

Schedule 6.1

Charges

This Schedule 6.1 shall govern Charges associated with One-Off Services (defined below), Non-Standard Charges for Services subject to a Service Schedule, and most favored nations with respect to Services subject to a Service Schedule. Charges under each Service Schedule shall be at such rates and amounts as set forth in such Service Schedule, or if no such rates and amounts are set forth in the applicable Service Schedule, then according to the provisions of this Schedule 6.1.

Article I. DEFINITIONS

All non-grammatical capitalized terms not defined in this Schedule 6.1 shall have the meaning given such term in the Master Outsourcing Agreement to which this Schedule is attached (the “**Master Agreement**”) or, as the case may be, any applicable Service Schedule. References to a section number, unless otherwise qualified, refers to a section of this Schedule 6.1. In addition to the terms defined in the Master Agreement and any Service Schedule, the following terms are used in this Schedule 6.1:

“**Favored Agreement**” shall have the meaning given such term in Section 2.01.

“**One-Off Service**” shall mean a Service to be performed by Vendor which is neither likely to recur with frequency, nor the specific subject of a Service Schedule.

“**Purchase Order**” shall have the meaning given such term in Section 3.03(a).

“**Rates**” shall have the meaning given such term in Section 3.08.

“**Retainage**” shall mean that percentage of final payment withheld by the City until the Service is complete in all respects, with performance satisfactory according to the terms and conditions in the Master Agreement, any applicable Service Schedule or as set forth in a Purchase Order.

Article II. MOST FAVORED NATION

Section 2.01 If Vendor makes any agreement (“**Favored Agreement**”) with any third party for a Service that is substantially the same as one which is the subject of a Service Schedule or Purchase Order, and such Favored Agreement contains terms, conditions, cost or revenue which the City contends are more favorable to such third party than as provided in such Service Schedule, Purchase Order or in the Master Agreement, and the provision of the Service in question occurs in whole or material part within 100 miles of the then-existing city limits of the City, then during the calendar year immediately preceding a Reset Date applicable to the Service Schedule in question, the City may request in writing that it also be given the benefit of the same terms or conditions of the Favored Agreement effective as of such upcoming Reset Date. The City shall submit its request to Vendor in writing, together with a revised version of the relevant Service Schedule, Purchase Order or Master Agreement as the City asserts to be comparable to the benefits available under the Favored Agreement. Within thirty (30) days of such written submission, Vendor shall either (i) respond in writing rejecting the submitted revisions and providing its analysis as to why the City’s revisions do not result in benefits comparable to those under the Favored Agreement (for example, if there are other terms in the Favored Agreement that are less favorable on a net economic basis to those enjoyed by the City under the existing Service Schedule, Purchase Order or Master Agreement), or (ii) Vendor shall be deemed to have concurred that the

revisions proposed by the City produce benefits comparable to those of the Favored Agreement. In the event the Parties are unable to agree as to what changes will be necessary to the existing Service Schedule, Purchase Order or Master Agreement to provide comparable economic benefits to the City as are provided in the Favored Agreement, then the Parties shall jointly refer the matter to a nationally recognized, disinterested public accounting firm to determine the economic benefits under the Favored Agreement and the revisions necessary to provide comparable benefits under the relevant Service Schedule, Purchase Order or Master Agreement. Once the determination of the disinterested public accounting firm has been delivered to each Party, then at the option of the City exercised with thirty (30) days of such written determination, the terms or conditions necessary to produce benefits comparable to those of the Favored Agreement shall be substituted for those specific relevant terms or conditions of the Master Agreement, Service Schedule or Purchase Order, but such substitution must be made as a whole with respect to the relevant terms, conditions, cost or revenue so that the net economic effect of such substitution shall be substantially the same to Vendor for the provision of the Services to the City as to the third party.

Section 2.02 Unless otherwise provided expressly to the contrary in a Service Schedule, Section 2.01 shall apply to each Service Schedule or Purchase Order executed under the Master Agreement.

Section 2.03 To facilitate the City's rights under this Article II, Vendor shall annually submit to the City a listing of all contracts under which Vendor provides services at its Designated Facility to any third party that in whole or substantial part involves Vendor providing services to such third party that are similar to the Services Vendor provides to the City under the Master Agreement (such annual submission required notwithstanding that the City's right for the terms of the Services to be adjusted to be substantially comparable to the economic benefits to the Favored Agreement only to be effective at the time of a Reset Date), any Service Schedule thereto or any Purchase Order. City may upon ten (10) Business Days notice to Vendor, employ at the City's cost and expense an independent auditor not a competitor of Vendor to inspect each such third-party Agreement or audit Vendor's performance and fees thereunder, with Vendor responsible for its own cost in responding to such inspection and audit.

