Contractor Service Fee (monthly)				
	1	2	3	4	5
2 yard					
2.6 yard					
3 yard					
3.6 yard					
4 yard					

5 yard					
5.5 yard					
6 yard					
8 yard					

*Contractor Service Fee for multiple Dumpsters is equal to the above scheduled amounts multiplied by the number of Dumpsters.

**Contractor Service Fee
for
Roll Off Service
Contractor Service Fee (Per Tip)**

10-20 yard	30-40 yard	10-20 yard Compactor	30-40 yard Compactor
\$_____ plus disposal	\$_____ plus disposal	\$_____ plus disposal plus disconnect fee of \$21.25	\$_____ plus disposal plus disconnect fee of \$21.25

**Contractor Service Fee Surcharges
for Dumpsters**

Service Description	Agreement Article	Amount
Change in size and number of Dumpster more frequently than once per Contract Year	Article 4-4.02b2	\$20.00 per exchange per Dumpster
Locks on Dumpster	Article 4-4.402	Additional \$5.00 per month

**Contractor Service Fee
For Recycling**

The KIB agrees to pay to the Contractor as compensation for all Recycling services as follows:

\$_____ per month as a flat rate, regardless of weight or volume. This price is based on processing up to an estimated 650 tons.

Contractor may charge customers directly for accepting Electronic Waste and for collection of recyclables from residents and businesses. Those charges shall be as follows:

Electronic Waste: \$___ per pound
 Recyclables collection (monthly charge for weekly service):
 \$___ for 64-gallon service
 \$___ for 3.6 gallon service

13.02 Inclusiveness. The Contractor Service Fee includes all Contractor's direct costs, indirect costs, plus profit or return on investment for providing Contract Services, including the following:

- (1) labor (including wages and fringe benefits), including drivers, Customer service personnel, supervisors, and administrators,
- (2) acquisition, repair and maintenance of Contract Service Assets (including buildings

- and grounds, and Vehicles),
- (3) tools and supplies,
- (4) fuel and utilities,
- (5) Insurance premiums and fees for the Letter of Credit or any further assurance of performance,
- (6) taxes,
- (7) securing and maintaining Permits and complying with Applicable Law,
- (8) fines and penalties for violation of Permits or Applicable Law,
- (9) handling Unpermitted Waste discovered in Solid Waste, including disposal thereof as required by Applicable Law,
- (10) negligence or misconduct,
- (11) fees imposed by Regulatory Agencies, including any Contract Fee,
- (12) fees charged by Solid Waste Management Facilities (*such as tipping fees at KIB Landfill*), and
- (13) any other cost of providing Contract Services not explicitly compensated by surcharge to Customer or charge to KIB.

Contractor Service Fee is not adjusted for changes in these costs, except under Article 13.03. Reference in this Contract to providing Contract Services “without surcharge” or similar language does *not* infer that absence those words, “without surcharge”, elsewhere in this Contract, means that Contractor is entitled to either of the following:

- (a) compensation in addition to the Contractor Service Fee listed on the Contractor Service Fee Schedule; or
- (b) reimbursement of Direct Costs or Contractor’s Reimbursement Costs.

13.03 Adjustment of Contractor Service Fee.

a. Adjustment events and timing. The Contractor Service Fee will be upon direction of KIB, in its sole discretion.

- (1) **Annual Adjustment.** On July 1, 2019, and each following July 1, the Contractor Service Fee will be adjusted to equal the following:
 - (01) the Contractor Service Fee in effect during the prior Contract Year (or portion of that Contract Year), *plus or minus*
 - (02) the Weighted Adjustment Percentage *times* that Contractor Service Fee.

Between April 1 and April 15 of each Contract Year, Contractor will prepare a statement setting forth Contractor’s detailed calculation of Contractor’s requested annual adjustment in Contractor Service Fee in the form of the following examples or other format prescribed by KIB (see, for example, Attachment B). Contractor’s statement is for convenience of KIB, but is not binding on KIB. KIB may make corrections or adjustments to that statement. *Subsection d contains a sample adjustment calculation.*

Calculation of Annual Service Fee Adjustment. The annual adjustment will be calculated for five Collection Rate Cost Components and Recycling as follows:

- A. **Collection & Administrative Cost Component: Annual changes in the CPI.** The operational component identified by the Contractor for each level of service will be adjusted by 75% of the CPI percent change from 2nd half of one year to the next (i.e., from the 2nd half of year n-1 to the 2nd half of year n, with n being the most current year available), but no greater than 5%, as confirmed by KIB.

"CPI" means the 2nd half consumer price index (CPI-U) for Anchorage, Base Period 1982-84=100, Series ID: CUUSA427SA0, not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics at www.bls.gov.

- B. **Fuel Cost Component: Annual changes in the PPI.** The fuel component identified by the Contractor for each level of service will be adjusted by the 75% of the PPI percent change from February to February (i.e., from February of year n-1 to February of year n with n being the current year), but no greater than 5%, as confirmed by KIB.

"PPI" means the annual Producer Price Index for No. 2 diesel fuel, Base Period 1982=100, Series ID: WPU057303, not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics at www.bls.gov.

- C. **Fixed Cost Component: No Change over the initial contract.** The fixed costs identified by the Contractor for each level of service will not be adjusted and remain constant over the term of the initial contract. These costs include, but are not limited to vehicle depreciation, leases, **cart and container rent** (as necessary to maintain containers provided to Contractor at the start of this contract, and for any new containers purchased by the Contractor).

Comment [PD4]: Kind of odd to allow contractor to recover cost of refuse carts and dumpsters if KIB owns the carts (or KIB transfers ownership of carts to contractor). I added the parenthetical here to address this issue.

- D. **Disposal Cost Component: Change in disposal fee and tons/customer.** The disposal cost identified by the Contractor for each level of service will be adjusted by 100% of the change, if any, in the tonnage rate charged Contractor at KIB Landfill (compared to the rate in effect on April 15, 2016), and for the change, if any, in the ratio between tons disposed and the number of customers served (compared to the ratio as calculated on April 15, 2016).

- E. **Profit: No Change over the initial contract.** The percentage of profit (operating margin) identified by the Contractor for each level of service will not be adjusted and remain constant over the term of the initial contract. Profit is calculated as a percentage of the total Collection rate.

- F. **Recycling: Annual changes in the CPI.** The Contractor Service Fee for Recycling will be adjusted by 75% of the CPI percent change, if any, from 2nd half of one year to the next (i.e., from the 2nd half of year n-1 to the 2nd half of year n, with n being the most current year available), in the CPI during the period commencing April 1 of the previous year and ending March 31 of the current year, but no greater than 5%, as confirmed by KIB.

The following table summarizes the Contract Service Fee adjustments for each Collection Rate Cost Component:

Rate Cost Component	Adjustment
A. Collection & Admin Costs	CPI
B. Fuel	PPI
C. Fixed Cost	Fixed
D. Disposal Cost	Tonnage rate and tons/customer
E. Profit	% of Rate
Total Collection Rate	Sum of Above

- (2) **Adjustment for changes in operations** (such as changes in Performance Obligations due to Changes in Law).

As soon as possible following agreement of the Parties under Article 12, the Contractor Service Fee will be adjusted for a change in Contractor's Direct Costs of providing Contract Services due to changes in Performance Obligations.

To the extent permitted by Applicable Law, an adjustment will reflect Contractor's costs from the date incurred. The Contractor Service Fee will not otherwise be adjusted (for example, no adjustment will occur for any changes in the price of fuel).

b. Rounding.

- (1) **Calculations.** Interim calculations shall be rounded to the nearest hundredth i.e., 0.499 and 0.510 shall be rounded to 0.50, excepting percentage changes used in calculations, which shall be rounded to the nearest hundredth percent i.e., 0.50%
- (2) **Dollars.** The final adjustment in Contractor Service Fee shall be rounded to the nearest penny.

c. Preconditions to adjustment. The Contractor Service Fee will not be adjusted upwards if either of the following has occurred and remains uncured:

- (1) Breach, or
- (2) Default.

d. Example calculations of annual adjustments in Contractor Service Fee.

The following is an example of how annual adjustments to the Contractor Service Fee will be calculated. The escalation, tonnage, and dollar amounts shown are examples only.

(1) Annual adjustment of Collection and Administration Cost Component due to Change in CPI.

Calculation of % change in CPI	2 nd half , current year - 1	223.83
	2 nd half, current year - 2	220.62
	Percent Change	1.45% (not more than 5%)
Portion of % change	75%	1.09%

(2) Annual adjustment of Fuel Cost Component Due to Change in PPI.

Calculation of change in PPI	February, current year	120.5
	February, current year - 1	122.3
	Percent Change	-1.47% (not more than 5%)
Portion of % change	75%	-1.10%

(3) Disposal Cost Adjustment

Row		2016	2019	2020	2021
	Tonnage Rate Adjustment				
1	Base Tonnage Rate (\$/ton when proposal submitted)	\$258			
2	Tonnage Rate in next contract year (Jul 1 - Jun 30)		\$270	\$280	\$280
3	Percent increase (decrease) from contract start		4.65%	8.53%	8.53%
	Disposal Ton-per-Customer Adjustment^a				
4	Prior year tons, actual (Jan 1- Dec 31)	8,588.19	8,766.58	8,843.25	8,972.45
5	Customer actuals (as of Apr 1)	3,115	3,150	3,245	3,240
6	Ratio, tons / customer	2.757	2.783	2.725	2.769
7	Percent increase (decrease) from contract start		0.94%	-1.16%	0.44%
	Disposal Cost Component Adjustment, effective July 1^b				
8	(1 + Row 3) x (1 + Row 7) - 1, rounded to hundredths		5.64%	7.27%	9.01%
9	Disposal Cost Component	\$14.83	\$15.67	\$15.91	\$16.17

Note: Green cells are the contract start, which is used as the basis for calculations in all future years. Yellow cells are data that would be input each year based on tonnage rate, customer accounts, and scalehouse records.

^atons and customers refer to residential accounts + commercial dumpsters. The number of commercial "customers" refers to the number of containers in service. It excludes commercial roll offs where customers are billed for the actual cost of disposal. All numbers shown are examples (not actuals) shown for illustrative purposes.

In this example, the disposal component of rates in initial proposal would be adjusted by 5.64% to take effect on the contract start date. The initial proposal rates would be adjusted by 7.27% and would take effect on July 1, 2020, and 9.01% on July 1, 2021.

(4) Example Application of Annual Update to Rate Components.

	Rate Component Adjustment Method	Proposed Rate	Rate Adjustments	Next Year Rate
Cost Components				
Collection & Admin Costs	CPI	\$13.57	\$0.15	\$13.72
Fuel	Fuel PPI	\$3.30	(\$0.04)	\$3.26
Fixed (rent, depreciation, lease)	No Inflatars	\$9.00	\$0.00	\$9.00
Disposal Cost (Pass Through)	Tonnage rate and tons/customer	\$14.83	\$0.84	\$15.67
Subtotal		\$40.70	\$0.95	\$41.65
Profit (7.5% of Rate)		\$3.30	\$0.08	\$3.38
Example Rate		\$44.00	\$1.03	\$45.03

(5) **Adjusted Contractor Service Fee.** The adjusted contractor service fee will be the current rate plus the sum of the rate adjustments.

ARTICLE 14: BREACHES, DEFAULTS AND REMEDIES.

KIB may enforce this Contract and exercise its remedies under this Contract in its sole discretion.

14.01 Certain Breaches; Liquidated Damages and Specific Compensatory Damages.

- a. **Notice.** If KIB determines that Contractor is in Breach, KIB may assess Compensatory Damages or Liquidated Damages after giving Notice to Contractor identifying and describing the Breach. Contractor will pay those Damages within 20 days of receiving that Notice.
- b. **Dispute.** Contractor may dispute the assessment of Compensatory Damages or Liquidated Damages by Notice to KIB within 20 days of receiving the Notice of assessment, but will pay assessed Compensatory Damages or Liquidated Damages pending resolution of its dispute. In that Notice of dispute, Contractor must describe the basis for its dispute and include relevant documentation. The Manager of KIB or his or

her designee will review the Notice of dispute and make a determination as soon as practicable. His or her determination will be final. If he or she determines that KIB should *not* have assessed all or a portion of the Compensatory Damages or Liquidated Damages, then KIB will return all or a portion of the Compensatory Damages or Liquidated Damages to Contractor. Contractor acknowledges that Compensatory Damages and Liquidated Damages do not constitute fines and penalties imposed by KIB as a governmental or regulatory entity, but as a contracting party.

e. Liquidated Damages: Acknowledgement, Agreement and Confirmation. The Parties make the following acknowledgments:

- (1) KIB incurred considerable time and expense negotiating this Contract to secure an improved level of Collection and Recycling service quality, increased Diversion and increased Customer satisfaction. Therefore consistent and reliable Contract Services are of utmost importance to KIB and Customers.
- (2) In awarding this Contract to Contractor, KIB considered and relied on Contractor's municipal references, experience, qualifications, and reputation as to service quality, and Contractor's Breach represents a loss of bargain to KIB.
- (3) Quantified standards of performance are necessary and appropriate to ensure consistent and reliable Contract Service, and if Contractor fails to meet Performance Obligations, KIB will suffer damages in subjective ways and in varying degrees of intensity that are incapable of measurement in precise monetary terms, including:
 - (i) Customers' inconvenience;
 - (ii) anxiety, frustration and potential political pressure;
 - (iii) criticism and complaint by Customers;
 - (iv) loss of KIB Governing Body members' and staff time; and
 - (v) deprivation of the benefits of this Contract and loss of bargain.
 It is and will be impracticable and extremely difficult to ascertain and determine the value of those damages.
- (4) In the event of Breach or Default, urgency of protecting public health and safety may necessitate that KIB enter into emergency or shorter arrangements for services without competitive procurement at prices substantial greater than under this Contract, and the monetary loss resulting there from is impossible to precisely quantify.
- (5) Termination of this Contract for Default and other remedies provided in this Contract are, at best, a means of future correction and not remedies that make KIB whole for past Breaches.

14.02 Liquidated Damages. Liquidated Damages in the chart below apply to each Breach established or substantiated to satisfaction of KIB, for each day (the first occurrence and continuation on successive days). *For example, failure to correct a missed pickup would result in liquidated damages on the day of the scheduled pickup and each following day until corrected.*

KIB’s assessment of Liquidated Damages for the following Breaches does not preclude KIB from enforcing the KIB Code for corresponding Violations.

In the following table, Articles listed under SECTION column describe Performance Obligations (including timeliness) to which the liquidated damages apply. Language listed under BREACH column summarizes those obligations for ease of Contract administration and enforcement, but breach is determined by (non) compliance with the referenced Article of this Contract or the KIB Code.

SECTION	BREACH	LIQUIDATED DAMAGE
4.01	failure to provide Contract Services for any Customer (including missed pickups of Carts)	\$250 per each failure / per Customer / per day; as evidenced to satisfaction of KIB, including oral or written communication with Customer and review of that Customer’s complaint log
4.01	failure to return emptied container to Set-out Site	\$100 per failure / per container / per Collection
6.01	failure to deliver any Solid Waste to a facility approved by KIB	\$1,000 per load for first failure; \$5,000 per load for each subsequent failure
7.01 / Customer Complaint Protocol	failure to record a complaint	\$100 per failure
7.01 / Customer Complaint Protocol	failure to timely respond and resolve a Customer complaint	\$250 per failure / per Customer / per day
7.08	failure to deliver, repair, replace or pick-up Carts, Dumpsters or Roll-offs	\$100 per failure / per Customer / per day
9.01 / KIB Code	failure to observe Collection hours	\$250 per failure / per Customer
9.01 / KIB Code	failure to observe Contractor Office Hours	\$250 per failure / per day
9.01 / KIB Code	failure to clean up litter, spills, leaks	\$100 per incident / per day
9.01 / KIB Code	failure to provide KIB access to or copies of	\$100/\$200/\$300/\$400 if

Code, 10.01	Records (including Routing)	not provided within 7 / 14 / 21 / 28 days, of KIB request; and \$500 for each week thereafter
9.01 / KIB Code	failure to maintain Contractor's phone number on Vehicles	\$200 per failure / per Vehicle / per day Vehicle is in use to Collect Solid Waste
9.01 / KIB Code	failure to clean up litter	\$100 per failure / per spill location / per day
9.01 / KIB Code	failure to cover materials in open Collection Vehicles	\$100 per failure / per truck / per route (first pick-up until delivery to Solid Waste Management Facility
9.03	failure to return KIB calls	\$500 for each breach over 1 time per month
9.03	failure to meet with KIB	\$500 for each breach over 1 time per Contract Year
9.03	failure to remedy any Violation of KIB Code within 5 days notice of Violation	\$250 per instance
9.03	conviction of Violation under KIB Code	\$2,500 per instance
10.02	failure to submit complete Report to KIB	\$500 per failure / per day until complete report delivered
Records, Reports, proposals, Etc.	failure to timely submit any documentation to KIB in form and at time required	\$100 per failure / per document / per day
13.01	Contractor charging any Customer more than the applicable Customer Special Service Surcharge	\$250 per Contractor / each Customer
17.10	discourteous behavior by Contractor's employees or Subcontractors reported by or complained of by Customers to Contractor or KIB	\$300 per report or complaint / per Customer
	failure to secure satisfaction of KIB, obtain any consent or approval of KIB, or to give Notice to KIB when required	\$250 per failure / per day until approval obtained or Contractor ceases action, retracts misinformation or otherwise remedies failure to satisfaction of KIB

d. Compensatory Damages. If Contractor fails to deliver any type of Solid Waste to a facility approved by KIB (such as a recyclables processing facility in connection with any Recyclables collection program that may be established), then in addition to assessing Liquidated Damages, KIB may in its sole discretion assess the following Compensatory Damages, and Contractor will pay KIB the following Compensatory Damages:

- (1) KIB’s Reimbursement Costs to monitor Contractor’s compliance with delivery Performance Obligations, including individuals following Collection Vehicles on Collection routes; and
- (2) KIB’s Reimbursement Cost of enforcing or securing specific performance of Contractor’s delivery obligation.

14.03 Defaults. Each act or omission described in this Article constitutes a material Breach (“Default”) under this Contract:

a. Contract Service Defaults:

- (1) **Uncured Breach:** Contractor Breaches this Contract; and
 - (i) KIB Notifies the Contractor that an identified Breach has occurred; and
 - (ii) Contractor does not correct that Breach within 20 days of receiving KIB’s Notice.

If Contractor believes that it cannot cure the Breach within 20 days, Contractor:

- A. may Notify KIB within 5 days of receiving KIB’s Notice, explaining why Contractor believes it needs additional time to effectuate a cure and proposing schedule for cure, and
- B. will diligently proceed to cure the breach within that schedule and report to KIB on schedule implementation at the times or frequencies requested by KIB.

KIB, in its sole discretion, may take any of the following acts:

- C. accept Contractor's proposed schedule of cure, or
 - D. make a written demand that Contractor cure the Breach within an alternative time period set by KIB, or
 - E. exercise any remedies under this Contract, including terminating this Contract at the end of the 20 day period.
- (2) **Repeated Breach.** Contractor repeatedly or habitually Breaches this Contract, as determined in the sole discretion of KIB.
 - (3) **Contract Service failures.** Contractor fails to Collect the following percent or number of pickups (regularly scheduled or by appointment) at Customer’s Set-Out Sites (subject to Contract Service Exceptions):

- (i) 100 or more for more than 7 consecutive days,
- (ii) 500 or more during a 12-month period; KIB does not have to wait until the end of the 12-month period to declare this Default, or
- (iii) at least 99.5% of pickups scheduled for a day, for more than 10 cumulative days over the Term.

(4) **Failure to comply with Applicable Law.**

(i) *Violation*

- A. **Material.** Contractor does not cure any material Violation of Applicable Law to the satisfaction of KIB or applicable Regulatory Authority within 30 days of the notice, assessment, or determination of that Violation of Applicable Law; or
- B. **Repeated.** In KIB’s judgment, Contractor repeatedly receives a notice, assessment or determination of the same or different Violation.

(ii) **Contests.** If Contractor is entitled to contest and in good faith does contest a notice, assessment, or determination of Violation of Applicable Law, no Default will be deemed to have occurred until a final decision adverse to Contractor is entered.

(5) **Criminal activity.** Contractor fails to effectuate cures or to timely terminate and/or replace any Contract Manager under Article 15.02.

(6) **Failure to timely pay Contractor Payment Obligation.** Contractor fails to pay any Contractor Payment Obligation within 15 days of the date it is due and payable.

(7) **Charging more than amounts listed in Contractor Service Fee Schedule.** Contractor charges any Customer more than the scheduled Customer Special Service Surcharge listed in the Service Schedule and does not reimburse the excess within 30 days of Contractor’s discovery thereof, KIB notice or Customer request.

(8) **Failure to allow KIB to perform Contract Services.** Contractor fails to timely allow KIB to exercise any of KIB’s rights in connection with performing Contract Services under Article 14.09.

b. Performance Assurance Defaults.

(1) **Failure to provide Performance Assurance.** Contractor fails to provide any Performance Assurance.

(2) **Seizure, attachment.** Any Contract Service Asset is seized, attached or levied

upon (other than a pre-judgment attachment) so as to substantially impair Contractor's ability to timely and fully perform Contract Services, and which cannot be released, bonded or otherwise lifted within 48 hours, excepting weekends and Holidays.

(3) **Insolvency, bankruptcy, liquidation.**

(i) Contractor:

- A. files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, *unless* Contractor retains full control of Contract Service Assets throughout the pendency of that claim, or
- B. consents to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of Contract Service Assets no longer used to provide Contract Services or backup Contract Services), trustee (other than as security of an obligation under a deed of trust), custodian, sequestration, administrator (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or
- C. makes any general assignment for the benefit of Contractor's creditors, or
- D. fails generally to pay Contractor's debts as they become due, or
- E. takes any action in furtherance of any of the foregoing.

(ii)

- A. A court having jurisdiction enters a decree or order for relief in respect of this Contract, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or
- B. Contractor consents to or fails to oppose any similar proceeding, or
- C. any court having jurisdiction enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, administrator (or similar official) of Contractor or for any part of Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor.

(4) **Default under Guaranty.** The occurrence of any default under the Guaranty.

(5) **Transfer.** Contractor makes a Transfer without KIB consent required by Article 16.01.

(6) **Subcontract.** Contractor engages a Subcontractor or enters into a Subcontract without KIB consent under Article 17.10, and does not terminate that Subcontract within 15 KIB Business Days of KIB Notice.

c. False Representations; Breach of Warranties.

(1) **Under this Contract.**

(i) Contractor makes a **representation or certification** in or under this Contract, including Article 2.01, which Contractor knows, or in the course of diligently conducting business and providing Contract Services should have known, is untrue on the date Contractor made it.

(ii) Contractor breaches a warranty under this Contract.

(2) **As inducement to enter into this Contract.** Contractor makes a representation or fails to make a disclosure, whether within this Contract or otherwise, to KIB in connection with or as a material inducement to entering into this Contract or any future amendment to this Contract, which representation or failed disclosure is false or misleading in any material respect when made.

14.04 Breaches and Defaults Excused.

a. Uncontrollable Circumstance/ prevention and mitigation. To the extent that any Default is due to an Uncontrollable Circumstance, Contractor will not be deemed in Default for Breach of its Performance Obligations under the following Articles:

- (1) Article 14.02a1 and 2 (Uncured Breach; Repeated Breach), except to the extent that a Breach constitutes a Default otherwise itemized in Article 14.02a3-8 or b, or;
- (2) Article 14.02a3 (Failure to Collect). *if* Contractor exerted the following best efforts:
 - (i) to prevent the Breach, and;
 - (ii) to mitigate the effects of the Uncontrollable Circumstance.