Article III. ONE-OFF SERVICES

Section 3.01 Purchase Order Amount. In consideration for the One-Off Services of Vendor to be performed under an executed (or electronically accepted Purchase Order), Vendor shall be paid under this Schedule 6.1 for fees and expenses as follows:

Section 3.02 Purchase Order Acceptance.

- (a) Either Party may propose that Vendor will perform a One-Off Service for the City related to Recyclable Materials or the City's zero waste plan as adopted, amended or modified by the City from time to time.
- (b) The party proposing the One-Off Service shall generate a draft Purchase Order which may be in writing or transmitted by fax or other means of electronic transmission. Set forth in such draft Purchase Order, in reasonable detail, shall be the following (if applicable):
 - (i) the types of Services to be performed,

- (ii) the proposed start date,
 - (iii) a proposed end date,
 - (iv) a description of the Services,
 - (v) a description of any standards by which the performance of Vendor is to be measured,
 - (vi) any Service Level metrics that might apply,
 - (vii) how any Service Level Credits will be calculated,
 - (viii) the cost for or revenues to be generated by the Services (which may be calculations based upon time and materials or physical volumes, or a flat fee regardless of time, expenses of vendor or physical volumes, or some combination, such as a not-to-exceed fee),
 - (ix) the timing of any payments to be made by either the City or the Vendor,
 - (x) and the relevant contact person at both the City and the Vendor for the One-Off Service in question.
- (c) If a draft Purchase Order is submitted by the City, the City shall expressly limit acceptance to the terms of the draft Purchase Order and Vendor shall give notice of objection to any different or additional terms in any response to such offer. If no response is received by the City of Vendor's acceptance of such draft Purchase Order within ten (10) days (or such other deadline as the City shall expressly set forth in the draft Purchase Order), the draft Purchase Order shall be deemed rejected. If Vendor shall propose new terms in writing, then the City's draft Purchase Order shall be deemed rejected, and the City shall retain its rights to use a third party of its own choosing, or to continue negotiating the terms of the One-Off Service with Vendor.
- (d) If a draft Purchase Order is submitted by Vendor, the City shall have no less than ten (10) days to accept such draft Purchase Order, or such longer time period as Vendor shall specify. If no response is received by Vendor of the City's acceptance of such draft Purchase Order within such time for acceptance, such draft Purchase Order shall be deemed rejected. Notwithstanding the foregoing, if Vendor transmits the draft Purchase Order to the City in response to a bona fide emergency, City shall respond by Vendor's written deadline if less than ten (10) days or the draft Purchase Order shall be deemed rejected. The City's acceptance of Vendor's draft Purchase Order shall not be binding on the City until expressly accepted by the City, and City shall have generated a conforming Purchase Order with the City's unique Purchase Order number.

Section 3.03 Invoices.

- (a) Vendor shall submit separate invoices in duplicate for each Non-Standard Charge or One-Off Service at least monthly (even if payment for a One-Off Service is to be paid less often than monthly or deferred to completion of the One-Off Service).

- (b) Invoices shall contain a unique invoice number, the Purchase Order number, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Vendor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Vendor's invoice. Invoices received without all required information cannot be processed and will be returned to the Vendor. Invoices shall be itemized and transportation charges, if any are permitted, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department:	
Attention:	
Address:	
City, State, Zip Code:	

- (c) Invoices for labor shall include a copy of all timesheets with trade labor rate and a deliverables order number, if any, clearly identified. Invoices shall also include a tabulation of hours worked at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- (d) Unless otherwise expressly authorized in the Master Agreement, the applicable Purchase Order or applicable Service Schedule, the Vendor shall pass through all subcontract and other authorized expenses at actual cost without markup.
- (e) Federal excise taxes, state taxes, or city sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

Section 3.04 Payment.