For example, if Contractor Breaches the Contract by failing to provide Insurance, which Breach constitutes a specific Default under Article 14.02b(1), that Breach is not excused by an Uncontrollable Circumstance.

b. Contractor Notice of Uncontrollable Circumstance. Contractor will give immediate Notice of an Uncontrollable Circumstance to KIB, including:

- (1) describing the Breach for which Contractor seeks to be excused;
- (2) the expected duration of the Uncontrollable Circumstance;
- (3) the extent to which Contractor may curtail Contract Services;
- (4) any requests or suggestions to mitigate the adverse effects of the Uncontrollable Circumstance.

c. KIB's Rights.

- (1) **Perform Contract Services.** Notwithstanding that a Breach due to Uncontrollable Circumstances does not constitute a Default, after the continuance of the Breach for 48 hours, in its sole discretion, KIB may nevertheless perform (or cause to be performed) Contract Services in the Contract Service Area itself under Article 14.09.
- (2) **Exercise other remedies.** After the continuance of any Breach for 30 days, KIB may, in its sole discretion, exercise any other remedy under this Contract, including suspending or terminating this Contract under Article 15.01.

14.05 Remedies.

- a. **As provided by law.** Either Party may exercise any and all remedies available under law or equity for the other Party’s breach of this Contract. A Party’s exercise of any one remedy, including KIB’s assessing Liquidated Damages or Compensatory Damages, is not an election of remedies but is cumulative with any other available remedies.
- b. **KIB’s additional remedies.** In addition to exercising any remedy available under law or equity, upon occurrence of a Default, KIB in its sole discretion may exercise any or all of the following additional remedies:
 - (1) **Termination.** Terminate this Contract or any portion of Performance Obligations under Article 15.01a;
 - (2) **Suspension.** Suspend this Contract or any portion of Performance Obligations under by Article 15.01b;
 - (3) **Perform Contract Services.** Perform Performance Obligations under Article 14.09;
 - (4) **Injunctive Relief / Damages.** Seek to obtain injunctive relief and/or damages;
 - (5) **Damages.** Assess Liquidated Damages, Compensatory Damages and any other damages under law, and;
 - (6) **Financial Assurances.** Draw on the Letter of Credit, demand payment under the Guaranty or any Indemnity, or submit any claim under Insurance.
- c. **Injunctive relief.** Contractor acknowledges that KIB’s remedy of damages for Breach or Default may be inadequate for reasons including the following:
 - (1) **public health and safety.** The urgency of timely, continuous and high-quality Contract Services, including Collection, Recycling, transportation and/or transfer and Disposal of putrescible solid wastes that constitute a threat to public health;
 - (2) **procurement time and expense.** The long time and significant investment of money and personnel (including KIB’s staff, elected officials and KIB Counsel, as well as procurement counsel and consultants) required to do the following:
 - (i) develop a scope of Contract Services and Performance Obligations acceptable to KIB,
 - (ii) draft this Contract and related procurement documents,

- (iii) solicit comments on this Contract and procurement documents from KIB (and KIB Counsel) and Persons interested in proposing to provide Contract Services,
- (iv) meet with those potential proposers to discuss their comments and answer their questions about this Contract and the procurement,
- (v) finalize this Contract and procurement documents,
- (vi) solicit proposals for Contract Services,
- (vii) review and evaluate those proposals and seek clarifications of those proposals,
- (viii) award this Contract under KIB's Applicable Law,
- (ix) finalize execution of this Contract, including reviewing, commenting on and approving (if required) Contractor Documentation, and,
- (x) conform KIB Code to the automated Refuse Collection programs; and
- (3) **reliance on Contractor.** KIB's reliance on Contractor's meeting evaluative criteria on which award of this Contract was based, such as the following:
 - (i) solid waste management experience,
 - (ii) KIB references,
 - (iii) qualifications of key personnel,
 - (iv) environmental programs and proposed Unpermitted Waste Screening Protocol,
 - (v) litigation history,
 - (vi) Contractor's proposed transition, Customer education, diversion and other plans,
 - (vii) acceptance of terms of this Contract, and
 - (viii) Diversion record.
- (4) **re-procurement time and expense.** The length and significant investment of time and money described in item (2) to develop alternative MSW Management Services comparable to Contract Services for the price provided under this Contract, and to negotiate new agreements therefore.

Consequently, KIB is entitled to all available equitable remedies, including injunctive relief.

d. Contractor Payment Obligations. KIB may collect Contractor Payment Obligations due and owing by Contractor to KIB by any or all of the following means:

- (1) demanding payment from Contractor or Guarantor,
- (2) drawing on the Letter of Credit,
- (3) submitting claims as an additional insured under Insurance policies or under contractual liability provisions of Insurance policies, and
- (4) directing Contractor to offset Contractor Payment Obligation from Contractor Service Fees that Contractor received from Customers to remit them to KIB.

14.06 Additional Compensatory Damages. Without limiting KIB's rights to seek Compensatory Damages under Article 14.01 or law, KIB may seek the following compensatory damages:

- (1) Amounts equal to any Contractor Payment Obligations or other amounts that Contractor has previously paid to KIB but are subsequently recovered from KIB by a trustee in bankruptcy as preferential payments or otherwise;
- (2) If KIB terminates this Contract for Default, KIB's Reimbursement Costs to provide or re-procure MSW Management Services in lieu of Contract Services; and
- (3) If KIB terminates this Contract for Default, KIB's projected Direct Costs of replacing MSW Management Services in excess of Contractor Service Compensation for the balance of the Term remaining if this Contract had not been terminated, as based on service fees under replacement agreements for those MSW Management Services.

THIS SECTION WILL SURVIVE THE TERMINATION OF THIS CONTRACT FOR 180 DAYS OR OTHER PREFERENCE PERIOD PROVIDED UNDER APPLICABLE LAW WITH RESPECT TO BANKRUPTCY OR INSOLVENCY. KIB may draw upon the Letter of Credit, Guaranty or any other available Performance Assurance to pay compensatory damages.

14.07 Waivers.

- a. **Waiver of Breach.** No waiver of any Breach or Default constitutes a waiver of any other Breach or Default. Failure of KIB to enforce any provision of this Contract may not be construed as a waiver of KIB's enforcement rights. KIB's subsequent acceptance of any damages or other money paid by Contractor may not be deemed to be a waiver by KIB of any pre-existing or concurrent Breach or Default.
- b. **Contractor Waiver of Certain Defenses.** Contractor acknowledges that it is solely responsible for providing Contract Services and by this Contract irrevocably and unconditional waives defenses to the payment and performance of its obligations under this Contract based on failure of consideration; contract of adhesion; impossibility or impracticability of performance; commercial frustration of purpose; or the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of Contractor with regard to any provision of this Contract; *provided* that Contractor does not by this Contract waive any defenses under this Contract of Uncontrollable Circumstances.

14.08 Jurisdiction; Venue, Costs.

- a. **Jurisdiction.** Parties will bring any lawsuit arising out of this Contract in State courts, which will have exclusive jurisdiction over those lawsuits. Each Party consents to jurisdiction over its person and over the subject matter of any litigation in those courts and to service of process issued by those courts to the Parties at their addresses for Notice.
- b. **Venue.** Venue is made in and will be performed in courts sitting in Anchorage, AK, to the extent permitted by Applicable Law. Parties further agree that the site of any other hearing or action, whether arbitration or non-judicial, of whatever nature or kind regarding this Contract, will be conducted in Kodiak, AK.

c. **Costs.** The non-prevailing Party in any dispute involving this Contract will pay the prevailing Party's Reimbursement Costs.

14.08 Enforcement Costs. Contractor will reimburse KIB promptly upon request for either or both of the following KIB's Reimbursement Costs:

- (1) investigating any alleged Breach, or
- (2) incurred by KIB as a consequence of a Breach.

14.09 KIB Right to Perform.

a. **Events.** KIB may perform, or providing for the performance of, any or all Performance Obligations (*such as Collection or transportation and delivery of Refuse to KIB Landfill, or operation of Recyclables Processing Facilities*) upon the occurrence of either of the following events determined by KIB in its sole discretion:

- (1) **Failure to Collect, Recycle, or Dispose for 48 hours.**
 - (i) Contractor, due to Uncontrollable Circumstances or for any reason whatsoever, fails, refuses or is unable to Collect any Solid Waste and transport it to KIB Landfill (or other KIB-approved Facility) or operate the Recyclables Processing Facility for a period of 48 hours after the Collection or acceptance was required under this Contract, and
 - (ii) KIB determines in its sole discretion that there is a danger to the public health, safety or welfare; or
- (2) **Suspension or termination of Contract.** KIB suspends or terminates all or a portion of this Contract.

b. **Continuation.** KIB has no obligation to continue performing or providing for the performance of any or all Performance Obligations and may at any time, in its sole discretion, cease to provide any or all Performance Obligation. However, KIB's right to perform or provide for the performance of any or all Performance Obligations will continue until either of the following:

- (1) **Resumption of Service.** Contractor can demonstrate to KIB's satisfaction that Contractor is ready, willing and able to resume timely and full performance of all Performance Obligations, or
- (2) **Alternative service arrangements.** KIB can make alternative arrangements for providing MSW Management Services and/or Recycling service, in its judgment comparable to Contract Services in scope and price, which may include contracting with another service provider.

c. **Notice.** KIB may give Contractor 24 hour oral notice that KIB is exercising any or all of KIB's rights under this Article. The oral notice will be effective immediately, but to remain effective, within another 24 hours KIB must confirm that oral notice with a Notice

(which is in writing).

d. Service Assets.

- (1) **Possessory interest.** KIB may take possessory interest in any or all Contract Service Assets necessary or convenient in performing or providing for the performance of Performance Obligations relating to Collection and Recycling, and Contractor will fully cooperate with KIB to transfer possessory interest in those Contract Service Assets to KIB. Customers' possession of Carts will be deemed possession by KIB if necessary to exercise this right.

KIB may use those Contract Service Assets to provide all or a portion of those Contract Services. It will have absolute and exclusive control over those Contract Service Assets as though it was the absolute owner thereof and assume complete responsibility for use of those Contract Service Assets while those Contract Service Assets are in KIB's possession.

- (2) **Maintenance.** At KIB's request, Contractor will keep those Contract Service Assets in good repair and maintenance (including fully fueled and oiled,) or pay KIB's Direct Costs of repair and maintenance. Subject to repair and maintenance performed by Contractor, KIB will do the following:
 - (i) maintain those Contract Service Assets in the same condition as they were in when Contractor transferred their possession to KIB; and
 - (ii) return those Contract Service Assets to Contractor in the same condition as received, normal wear and tear excepted.
- (3) **Insurance.** Contractor will maintain in full force and effect all Insurance during KIB's use of Contract Service Assets. By granting KIB the right to possession and use of Contract Service Assets, Contractor declares as follows:
 - (i) KIB or KIB's personnel or designees using those Contract Service Assets are permitted users for purposes of liability Insurance, and
 - (ii) use and possession of those Contract Service Assets is not intended to be and is not transfer of ownership for purposes of any liability Insurance.

Contractor will execute whatever documentation its liability Insurers require to ensure that KIB and its designees are protected and covered by liability Insurance, including requesting and executing endorsements to liability policies. KIB may secure endorsements at its cost. KIB may call and confer with Contractor's insurance agent, broker and underwriter to determine what, if any, documentation or actions are necessary to achieve protection satisfactory to KIB. By executing this Contract, Contractor authorizes its insurance broker to cooperate with and respond to requests from KIB. Contractor may not rescind this authorization without KIB consent.

(4) **Contract Service Asset Documentation.** Each Contract Service Asset Document must allow KIB to assume Contractor’s obligations and to continue use of those Contract Service Assets in performing MSW Management Services.

e. Contractor's Personnel. KIB may immediately engage any or all of Contractor’s present or prior employees and Subcontractors to provide all or a portion of Contract Services relating to Collection (including drivers, route supervisors, management and office personnel who provide Customer service and billing) and/or Recycling. However KIB is *not* obligated to hire Contractor's employees or Subcontractors and may use municipal employees or other Persons to provide all or a portion of Contract Services relating to Collection and/or Recycling. Promptly upon receiving notice under Subsection c, Contractor will make available its employees or Subcontractors to KIB.

f. Records. At KIB request, Contractor will immediately provide KIB or its designees with immediate access to Contractor Office at any time KIB is exercising its rights under this Article and possession of any or all Records, including those related to routing and Customers’ frequency and level of Contract Service (*such as Customer Service Subscription data*).

g. Contractor Payment or KIB Reimbursement.

- (1) **Uncontrollable Circumstances.** In the following events:
 - (i) items (1) and (2) in Subsection a are due to Uncontrollable Circumstances, and
 - (ii) Contractor is not being paid (or if Contractor bills in advance, and has not been paid) through billing and collecting Customer charges, then the KIB will pay Contractor each of the following costs:
 - (iii) rental fees for use and possession of those Contract Service Assets equal to their fair market value as determined by an independent appraiser selected by the Parties in the same manner as the Independent Expert in Article 12.03a;
 - (iv) Contractor’s Direct Costs of providing Vehicles with fuels, oil and other maintenance under Subsection d(2);
 - (v) Contractor’s Direct Cost of making personnel available to KIB under Subsection e.
- (2) **Other than Uncontrollable Circumstances.** If the events enumerated in paragraphs numbered (1) and (2) in Subsection a are *not* due to Uncontrollable Circumstances, then KIB is *not* obligated to pay the compensation enumerated in preceding Subsection g(1) and Contractor will pay KIB’s Reimbursement Costs of performing Performance Obligations within 10 days of its submitting an invoice for that compensation. If Contractor does not timely pay that invoice, KIB may draw upon any or all Performance Assurances.

h. Stipulations. Contractor stipulates that KIB’s exercise of rights under this Article does *not* do any of the following:

- (1) create any liability on its part to Contractor,
- (2) constitute a taking of private property for which it must compensate Contractor, or

- (3) exempt Contractor from any Indemnities, which Parties acknowledge are intended to extend to circumstances arising under this Article.

However, Contractor is not required to indemnify KIB against claims and damages arising from the negligence of KIB’s officers and employees (other than employees of Contractor at the time they commenced performing Contract Services), contractors and agents driving Collection Vehicles.

ARTICLE 15: SUSPENSION OR TERMINATION.

15.01 KIB Right to Suspend or Terminate.

- a. **Termination Events.** KIB may, in its sole discretion, terminate this Contract in whole or in part, in the following Termination Events:
 - (1) **Default.** The occurrence of a Default;
 - (2) **Uncontrollable Circumstances.** The occurrence and continuance of an Uncontrollable Circumstance under Article 14.03c;
 - (3) **Non-severable Provisions.** Any Contract Provision defined in Article 20.05 is ruled unconstitutional, illegal, invalid, non-binding or unenforceable by any court of competent jurisdiction and KIB determines not to sever it but to terminate this Contract;
 - (4) **Assignment of Guaranty Without Consent.** The Guarantor transfers the Guaranty without consent required by the Guaranty, and on or before 15 days after the transfer, the Guarantor does not provide KIB with a substitute Guarantor or alternative financial credit support satisfactory to KIB.

- b. **Suspension Events.** Upon the occurrence of any Termination Event, KIB may in its sole discretion suspend this Contract, in whole in or in part, for no longer than 30 days. During the suspension period Contractor will have the opportunity to demonstrate to the satisfaction of KIB that Contractor can once again fully perform Contract Services. If Contractor so demonstrates to satisfaction of KIB in its sole discretion, KIB’s right to suspend or terminate this Contract will cease and Contractor may resume providing Contract Services. If Contractor does not so demonstrate, KIB may terminate this Contract and exercise its additional rights and remedies.

- c. **Notice.** KIB will give Contractor a Notice of termination or suspension effective at the following times:
 - (1) immediately or upon other period stated by KIB with respect to the following Defaults described in Article 14.02:
 - (i) Insurance (*Failure to Provide Performance Assurances*), and
 - (ii) insolvency, bankruptcy, liquidation, to the extent permitted by Applicable Law (*Insolvency, Bankruptcy, Liquidation*), or

- (2) upon Contractor’s receipt of Notice with respect to any other Default, *unless* KIB specifies an alternative date in the Notice;
- (3) a date KIB specifies in the Notice.

d. Suspension, Termination of a Portion of Performance Obligations: Reduction in Fee. If KIB suspends a portion of this Contract or terminates some but not all Performance Obligations, Contractor will continue to fully perform its remaining Performance Obligations and the Contractor Service Fee will be adjusted to reflect reductions in Performance Obligations. *For example, if KIB suspends Performance Obligations with respect to Collection of Bulky Items upon the occurrence of a Termination Event, Contractor would be obligated to fully perform its other obligations under this Contract (such as Collection of Refuse).*

15.02 Criminal Activity

- a. Notice.** Contractor will *immediately* give Notice to KIB of either of the following with respect to Contractor or any Contract Manager (except for the Contract Manager in a Position of Influence):
 - (1) conviction of a Criminal Activity (“**conviction**”) or
 - (2) plea of “guilty”, *nolo contendere*” or “no contest” to a Criminal Activity (“**plea**”)

Contractor will *promptly* give Notice to KIB of any of those convictions or pleas with respect to the Contractor Manager in a Position of Influence.

- b. Cure.** Upon the occurrence of any conviction or plea defined in Subsection a, Contractor immediately will do or cause to be done both of the following:
 - (1) terminate from employment anyone in a Position of Influence or remove from office anyone in a Position of Influence, *unless* otherwise directed or ordered by a court or Regulatory Authority of competent jurisdiction and/or authority, and *unless* termination would subject Contractor, an Affiliate or any of its Contract Managers to substantial liability for breach of any labor agreement entered into before the Contract Commencement Date, and
 - (2) refrain from employing or appointing that individual or individuals responsible for the Criminal Activity from any other Position of Influence.
- c. KIB remedies.** Upon the occurrence of either of the following events:
 - (1) Contractor or any Affiliate fails to effectuate the cure described in Subsection b, or
 - (2) the Criminal Activity is related to this Contract or occurs within the boundaries of KIB (incorporated or unincorporated),

KIB may take any or all of the following actions:

- (3) suspend or terminate this Contract, or
- (4) impose other sanctions (which may include financial sanctions and any other condition KIB deems appropriate, short of suspension or termination) as it deems proper.

d. Limitations on Contractor Manager. No Contractor Manager may have previously:

- (1) been convicted of a Criminal Activity, or
- (2) plead “guilty”, *nolo contendere* or “no contest” to a Criminal Activity.

ARTICLE 16: TRANSFER OF CONTRACT.

16.01 Contractor Transfer.

- a. Acknowledgment.** Contractor acknowledges that Contractor submitted evidence to KIB with respect to Contractor’s experience, expertise and qualifications to provide Contract Services, and that Contractor’s experience, expertise and qualifications were material considerations of KIB in entering into this Contract with Contractor.
- b. KIB consent.** Without KIB consent, given in KIB’s sole discretion, Contractor will not Transfer in whole or in part, voluntarily or involuntarily any of the following:
 - (1) this Contract,
 - (2) the Guaranty, or
 - (3) any rights or duties in this Contract or under the Guaranty,

Contractor may not circumvent KIB’s consent rights by securing Goods or Services from a Subcontractor.

Contractor acknowledges that in its submitted proposal to provide Contract Services and enter into this Agreement it described the experience, qualifications and operations not only of Contractor itself, but of the following companies that are wholly owned by Contractor as of the Contract Commencement Date: [REDACTED] (together, “**Contractor’s Operations**”). Furthermore, in its proposal Contractor did not take an exception to its Performance Obligation to provide the Guaranty. Therefore, in lieu of providing the Guaranty, Contractor will not Transfer in whole or in part, voluntarily or involuntarily any of Contractor’s Operations without KIB consent, given in KIB’s sole discretion. For purposes of this Performance Obligation and KIB right, the definition of “Transfer”, the “Contractor” is deemed to include “Contractor’s Operations.

- c. Contractor request.** Without obligating KIB to give consent, Contractor will demonstrate to KIB’s satisfaction that the proposed transferee has the operational and financial ability to satisfy Performance Obligations. KIB is not obligated to consider any

proposed Transfer by Contractor if Contractor is in Breach at any time during KIB's consideration.

d. Payment of KIB's Transfer Costs.

(1) **Transfer Deposit.** Contractor must make any request for KIB's consent to a Transfer in the manner prescribed by KIB. Contractor must pay KIB the Transfer Deposit before KIB will consider Contractor's request. "**Transfer Deposit**" means lesser of the following refundable amounts:

- (i) \$1,500
- (ii) KIB's anticipated Transfer Costs.

(2) **Additional Transfer Costs.** Within 30 days of KIB's request, Contractor will further pay KIB's additional Transfer Costs in excess of the Transfer Deposit, whether or not that KIB approves the Transfer. "**Transfer Costs**" means the following KIB Reimbursement Costs:

- (i) considering and reviewing Contractor's request for Transfer,
- (ii) investigating the suitability of the transferee, and
- (iii) determining whether or not to give its consent,
- (iv) preparing documents to effectuate the Transfer.

(3) **KIB's Reimbursement Costs of enforcement.** Within 30 days of KIB's request, Contractor will pay KIB's Reimbursement Costs for fees and investigation costs as KIB deems necessary to enjoin the Transfer or to otherwise enforce this Article.

e. Novation. If KIB consents to Transfer of this Contract, upon request of the transferee, KIB will execute a novation under which the Person which is the transferee Contractor assumes all of the rights and Performance Obligations of the transferor Contractor.

ARTICLE 17: THE PARTIES.

17.01 Contractor Is Independent Contractor. The Parties agree and the Contractor acknowledges as follows:

- (1) Contractor is an independent entity and contractor engaged by KIB and not KIB's Related Party or a joint venturer with KIB.
- (2) No employee or agent of Contractor is deemed to be KIB's Related Party.
- (3) Contractor will have the exclusive control over the manner and means of performing Contract Services and over all Persons performing Contract Services.
- (4) Contractor is solely responsible for the acts and omissions of Contractor's Related Parties, none of whom is deemed to be KIB's Related Party.
- (5) Nothing in this Contract may be construed as creating an arrangement for handling Unpermitted Waste.
- (6) Neither Contractor nor any of Contractor's Related Parties will obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to KIB employees and Contractor expressly waives any claim it may have or acquire to those benefits.
- (7) Contractor bears the sole responsibility and liability for furnishing workers' compensation and all other benefits required by law to any individual for injuries arising from or connected with Contract Services.

17.02 Parties in Interest. Nothing in this Contract, whether express or implied, is intended to confer any rights on anyone other than the Parties and the Parties' respective representatives, successors and permitted assigns. Related Parties are third party beneficiaries of provisions in this Contract that reference them.

17.03 Binding on Successors. The provisions of this Contract will inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

17.04 Further Assurances. Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other to give full effect to this Contract, including Contractor Documentation. Contractor will complete Contractor Documentation satisfactory to KIB by the Contract Commencement Date.

17.05 Actions of KIB in Its Governmental Capacity. Nothing in this Contract may be interpreted as limiting the rights and obligations of KIB in its governmental or regulatory capacity.

17.06 Contractor's Obligations Performed at Its Sole Expense. Contractor will perform Contract Services solely for the compensation expressly provided for in this Contract.

17.07 Parties Representatives.

a. KIB

- (1) **Identification.** KIB Representative is the Manager or his or her designee, as may be amended upon Notice to Contractor by KIB in KIB's sole discretion.
- (2) **Delegation.** By authorizing the execution of this Contract, KIB delegates to KIB Representative the authority to exercise KIB's rights, remedies and options under this Contract and administer this Contract, *except* with respect to the following, which must be approved by the KIB Governing Body:
 - (i) extending the Term for an additional year or more,
 - (ii) suspending or terminating this Contract,
 - (iii) approving or disapproving Transfer of this Contract,
 - (iv) amending this Contract, including the Contractor Service Fee due to changes in operations under Article 13.03a2, but *not* annual adjustments under 13.03a1,
 - (v) Indemnities, and
 - (vi) exercising any delegation of authority contrary to Applicable Law.

b. Contractor Representative. Contractor Representative is named in Contractor Documentation. Contractor Representative must have at least 5 years of experience in Solid Waste collection services before being named Contractor Representative. Contractor Representative is authorized to act on behalf of Contractor in the satisfaction of all Performance Obligations and exercise of Contractor's rights and options under this Contract.