- (a) All invoices received by the City in accordance with Section 3.03, above, will be paid within thirty (30) calendar days after the later of (i) delivery and acceptance by City of the Service or Services conforming with the terms of the relevant Service Schedule or Purchase Order, and (ii) City's receipt of the applicable invoice.
- (b) If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; provided, that if payment is not timely made for a reason for which the City may withhold payment hereunder, or pursuant to the applicable Purchase Order, under the Master Agreement or any applicable Service Schedule, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

- (c) The City may withhold or set off the entire payment or part of any payment otherwise due Vendor to such extent as may be necessary on account of:
- (i) third party claims not covered by the insurance which Vendor is required to provide, which are filed, or reasonable evidence indicating probable filing of such claims;
 - (ii) failure of the Vendor to pay subcontractors for labor, materials or equipment;
 - (iii) damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by Vendor;
 - (iv) reasonable evidence that Vendor's obligations will not be completed within the time specified in a Purchase Order or any Service Schedule, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - (v) failure of Vendor to submit proper invoices with all required attachments and supporting documentation; or
 - (vi) failure of Vendor to comply with any material provision of this Schedule 6.1, any applicable Purchase Order, any applicable Service Schedule or the Master Agreement.
- (d) Notice is hereby given and Vendor agrees to the provisions of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- (e) Payment will be made by check unless the Parties mutually agree in the relevant Purchase Order to payment by credit card or electronic transfer of funds. Vendor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.
- (f) If completion dates cannot be met under the applicable Purchase Order for a One-Off Service, Vendor shall inform City immediately. Such notice shall not, however, constitute a change to the completion terms of the relevant Purchase Order unless City modifies such Purchase Order in writing. If any element of the work is not completed by the date specified, the City, at the City's option and without prior notice to Vendor, may either approve a revised date or may cancel the Purchase Order and may obtain such work elsewhere, and in either event Vendor shall be liable to City for any resulting loss incurred by the City. Applicable time frames shall automatically be extended as a result of delays arising from Force Majeure, to the extent not otherwise limited or obviated by the terms of the Master Agreement or the applicable Service Schedule. Vendor's sole remedy for a delay caused by City shall be an extension in the time for Vendor's performance equal to the duration of City's delay. **TIMING OF PERFORMANCE OF THE SERVICES IS OF THE ESSENCE WITH RESPECT TO PURCHASE ORDERS.**

Section 3.05 Improper Performance and Disputes. In addition to other remedies provided by law, City reserves the right to revoke any previous acceptance and to cancel all or any part of the Purchase Order if Vendor fails to perform any of the work in accordance with the terms and conditions of the Purchase

Order. Any dispute arising in connection with this Purchase Order shall be resolved according to the Master Agreement.

Section 3.06 Retainage. With the exception of any costs Vendor is expressly permitted to pass through to the City (including any markup Vendor is entitled to under the pass-through arrangement), unless a different amount is set forth in the relevant Service Schedule or Purchase Order, the City reserves the right to withhold a ten percent (10%) Retainage until completion of all work under a Purchase Order or Invoice for One-off Services. The Vendor's invoice shall indicate the amount due, less the Retainage. Upon final acceptance of the work, the Vendor shall submit an invoice for the Retainage to the City and payment will be made as specified in this Schedule 6.1. Payment of the Retainage by the City shall not constitute nor be deemed a waiver or release by the City of any of its rights and remedies against the Vendor for recovery of amounts improperly invoiced or for defective, incomplete or non-conforming work under the relevant Purchase Order.

Section 3.07 No Battle of the Forms; Master Agreement Controls. The City's payment obligations of any Non-Standard Charges or under any Purchase Order remain subject to all terms in this Schedule 6.1, in the Master Agreement, and the relevant Service Schedule, including any right to assert Force Majeure and that payment will only and solely be from funds appropriated and available notwithstanding any inconsistent or contrary terms in the Purchase Order or Vendor's invoice. The absence of appropriated or other lawfully available funds shall render the applicable Purchase Order null and void to the extent funds are not appropriated or available.

Section 3.08 Travel Expenses. All travel, lodging, and per diem expenses in connection with a Purchase Order for which reimbursement may be claimed by the Vendor will be reviewed against the City's Travel Policy and the then-current United States General Services Administration Domestic Per Diem Rates (the "**Rates**") as published and maintained on the Internet at: http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC. No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (*e.g.* hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

Article IV. NON-STANDARD CHARGES

Section 4.01 With respect to the payment of Vendor's invoice for any Non-Standard Charges, the provisions of Section 3.03, Section 3.04, Section 3.07, and Section 3.08 of this Schedule 6.1 shall apply to such Non-Standard Charges to the same extent they would apply to One-Off Services, *mutatis mutandis*.