17.08 Due Diligence. Contractor acknowledges each of the following:

- a. MSW Management Services and Recycling Services, including Contract Services, are highly regulated under Applicable Law,
- b. waste management is a public health and safety concern.

Contractor agrees that it will exercise due diligence in performing Contract Services.

17.09 No Use of KIB Name. Contractor will not do business as or use a corporate, partnership, venture or other formal name, containing the name of any KIB or implying government ownership.

17.10 Subcontractors.

- a. **Subcontracts exceeding \$50,000.** Contractor will not engage any Subcontractor in an amount exceeding \$50,000 for any individual Subcontractor without KIB's prior approval of the Subcontract and Subcontractor. Any Subcontract entered into without KIB's prior approval is void. Contractor will identify approved Subcontractors in Contractor

Documentation.

- b. Contractor responsibility.** Contractor is solely responsible for directing the work of Subcontractors and paying Subcontractors' compensation.
- c. Removal.** KIB may require Contractor to remove any approved Subcontractor for any of the following reasons:
 - (1) failure to provide Contract Services,
 - (2) non-compliance with Applicable Law, or
 - (3) in KIB's judgment, conduct that is abusive, rude or unsafe.
- d. Reference to Subcontractors.** Specific reference to Subcontractors under this Contract (such as with respect to compliance with Applicable Law and meeting Insurance requirements) does not imply that lack of specific reference to Subcontractors elsewhere under this Contract exempts Subcontractors from complying with this Contract.

ARTICLE 18: AMENDMENTS.

18.01 Amendments.

- a. KIB Governing Body authorization and direction / Contractor consent.** Amendments to Contract rights, remedies and options that are *not* delegated to the KIB Representative under subsection b will be effective upon completion of the following actions:
 - (1) authorization and direction of KIB Governing Body,
 - (2) consent of the Contractor, and
 - (3) due execution by the Parties of an amendment reflecting those changes.
- b. KIB Representative Consent / Contractor Representative Consent.** All other Amendments to this Contract will be effective upon completion of the following:
 - (1) consent of KIB Representative (*except* for Contractor's amendments to Contractor Documentation that do not require KIB consent),
 - (2) consent of Contractor Representative (*except* for amendments to Articles to this Contract that do not require Contractor consent, such as changing Contractor's address for Notices), and
 - (3) due execution by the Parties of text reflecting those changes.

Examples of those amendments include the following:

- (4) amendments *not* listed in Subsection a,
- (5) Contractor Documentation, and
- (6) Exhibits or Attachments to this Contract (*except* with respect to Contractor Service

Fee other than annual adjustments).

- c. **Due execution.** For purposes of this Article, “due execution” of amendments to the text of this Contract means the Parties’:
- (1) witness and signing written amendment in the form provided on the signature page of this Contract; and
 - (2) warranties as to their due authorization and execution of the amendment.

”Due execution” of amendments to Contractor Documentation, Attachments and Exhibits means KIB and Contractor Representative signing and dating the amendments.

ARTICLE 19 : NOTICES, CONSENTS, APPROVALS, ETC.

19.01 Notices, etc. Notices must be given at the addresses provided in Contractor Documentation attached to this Contract, as follows:

- (1) by Email or facsimile promptly followed by personal or mailed delivery, or
- (2) by personal delivery to the Contractor Representative or KIB Representative, as the case may be, or
- (3) by deposit in the United States mail first class postage prepaid (certified mail, return receipt requested), or
- (4) by commercial delivery service providing delivery verification.

Notice by KIB to Contractor of a missed pick-up or a Customer problem or complaint may be given to Contractor orally by telephone to Contractor Representative or other Contractor personnel responsible for taking complaints from KIB or the public.

Parties may change their address upon Notice to the other Party.

19.02 Writing Requirements. All Notices, reports, demands, requests, directions, selections, option exercises, orders, proposals, reviews, comments, acknowledgments, approvals, agreements, consents, waivers, certifications and other communications made under this Contract must be in writing, *except* the following:

- (1) oral communication is explicitly authorized, and
- (2) communication with respect to routine Contract administration, such as submitting Records or Reports, correcting Reports or, discussing Customer complaints.

19.03 Exercise of Options. Parties will exercise any approval, disapproval, consent, acceptance, option, discretion, election, opinion or choice under this Contract, make a requirement under this Contract or interpret this Contract (“**Discretionary Action**”) reasonably. Recognizing the essential public health and safety protections this Contract serves, where this Contract specifically provides that the exercise of any Discretionary Action is in either Party’s independent, sole, exclusive or absolute discretion, control or

judgment, the other Party will not question or challenge the other Party's exercise thereof. Parties will nevertheless exercise their rights and remedies in good faith as required by Applicable Law. Any mediator or court must find the Party's exercise to be reasonable.

ARTICLE 20: DEFINITIONS AND INTERPRETATION OF CONTRACT.

20.01 Definitions. In this Contract words have the meanings defined in Article 20.01, which control in the event of any conflict with the definitions used in the recitals above.

20.02 Interpretation of Contract.

- a. **Plurality.** Terms that are defined in the singular and plural in Article 20, include both singular and plural throughout the Contract, unless the context demands otherwise.
- b. **Headings, Font.** Any caption or heading after the ATTACHMENT, EXHIBIT, ARTICLE, Article, lettered subsection, Arabic-numbered subsection or Roman-numbered *subsection* and numbered lists preceding the operative text of this Contract is for convenience of reference only and does not in any way control or affect the scope, intent, meaning, construction, interpretation or effect of this Contract. Any underlined, *italicized*, **bold-faced**, UPPER-CASED or other font style is for ease of reading and contract administration, and it does not in any way imply relative importance or unimportance of any provision of this Contract.
- c. **References to Parts.** References to Articles refer to the Articles of this Contract, unless specified otherwise. References to Attachments and Exhibits refer to Attachments and Exhibits appended to this Contract. References to subsections are to the Article in which that subsection occurs, unless otherwise provided.
- d. **Examples.** Examples are for purpose of illustration only. If any example is ambiguous or conflicts with the text that it illustrates, the text governs.
- e. **Specifics no limitation on generalities.** The mention of any specific duty or liability imposed upon Contractor may not be construed as a limitation or restriction of any general liability or duty imposed upon Contractor by this Contract or Applicable Law.
- f. **Ambiguities, Inconsistencies and Conflicts.** If any provision contained in the body of this Contract is ambiguous, inconsistent with or conflicts with any Attachments or Exhibits to this Contract, the provisions of the body of this Contract will govern.
- g. **Time for performance.** Any reference to the number of days (or other period of time) in which any action must be taken means consecutive calendar days, without regard to intervening Holidays or Sundays. However, if any Performance Obligation (other than emergency services described in Article 9.07) must be performed on a Holiday or Sunday, the time for performance is extended until next Service Day.

20.03 Integration. This Contract contains the entire agreement between the Parties with respect to their rights and obligations under this Contract. This Contract completely and fully supersedes all prior understandings and agreements between the Parties with respect to their respective rights and obligations, including those contained in each of the following:

- (1) requests for proposals,
- (2) proposals,
- (3) memorandums,
- (4) correspondence,
- (5) telephone calls,
- (6) field trips,
- (7) interviews,
- (8) negotiations, and
- (9) KIB Governing Body sessions.

20.04 Governing Law. This Contract is governed by, and construed and enforced as required by, the Applicable Law of the State, without giving effect to the State's principles of conflicts of laws.

20.05 Severability. If any clause, sentence, provision, subsection, or Article of this Contract or Exhibit or Attachment to this Contract (a "**Contract Provision**") is ruled unconstitutional, illegal, invalid, non-binding or unenforceable by any court of competent jurisdiction, then the Parties will take the following actions:

- (1) promptly meet and negotiate a substitute for the Contract Provision and any related amendments, deletions or additions to other provisions of this Contract which together effect the Parties' original intent to the greatest extent allowable under Applicable Law; and
- (2) if necessary or desirable to accomplish preceding item (1), apply to the court that declared said invalidity for a judicial construction of the substituted Contract Provision and any amendments, deletions or additions to this Contract. Within 10 days of any KIB's request, Contractor will pay KIB half of the Direct Costs of that application.

The unconstitutionality, illegality, invalidity, non-binding nature or unenforceability of any Contract Provision will not affect any of the remaining provisions of this Contract. This Contract will be construed and enforced as if the Contract Provision did not exist.

However, if any Contract Provision with respect to KIB direction to a Solid Waste Management Facility is ruled unconstitutional, illegal, invalid, non-binding or unenforceable by any court of competent jurisdiction, then KIB in its sole discretion may take either of the following actions:

- (3) sever that Contract Provision and construe and enforce this Contract under this Article, or

- (4) terminate this Contract.

Contractor agrees not to challenge the constitutionality, legality, validity, enforceability or binding nature of either of the following provisions of this Contract:

- (5) Contractor obligation to deliver Refuse to KIB Landfill,
- (6) Contractor obligation to any other type of Solid Waste (such as recyclables) to any other Solid Waste Management facility as directed by KIB.

20.06 Interpretation. This Contract must be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting. Contractor acknowledges that it determined to provide Contract Services in KIB and execute this Contract upon its own choice and initiative and that it had the opportunity to submit comments, recommend changes and take exception to the proposed provisions of this Contract during the procurement process. Each Party represents and warrants that it has reviewed this Contract and has either commented upon this Contract or had the opportunity to do so, with advice of its attorneys. No provision in this Contract may be construed against KIB solely because KIB prepared this Contract in its signed form.

20.07 New Contract. This Contract is a new obligation between the Parties and is a novation, substitution and replacement for any present or prior contracts or agreements between the Parties connected with or related to MSW Management Services.

ARTICLE 21: EXECUTION OF CONTRACT.

21.01 Execution in Counterparts. This Contract may be signed in any number of original counterparts. All counterparts will constitute but one and the same Contract.

21.02 Authority to Execute.

- a. **KIB.** KIB warrants that its officers listed below have been duly authorized to execute this Contract on its behalf.
- b. **Contractor.** Contractor warrants that the individuals listed below have been duly authorized to execute this Contract on behalf of Contractor.

KODIAK ISLAND BOROUGH
Alaska, a political subdivision

ALASKA PACIFIC ENVIRONMENTAL SERVICE, LLC

By: _____
Name: Rick L. Gifford
Title: Manager
Dated: _____

By: _____
Name: Jeff Riley
Title: Chief Operations Officer
Dated: _____

ATTEST:

KIB CLERK

ATTEST:
By: _____
Name: _____

Name: Nova M. Javier, CMC
Dated: _____

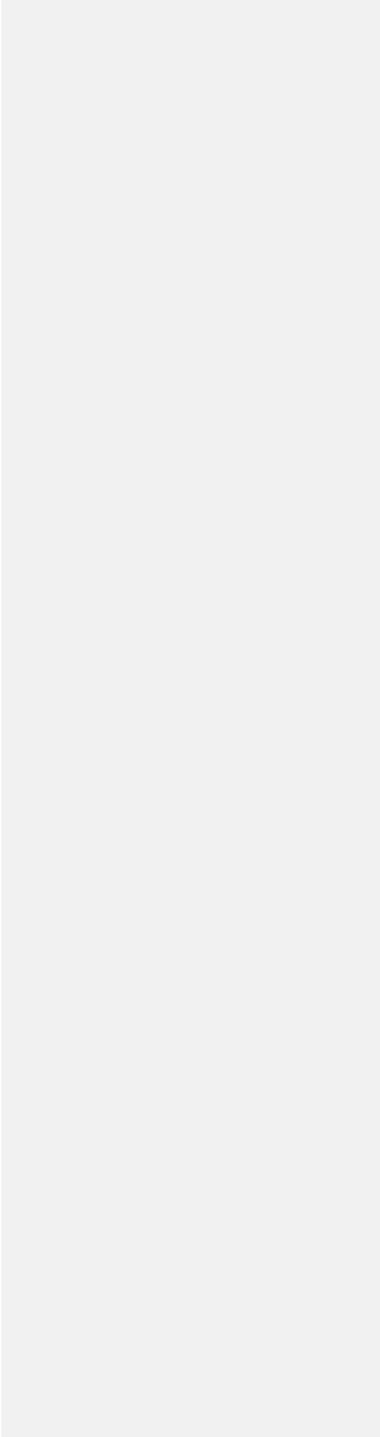
Dated: _____

APPROVED AS TO FORM:

KIB COUNSEL
Name: _____
Dated: _____

ARTICLE 22: DEFINITIONS.

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Affiliate means a Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, Contractor. For the purpose of this definition, “control” has the meaning provided in Rule 144 of the Securities Act of 1993.

Affiliate Parent means an Affiliate that, directly or indirectly, through one or more intermediaries, controls Contractor.

Annual Report means the Report required under Article 10.02 in form and content satisfactory to KIB.

Applicable Law means any or all of the following enacted, adopted, promulgated, issued, ruled, ordered, determined or otherwise made by any Regulatory Authority that apply to or govern Contract Services or the performance of the Parties' obligations under this Contract:

- (1) laws, statutes,
- (2) rules, regulations,
- (3) guidelines,
- (4) Permits,
- (5) actions, determinations, orders, or
- (6) other requirements, including Applicable Law concerning the following:
 - (7) health,
 - (8) safety,
 - (9) fire,
 - (10) labor relations,
 - (11) mitigation monitoring plans,
 - (12) building codes,
 - (13) zoning,
 - (14) non-discrimination,
 - (15) **Vehicles:** such as:
 - (i) air emissions (**smog checks**); **tires**; documentation through maintenance log or otherwise of a safety compliance report; Vehicle highway **lighting, flashing and warning lights, clearance lights, and warning flags; registration; weight limits**; cleaning; enclosure / water-tight beds;
 - (ii) The appropriate class of **drivers' licenses** issued by the State Department of Motor Vehicles;
 - (iii) any State laws relating to operating equipment **construction, safety, and parking and identification,**
- (16) **Carts:** such as:
 - (i) maintenance and placement of Carts;
 - (ii) placing Contractor’s name and telephone number on Receptacle;

- (17) Labor:
 - (i) Drug and alcohol testing;
 - (ii) The Occupational Safety and Health Act, (29 U.S.C. §651 *et seq.*), including the Solid Waste Disposal Facility Criteria promulgated by the U.S. EPA on October 9, 1991 (40 C.F.R., Parts 257 and 258); and corresponding State requirements;
 - (iii) Immigration Reform and Control Act of 1986 (PL.99-603);

- (18) **Environmental Protection:**
 - (i) CERCLA;
 - (ii) RCRA;
 - (iii) Clean Air Act, (42 U.S.C. §1351 *et seq.*, 42 U.S.C. §7401-7642) and Clean Water Act, and;
 - (iv) corresponding State requirements;
 - (v) Emergency Planning and Community Right to Know Act, (42 U.S.C. §11001 *et seq.*);
 - (vi) regulations governing the recovery of ozone-depleting refrigerants during the Disposal of air conditioning or refrigeration equipment, including 40 C.F.R. Part 82;
 - (vii) any wash-down requirements for containers, trucks or facilities,

- (19) **KIB Code,**

- (20) **Miscellaneous:**
 - (i) Civil Rights Act of 1964 (Sub chapter VI or Chapter 21 of Title 42);
 - (ii) Customer's privacy rights.

Reference to Applicable Law includes amendments and supplements to or replacement, restatement or recodification occurring after the Contract Commencement Date.

Base Service Level is described on the Contractor Service Fee Schedule.

Bear Cart means a cart designed to be resistant to opening by bears.

Breach means Contactor's failure to fully and timely meet any Performance Obligation.

Bulky Item(s) means any large item of Solid Waste that can be safely lifted by two individuals using a dolly, generated at Residential Premises and discarded at Residential Set-out Sites, such as the following:

- (1) furniture, including metal desks and storage cabinets,

- (2) pianos and organs,
- (3) televisions,
- (4) large appliances, including washers, driers, refrigerators, freezers, dishwashers and stoves,
- (5) toys, bikes and dismantled swing sets,
- (6) lawn mowers and snow blowers with no gas or oil in them, up to 4 auto or pickup tires per Customer each calendar month, with rims removed,
- (7) any item (other than lumber) that can be cut or broken down meeting the following requirements:
 - (i) not longer than 4 feet in length,
 - (ii) weighing no more than 70 pounds.

Bulky Items does *not* mean the following:

- (1) material generated at non-Residential Premises, including commercial business operations,
- (2) bundled Yard Waste, branches,
- (3) sod, soil and rock,
- (4) broken concrete and asphalt,
- (5) brick, block and stone,
- (6) railroad ties or similar type of retaining wall timbers,
- (7) remodeling debris, including shingles,
- (8) carpeting,
- (9) sinks, concrete laundry tubs and cast iron plumbing fixtures,
- (10) windows and doors,
- (11) lumber,
- (12) animal waste, including all excrement from domestic animals and fowl, and all hay, straw or other materials that have been used for animals' or fowls' bedding,
- (13) liquids, including paint,
- (14) hazardous waste, including household hazardous waste,
- (15) fuel oil tanks,
- (16) any automotive parts (including vehicle batteries and tires).

C&D Debris means any Solid Waste discarded in Dumpsters or Roll Off Containers that Contractor must Collect under Article 6.01, such as the following:

- (1) bundled Yard Waste, branches,
- (2) sod, soil and rock,
- (3) broken concrete and asphalt,
- (4) brick, block and stone,
- (5) railroad ties or similar type of retaining wall timbers,
- (6) remodeling debris, including shingles,
- (7) carpeting,
- (8) sinks, concrete laundry tubs and cast iron plumbing fixtures,

- (9) windows and doors,
- (10) lumber.

Calendar Year means a period of 12 months of 365 or 366 consecutive days beginning January 1 and ending December 31. (*Compare “Contract Year”*)

Cart means a wheeled receptacle that can be emptied by either semi- or fully-automated vehicles.

Change in Law means the following changes occurring after the Contract Commencement Date:

- (1) the adoption, promulgation, repeal, modification, amendment or other change in Applicable Law or change in judicial or administrative interpretation thereof occurring, *other than*:
 - (i) laws with respect to taxes based on or measured by net income, or
 - (ii) any unincorporated business, payroll or Contract taxes levied by any tax governmental authority (other than any taxes levied by KIB that are obligations of Contractor and not merely fees that Contractor must collect on behalf of KIB), or
 - (iii) employment taxes; or
- (2) any order or judgment issued by a Regulatory Authority that binds Contractor or has a material impact on Contract Service:
 - (i) if the order or judgment is not also the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and
 - (ii) unless excused in writing from so doing by the other Party, the Party relying thereon will make or have made, or will cause or have caused to be made, Reasonable Business Efforts (*such as retaining counsel*) to contest the order or judgment (it being understood that contesting in good faith an order or judgment will not constitute or be construed as a willful misconduct or negligent action of that Party); or
- (3) the imposition by a Regulatory Authority of any new or different material conditions in connection with the issuance, renewal, or modification of any Permit; or
- (4) a Regulatory Authority’s
 - (i) failure to issue or renew any Permit,
 - (ii) delay in issuing or renewing any Permit, or
 - (iii) suspension, interruption or termination of, any Permit;

provided the failure, delay, suspension or termination is not due to the willful misconduct or negligent action or inaction of the Party relying thereon or any third party for whom the Party relying thereon is directly responsible.

Collect, Collection or Collecting other form thereof means pick-up and removal of discarded Solid Waste required under this Contract, including Articles 4.01 (from Carts), 4.02 (from Dumpsters) and 4.03 (Bulky Items), 6-6.01 (4-yard Dumpsters and Roll Off Containers) and 6-6.02 (Roll Off Containers).

Collection Commencement Date means the date described in Article 3.01b, on which Contractor begins providing certain Customer Collection services, including:

- (1) Article 4-4.01 (residential Carts),
- (2) 4.02 (residential, commercial, multifamily Roll Offs or Dumpsters),
- (3) 6.01 (on-call Roll Off Containers),
- (4) 6.02 (permanent Roll Off Containers) and
- (5) 6.03 (Roll Off Container at KIB Landfill, at KIB's request).

(Compare "Contract Commencement Date".)

Collection Hours means the time during which Contractor can Collect Solid Waste under the KIB Code.

Commercial describes Persons (such as Customers) or things (such as Carts, Premises or types of Solid Waste) in the Contract Service Area that are not Residential or Multi-family.

Commercial Customer means a Customer who owns or occupies a Commercial Premise.

Commercial Premise means each Premise containing that is *not* a Residential Premise or Multi-family premise, such as businesses.

Compactor means a receptacle containing a ram that pushes and compresses waste into a container or bale.

Compensatory Damages means "Compensatory Damages" described in Articles 14.01 and 14.05.

Contract means this agreement, including the following:

- (1) all Articles,
- (2) all Exhibits and
- (3) all appended documentation which Attachments, Exhibits and documentation are incorporated in this Contract by reference.

Contract Commencement Date means the date on which this Contract is signed by both Contractor and KIB. (Compare "Collection Commencement Date".)

Contract Manager means the following:

- (1) Contractor Representative
- (2) Contractor's officers
- (3) Contractor's directors, and
- (4) any individual in a Position of Influence.

Contract Service means the MSW Management Services that Contractor must provide for

Customers under this Contract, including Performance Obligations in the Articles 4 (Collection in Carts, dumpsters or compactors), 5 (possible Collection of recyclables in the future), 6 (Collection in roll-offs), 7 (Collection specifications and standards; Customer billing and collection), and 8 (transportation to KIB landfill). (*Compare “MSW Management Services”.*)

Contract Service Area means all land within the boundaries of KIB where Customer’s premises can be served by roads.

Contract Service Asset Document means a document that encumbers or limits Contractor’s interest in a Contract Service Asset or that evidences Contractor’s ownership interest in the Contract Service Asset, such as:

- (1) lease-purchase agreement,
- (2) installment purchase agreement,
- (3) financing statement, mortgage or other instrument establishing a security interest to or by Contractor,
- (4) if requested by KIB, documents related to Contractor’s rights with respect to the Contractor Service Asset, such as Cart warranties, and
- (5) if requested by KIB, documents related to operation and maintenance of the Contractor Service Asset.

Contract Service Assets means all property, both tangible and intangible (such as facility leases or equipment installment purchase agreements) used directly or indirectly in performing Contract Services, including the following:

- (1) vehicles,
- (2) receptacles,
- (3) operation / maintenance equipment and facilities,
- (4) administrative / office equipment (such as computer hardware and software, telephones/telefax) and offices.

Contract Service Asset Inventory means a listing of all Contract Service Assets that includes a description of the type, size, year in service, comments regarding condition (if relevant), and useful service life for each asset.

Contract Service Day means a weekday or Saturday on which Contractor must perform Contract Services, Holidays excepted. (*Compare “day” and “KIB Business Day”.*)

Contract Service Exceptions means:

- (1) **Solid Waste Not Properly Placed in Receptacles:** discarded Solid Waste (other than any Bulky Item) that is not placed inside a Receptacle.
- (2) **Any Receptacle that weighs more than limits** prescribed on **Receptacle’s** manufacturer warranty or other documentation acceptable to KIB and noted on the **Receptacle**.

- (3) **Receptacle or Bulky Items Not Placed at Proper Set-out Site:** a Receptacle is not discarded at the Set-out Site, or a Bulky Item or excess Refuse is not discarded at the Set-out Site under 4.04.
- (4) **Unsafe Condition:** the Set-out Site is not safely accessible to Vehicles or Contractor's employees.
- (5) **Unpermitted Waste or Unsafe Materials:** Contractor observes Unpermitted Waste in a Receptacle or at the Set-out Site.

Contractor means the following:

- (1) the Person named and signing the signature page of this Contract,
- (2) any transferee of that Person consented to by KIB under Article 16.01
- (3) for purposes of Indemnities, Contractor and Contractor's Related Parties.

Contractor's actions and Performance Obligations include reference to any Subcontractor's actions under this Contract, as applicable, without specifying in each instance that Contractor must directly take those actions itself, or cause its Subcontractors to take those actions on Contractor's behalf.

Contractor Documentation means documentation provided by Contractor to KIB under this Contract in form and content satisfactory to KIB, listed and collected in the Appendix.

Contractor Office means Contractor's office located in KIB at the address listed in the Appendix.

Contractor Office Hours means at least 8:00 a.m. to 5:00 p.m. Monday through Friday (Holidays excepted).

Contractor Payment Obligations means amounts Contractor owes to KIB, including:

- (1) **damages**, including Liquidated Damages and Compensatory Damages;
- (2) reimbursements to KIB, including KIB's **Reimbursement Costs**;
- (3) any **other amounts** provided in this Contract, such as costs of applying to courts for judicial construction of Contract Provisions as defined and under Article 20.05.

Contractor Phone Hours are hours (excepting Holidays) between the following times:

- (1) 8:00 a.m. and 5:00 p.m., Monday through Friday, and
- (2) if Contractor provides Contract Services on Saturday, from 8:00 a.m. to noon on Saturdays.

Contractor Representative means Contractor Representative named by Contractor under Article 17.07b and listed in Contractor Documentation. (*Compare "KIB Representative".*)

Contractor's Reimbursement Costs means Contractor's Direct Costs plus 10% thereof.

(Compare “KIB’s Reimbursement Costs.”)

Contractor’s Related Parties means Contractor’s employees, partners, officers, agents, Subcontractors, attorneys, consultants, licensees, invitees and Affiliates. Contractor’s Related Parties are third party beneficiaries of provisions that reference them. *(Compare “KIB’s Related Parties”.)*

Contractor Service Fee means the amount listed on the Contractor Service Fee Schedule.

Contractor Service Fee Schedule means the schedule appended to Article 13.01.

Contractor Transition Plan means the plan under Article 7.04 in form and content satisfactory to KIB. It is Contractor Documentation.

Contract Year means each 12-month period commencing July 1 and ending June 30, or with respect to less than 12-month periods following execution, termination or execution of the Agreement, the portion of that 12-month period. *(Compare “Calendar Year”.)*

Criminal Activity means any of the following:

- (1) fraud or criminal felony offenses in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to recyclables, yard waste, construction and demolition debris, garbage, refuse, or any other solid waste or MSW Management Services of any kind (including collection, hauling, transfer, processing, composting or disposal), including this Contract;
- (2) bribery or attempting to bribe a public officer or employee of a Regulatory Authority; or
- (3) embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony; or
- (4) unlawful disposal of hazardous, designated or other waste; or
- (5) violation of the following:
 - (i) securities or antitrust laws (such as laws relating to price-fixing, bid-rigging and sales and market allocation), and
 - (ii) unfair and anti-competitive trade practice laws, including with respect to inflation of waste collection, hauling or disposal fees.

Cubic Yard means 46,656 cubic inches.

Customer or **Customers** means a Person who subscribes for Contract Services from Contractor.

Customer Complaint Protocol means the protocol under Article 7.01 in form and content satisfactory to KIB. It is Contractor Documentation.

Customer Service Subscription means the service order form under Article 7.09, in form and content satisfactory to KIB. It is Contractor Documentation.

Day means a calendar day. (*Compare “KIB Business Day” and “Contract Service Day”.*)

Default means “Default” defined in Article 14.02.

Direct Costs means the sum of the following:

- (1) payroll costs directly related to the performance, or management or supervision of any obligation under the provisions of this Contract, comprised of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, workers’ compensation insurance, federal and state unemployment taxes and all medical and health insurance benefits, plus
- (2) the costs of materials, services, direct rental costs and supplies, plus
- (3) travel and subsistence costs, plus
- (4) the reasonable costs of any payments to Subcontractors (with respect to Contractor) or contractors (with respect to KIB) or third parties necessary to and in connection with Performance Obligations; plus
- (5) any other cost or expense which is direct or normally associated with a task performed; plus
- (6) reasonable litigation costs and expenses, including attorneys’ fees (including the reasonable value of the services rendered by KIB Counsel’s Office) investigation fees and expert witness fees.

which Direct Costs are substantiated by:

- (7) a certificate signed by the principal financial officer of Contractor or an authorized representative of KIB, as the case may be:
 - (i) setting forth the amount of the cost and the reason why the cost is properly chargeable to KIB or Contractor, as the case may be, and
 - (ii) stating that the cost is an arm’s length and competitive price, if there are competitive prices, for the service or materials supplied; and if KIB or Contractor requests, as the case may be, the additional back-up documentation to substantiate any Direct Cost, including invoices from suppliers, Subcontractors and contractors.

Direct Costs excludes profit or return on investment.

Disposal or **Dispose** or other form thereof means final deposition or destruction of Solid Waste.

Diversion or **Divert** means activities that reduce or eliminate the amount of Solid Waste from disposal.

Drive-in Service means when the contractor is required to leave the public right-of-way and

enter a driveway, private road, or private property.

Dumpster means a receptacle for discarded solid waste that has slots to allow pick-up by the forklifts, generally a metal box with lid also referred to as “bin” or “container”.

Elderly or Handicapped means any Residential Customer who meets the following criteria:

- (1) has handicapped status recognized by the State Department of Motor Vehicles, or
- (2) is over 65 years old as evidenced by birth dates on driver’s licenses, birth certificates, passports, green cards or other documentation issued by a Regulatory Authority, and
- (3) provides written representation that he or she is functionally unable to roll his or her Refuse Cart to the curb, and that there is no one else residing in that Customer’s premises who is functionally able to roll that Refuse Cart to the curb.

Electronic Waste means discarded computers/monitors/equipment, office electronic equipment, entertainment device electronics, mobile phones, television sets, and other materials with electronics that may be Recyclable.

Goods or Services means goods or services used in providing Contract Services, including the following:

- (1) labor,
- (2) leases and subleases,
- (3) equipment,
- (4) supplies,
- (5) capital,
- (6) insurance, if the insurer is an Affiliate,
- (7) bonds or other credit support if the surety or other provider is an Affiliate; and
- (8) legal, risk management, general and administrative services.

Guarantor means the Person executing the Guaranty.

Guaranty means the guaranty in substantially the form attached as Exhibit 11.04, as approved by KIB, signed by Guarantor.

Herein, Hereof, Hereunder and variations mean "in this Contract", "of this Contract", "under this Contract"; "**hereinbefore**" and "**hereinafter**" mean before and after the Contract Commencement Date, respectively.

Holidays means days on which KIB offices are closed for business to the public, comprised on the Contract Commencement Date of the following days:

- (1) New Year’s Day,
- (2) Martin Luther King Day

- (3) President’s Day
- (4) Seward’s Day
- (5) Memorial Day,
- (6) Independence Day,
- (7) Labor Day,
- (8) Veteran’s Day
- (9) Thanksgiving Day and the day after Thanksgiving and,
- (10) Christmas.

Including or Include or variations thereof means “including without limitation, “including, but not limited to” and “including, at a minimum”.

Indemnities or Indemnity or Indemnification or variations thereof means hold harmless obligations, defenses, indemnities and releases under this Contract, including under Article 8-8.01 and Article 11.02.

Independent Expert is the Person having the qualifications and selected under Article 12.03.

Insurance means the insurance coverage described in Article 11.01.

KIB means the following:

- (1) Kodiak Island Borough, and
- (2) any transferee of Kodiak Island Borough under Article 16.01a, and
- (3) for purpose of Indemnities, Kodiak Island Borough’s Related Parties.

KIB Business Day means any day on which KIB Administration office is open to do business with the public. (*Compare “Contract Service Day”.*)

KIB Code means municipal law of KIB.

KIB Governing Body means KIB Assembly.

KIB Office Hours means the hours of any KIB Business Day on which KIB Administration office is open to do business with the public. (*Compare “Contractor Office Hours”.*)

KIB Representative means the individual holding the position named by KIB under Article 17.07a. (*Compare “Contractor Representative”.*)

KIB’s Reimbursement Costs means KIB’s Direct Costs plus 15%. (*Compare “Contractor’s Reimbursement Costs”.*)

KIB’s Related Parties means KIB’s officers, employees, agents, contractors, attorneys, administrators, affiliates, representatives, servants, insurers, heirs, assigns, volunteers and each and every one of them. They are third party beneficiaries of provisions in this Contract that

reference them. (*Compare “Contractor’s Related Parties”.*)

KIB Landfill means the landfill owned by KIB.

Letter of Credit means the letter of credit described in Article 11.03. It is Contractor Documentation.

Liabilities and Losses means all of the following:

- (1) liabilities,
- (2) lawsuits,
- (3) claims,
- (4) complaints,
- (5) causes of action,
- (6) citations,
- (7) investigations,
- (8) demands,
- (9) clean-up orders,
- (10) damages (*including* actual, special, consequential and punitive) whether in contract or in tort, such as natural resource, property and personal injury damages,
- (11) costs and expenses, *including*
 - (i) all costs and expenses of litigation, mediation or arbitration, accountants fees, engineers fees, attorneys fees (whether KIB’s or Contractor’s staff attorneys or outside attorneys) and other consultant’s fees, expert witness fees, and court costs, and
 - (ii) response remediation and removal costs,
- (12) losses,
- (13) debts,
- (14) liens,
- (15) mediation, arbitration, legal or administrative proceedings,
- (16) interest,
- (17) fines, charges, penalties, and
- (18) other detriments of every nature and description, whether under state or federal law.

Liquidated Damages are described in Article 14.

Monthly Meeting means the meeting prescribed in Article 10.02

MSW Management Services means:

- (1) collection, transportation, storage, transfer, or processing of solid waste; and/or
- (2) arranging for disposal of solid waste.

Multi-family describes Persons (such as Customers) or things (such as Carts or types of Solid Waste) in the Contract Service Area that are not Residential.

Multi-family Customer means a Customer who owns or occupies a Multi-family Premise.

Multi-family Premises means premises that are not residential premises (and therefore contains 4 or more dwelling units) including apartment complexes and trailer courts.

Non-Collection Notice means a notice in form and substance satisfactory to KIB left by Contractor in event of Contract Service Exceptions, such as Discard of Unpermitted Materials.

Notice or **Notify** or other variation thereof means notice given under Article 19.01. “**Due Notice**” or “**Notice duly given**”, refers to Notice given under Article 19.01.

Own, Owner or **Ownership** or other variation there or has the meaning provided in the constructive ownership provisions of Article 318(a) of the Internal Revenue Code of 1986, as in effect on the Contract Commencement Date , *except* that

- (1) 10% is substituted for 50% in Article 318(a)(2)(C) and in Article 318(a)(3)(C) thereof;
- (2) Section 318(a)(5)(C) is disregarded, and
- (3) ownership interest of less than 10 percent is disregarded and percentage interests is determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

Party and **Parties** means the following 2 Persons, individually and together:

- (1) KIB, and
- (2) Contractor.

Performance Assurances means each and every Indemnity, Insurance, Letter of Credit and Guaranty, and any other instrument described in Article 11.

Performance Obligations means each and every obligation and liability of Contractor under this Contract.

Permit means the following:

- (1) permit,
- (2) registration,
- (3) order,
- (4) license (including business license),
- (5) approval,
- (6) authorization,
- (7) consent and
- (8) entitlement

of whatever kind and however described that Applicable Law requires Contractor to obtain or maintain with respect to satisfaction of Performance Obligations, as renewed or amended from time to time.

Person means any of the following:

- (1) individual,
- (2) sole proprietorship,
- (3) firm,
- (4) association,
- (5) organization,
- (6) partnership (whether limited or general),
- (7) corporation,
- (8) trust,
- (9) joint venture,
- (10) Regulatory Authority, or
- (11) any other entity.

Position of Influence means a position of authority or responsibility to directly or indirectly administer, manage, direct, supervise or oversee Contract Services or this Contract, *including* the following:

- (1) Affiliate Parents' officers;
- (3) Affiliate Parents' directors;
- (4) individual who reviews or negotiates Contractor's contracts (including this Contract);
- (5) individual who provides in-house legal services;
- (6) Affiliate insurer (captive insurance),
- (7) Guarantor, and
- (8) Affiliate surety or other Person providing Performance Assurance.

Premises means a tract of land with habitable buildings located in the Contract Service Area and safely accessible by Vehicles.

Processing means solid waste:

- (1) reduction,
- (2) separation,
- (3) recovery,
- (4) conversion or
- (5) recycling, and
- (6) creating compost.

Processing means "processing" of Solid Waste: it does not mean baling refuse.

Promptly or Prompt means as soon as practicable, but not more than two days.

Quarter means any of all of the following periods, as the context demands:

- (1) January, February, March (“**1st Quarter**”),
- (2) April, May, June (“**2nd Quarter**”),
- (3) July, August, September (“**3rd Quarter**”),
- (4) October, November, December (“**4th Quarter**”).

RCRA means the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq.*).

Reasonable Business Efforts means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of that Person’s business judgment, intending in good faith to take steps calculated to satisfy the obligation which that Person has undertaken to satisfy.

Receptacle means any Cart, Dumpster, Roll Off Container or other receptacle (such as bags designed for solid waste discard, but not shopping or grocery bags) for storing discarded Refuse.

Records means information relating to Contract Services and other Performance Obligations, including documentation in any form or media, including:

- (1) ledgers and books of account,
- (2) invoices, vouchers and canceled checks,
- (3) logs and correspondence,
- (5) data and computations,
- (6) files,
- (7) reports,
- (8) drawings, plans and designs (other than those respecting facilities or facility operations that do not involve Collection, such as materials recovery facility plans and specifications), and
- (9) photographs.

Recyclables means Solid Waste that is recyclable.

Recyclables Processing Facility means the Contractor-operated facility where it processes recyclables for shipment to markets.

Recycle, Recycling or Recyclable means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste 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 the market place.

Recycled Content Procurement Policy means KIB’S current buy-recycled policy, if any.

Recycling or Recycling Services means all activities related to managing Recyclables.

Refuse means Solid Waste comprised of rubbish, trash and garbage, excluding any Bulky Item

that Contractor Diverts.

Regularly Scheduled Collection Day(s) means the same day(s) each week on which Contractor provides Collection to a Customer.

Regulatory Authority means each of the following that has jurisdiction over either Party or this Contract:

- (1) the United States,
- (2) the State and other states,
- (3) KIB,
- (4) governmental authorities, agencies and districts,
- (5) governmental boards and commissions,
- (6) federal, state and local courts, and
- (7) any other municipal, governmental or public bodies.

Report means any report that Contractor is obligated to provide under this Contract, including Article 10.02.

Residential describes Persons (such as Customers) or things (such as Carts, Premises or types of Solid Waste) in the Contract Service Area that reside or are related to Residential Premises.

Residential Customer means a Customer who owns or occupies a Residential Premise.

Residential Premise means a premises meeting both of the following conditions:

- (1) It contains one, two or three dwelling unit(s), and
- (2) Each dwelling unit is occupied by related individuals or by 5 or fewer unrelated individuals.

Roll Off Container means an open-topped rectangular container for storage, collection and transport of Solid Waste that are rolled on and off flatbed collection vehicles via winches or reeving cylinders (hooks).

Rollout Service means taking the following actions by *manual means*:

- (1) dismounting from the Collection Vehicle,
- (2) moving a Receptacle more than five feet (5') from its storage location indicated on that Customer's Service Subscription (such as within enclosures or by garages) to the Collection Vehicle for emptying, and
- (3) returning the Receptacle to its storage location.

Senior Discount means the amount by which the Contractor Service Fee is reduced from time to time by KIB for providing Contract Service to any Residential Customer who is over 65 years old as evidenced to KIB by birth dates on driver's licenses, birth certificates, passports, green

cards or other documentation issued by a Regulatory Authority.

Service Day means a weekday or Saturday, Holidays excepted, when Contractor must provide Contract Service. (*Compare "KIB Business Day".*)

Set-out Site means the location agreed to by Contractor and the Customer and indicated on the Customer Service Subscription or required by KIB, where Customer must place its Carts for Collection, including:

- (1) **Residential curb:** on the curb in front of Residential Premises; in the street immediately adjacent to that curb or; if there is no curb, at the edge of Customer's property abutting the street, *unless* Contractor provides Roll-out Service or Up-the-Drive Service;
- (2) **Roll-out Service:** at the storage location agreed upon between a Residential Customer and Contractor and included on the Customer Service Subscription; and.
- (3) **Up-the-Drive Collection:** at the storage location agreed upon between a Residential Customer and Contractor.

Solid waste means "municipal solid waste" defined under AS 46.03.900.

Solid Waste means "municipal solid waste" discarded in Receptacles located in the Contract Service Area that Contractor must Collect, including:

- (1) Refuse,
- (2) Recyclables,
- (3) Bulky Items, and
- (4) C&D Debris.

but *excluding* Unpermitted Waste.

Solid Waste Management Facility means the following facilities, individual and together, as the context demands:

- (1) KIB Landfill, and
- (2) any other facility that handles Solid Waste and that is approved by KIB.

State means the State of Alaska.

Subcontract means any arrangement, formal or informal, written or merely in practice, between Contractor and a Subcontractor, including:

- (1) contracts or agreements,
- (2) letters or memorandum of understanding or intent,
- (3) subscription or purchase orders.

Subcontractor means anyone Person that provides Goods or Services related to Collection, transportation or storage of Solid Waste or related to Service Assets, including their operation, maintenance and repair, to or on behalf of Contractor.

Such as means for example.

Term of this Contract means the period beginning on the Contract Commencement Date and ending on the Termination Date.

Termination Date means the date this Contract expires or is earlier terminated.

Termination Events are listed in Article 15.01a.

Ton (or **Tonnage**) means a short ton of 2,000 pounds avoirdupois.

Transfer means any of the following:

- (1) selling, exchanging or otherwise transferring Ownership or control of Contractor (through sale, exchange or other transfer of outstanding stock, partnership shares, equity interest or otherwise);
- (2) issuing new stock or selling, exchanging or otherwise transferring 20% or more of the then outstanding common stock of, or partnership shares or equity interest in, Contractor;
- (3) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, buy-out or other transaction which results in a change of Ownership or control of Contractor;
- (4) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, being levied against Contractor, appointment of a receiver taking possession of any of Contractor's tangible or intangible property;
- (5) any sale or other transfer of 50% or more of the value of assets of Contractor *except* for sales or transfers to parents, grandparents, siblings, children, and grandchildren of persons having a shareholder, partnership or other equity interest in Contractor on the Contract Commencement Date ("**Immediate Family**") or trust created primarily to benefit members of the Immediate Family;
- (6) substitution by a surety company providing any performance bond of another Person for Collector to perform Contract Services; and
- (7) assumption of any of Contractor's rights under this Contract, or
- (8) assumption by, delegation to or takeover of any Performance Obligations or any other Contractor's duties or responsibilities under this Contract by any Person other than Contractor, whether by Subcontract (unless approved by KIB under Article 17.10) or any other mechanism.
- (9) any combination of the forgoing (whether or not in related or contemporaneous transactions), without consideration, which has the effect of any transfer or change of Ownership or control of Contractor.

For the purpose of this definition, "control" has the meaning provided in Rule 144 of the

Securities Act of 1993

Transition Plan means the plan under Article 7.04, in form and content satisfactory to KIB. It is Contractor Documentation.

Uncontrollable Circumstance(s) means any of the following events:

- (1) any natural disaster such as landslide, lightning, earthquake, fire, flood, tsunami, (other than reasonably anticipated weather conditions for the geographic area of KIB, such as wind, rain or snow);
- (2) sabotage, explosion;
- (3) insurrection, riot or civil disturbance, war or other emergency affecting KIB declared by the President of the United States or Congress of the United States, the State Governor or KIB Governing Body;
- (4) failure of public agency or private utility to provide and maintain water, power or service in KIB or at Contractor's operations and maintenance yard or administrative offices;
- (5) other catastrophic events beyond the reasonable control of that Party and not the result of willful or negligent action or inaction of that Party (other than the contesting in good faith or the failure in good faith to contest that action or inaction), which materially and adversely affects the ability of either Party to perform any obligation under this Contract despite that Party's exercise of due diligence.

Uncontrollable Circumstances *excludes*, without limitation:

- (1) Breach, Default or Contractor's financial inability to satisfy its Performance Obligations;
- (2) strikes, work stoppages or other labor disputes or disturbances of any Subcontractor or Contractor's inability to hire adequate numbers of personnel who are competent and skilled in the work to which they are assigned;
- (3) failure of Contractor to obtain Permits and patents, licenses, or trademarks necessary to perform Contract Services; and
- (4) the failure of any Contract Service Asset to function under any warranties, unless caused by Uncontrollable Circumstances.

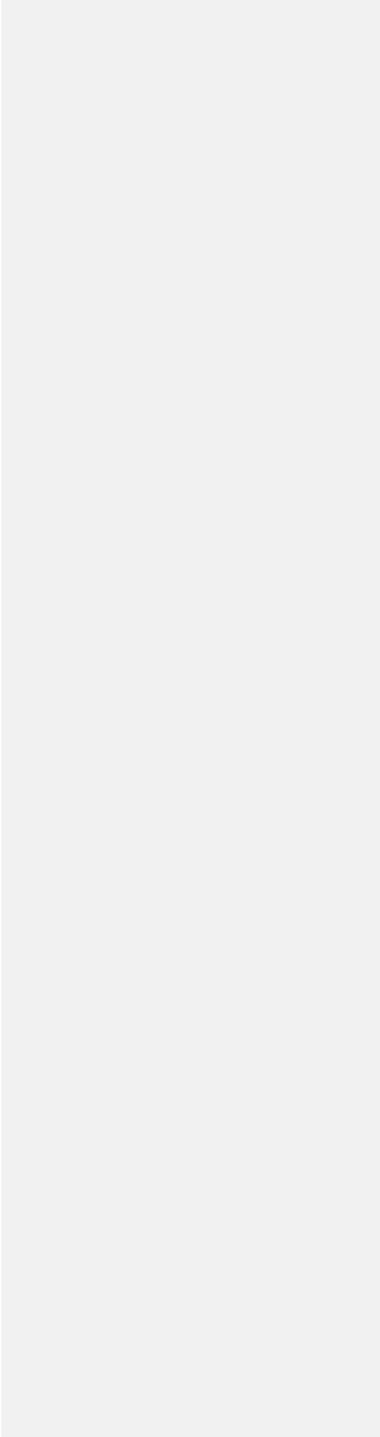
Unpermitted Waste means materials that cannot be disposed of in the KIB Landfill under Applicable Law of the State or KIB rules.

Unpermitted Waste Screening Protocol means the protocol under Article 7.02, in form and content satisfactory to KIB. It is Contractor Documentation.

Vehicle means any truck used to provide Contract Services.

Violation means any noncompliance with Applicable Law as evidenced by written notice, assessment or determination of any Regulatory Authority to Contractor, whether or not a fine or

penalty is included, assessed, levied or attached.



APPENDIX: CONTRACTOR INFORMATION AND DOCUMENTATION

	Contractor Representative 17.07b	Contractor Notice 19.01	“Contractor Office” (local) Article 21.01	
Name and/or Title				
Telephone				
Email				
Telefax				
Postal address				
Delivery address				

**Article 21.01 “Contract Managers”
(with respect to Article 15.02 Criminal Activity)**

“CONTRACT MANAGERS”	CONTRACTOR	AFFILIATE PARENT	SUCCESSIVE AFFILIATE PARENT
(1) CONTRACTOR REPRESENTATIVE			
(2) OFFICERS: Chief Operating Officer Chief Financial Officer			
(3) Management Board 1. 2. 3. 4. 5.			
(4) “POSITION OF INFLUENCE” (1) officers of Parent Affiliate President Vice-President Secretary Treasurer			
(2) Directors of Parent Affiliate			

(3) individual who reviews / negotiates Contract			
(4) individual providing in-house legal services			
(5) Guarantor			
(6) Affiliate insurer			
(7) Affiliate surety etc.			