

## **APPENDIX A3 – Operations Contract**

**THIS AGREEMENT effective the \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”)**

**AGREEMENT BETWEEN:**

**THE REGIONAL MUNICIPALITY OF NIAGARA**

(referred to as “Niagara Region”)

**AND:**

**[\*INSERT FULL LEGAL NAME OF CONTRACTOR\*]**

(referred to as the “Contractor”)

**WHEREAS** on **[Date]** Niagara Region issued Request for Proposals (2021-RFP-209) (the “RFP”) for, inter alia, the provision of processing of recyclable material as further set out therein;

**AND WHEREAS** the Contractor submitted a response to the RFP (the “Proposal”);

**AND WHEREAS** Niagara Region wishes to enter into an agreement with the Contractor for the completion of the Work as more particularly described in the RFP, the Proposal and upon the terms and conditions as more particularly set out herein;

**NOW THEREFORE** in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Niagara Region and the Contractor agree as follows:

**1. CONTRACT DOCUMENTS**

- 1.1 The Contract shall consist of: (i) this main contract document and the terms and conditions set out herein; (ii) all schedules to this main contract document; (iii) Appendix “B” to the RFP; and (iv) Contractor’s Proposal (collectively, the “Contract”). All documents comprising the Contract are intended to be construed together as a consistent whole and for a common purpose.
- 1.2 Any ambiguity, conflict or inconsistency between or among the documents comprising the Contract will be resolved by giving precedence to the express terms of the documents in the order in which they appear above, so that a first mentioned document shall prevail notwithstanding any term or aspect of a later mentioned document.

**2. INTERPRETATION**

**2.1 Definitions**

In this Contract, unless the context otherwise requires:

- (a) "Applicable Laws" means all applicable laws, statutes, regulations, orders, by-laws, treaties, judgements, decrees and ordinances applicable from time to time and, whether or not having the force of law, all applicable Approvals, standards, codes, requirements, requests, directives, rules, guidelines, instructions, circulars, manuals, and policies of any Governmental Authority having or purporting to have jurisdiction or authority over a Party, property, transaction or event, including

laws relating to workplace safety and insurance, occupational health and safety and employment standards.

- (b) "Approvals" means any permits, licences, consents, approvals, clearances, orders, ordinances, registrations, filings or other authorizations respecting the work undertaken as part of the Work as may be required from any applicable Governmental Authority or otherwise by the Contract.
- (c) "Background Information" means the historical information as provided as part of the RFP or any other drawings, reports, studies, data, documents, or other information, given or made available to the Contractor by Niagara Region, or which was obtained from or through any other sources prior to the Effective Date and which do not expressly form part of the Contract.
- (d) "Business Day" means any day other than: (a) a Saturday or Sunday and (b) any other day on which Niagara Region is not open for business. Each Business Day will end at 4:00 p.m. on that day.
- (e) "Claim" has the meaning ascribed to it in Section 15.1.
- (f) "Conflict of Interest" has the meaning set out in Section 3.4 of Part 3 (Terms and Conditions) of the RFP.
- (g) "Contract" has the meaning ascribed to it in Section 1.1.
- (h) "Contractor Personnel" means (a) with respect to the Contractor, all of the Contractor's personnel, employees and independent contractors (including the Contractor's Representative) engaged in the performance of the Work; and (b) with respect to each Subcontractor, all of that Subcontractor's personnel, employees and independent contractors engaged in the performance of the Work.
- (i) "Contractor Representative" has the meaning ascribed to it in Section 7.4.
- (j) "Default" has the meaning ascribed to it in Section 18.1(a).
- (k) "Effective Date" means the date first written above.
- (l) "Emergency" means any situation, event, occurrence, multiple occurrences or circumstances that:
  - (A) constitutes or may constitute a hazard to or jeopardizes or may jeopardize or pose a threat to health and safety of any persons; or
  - (B) causes or may cause damage or harm to property, buildings and/or equipment;and which, in the opinion of the Contractor, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing.
- (m) "Environmental Compliance Approval" means the permit to operate a waste management system issued by the Ministry of the Environment, Conservation and Parks for the MRF, as amended from time to time.
- (n) "Force Majeure" has the meaning ascribed to it in Section 20.1.

- (o) “Good Industry Practice” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- (p) "Governmental Authority" means any domestic government, including any federal, provincial, territorial, municipal, regional or other local government, and any government established court, agency, tribunal, commission or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions respecting government.
- (q) “Industry Standards” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- (r) “MRF” means the lands and buildings comprising the Material Recycling Facility known municipally as 4935 Kent Avenue and 5030 Montrose Avenue, Niagara Falls.
- (s) “Niagara Region Representative” has the meaning ascribed to it in Section 7.3.
- (t) "OHSA" means the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1.
- (u) “Operational Period” means the period of time commencing on the Operational Period Commencement Date through to the expiry or earlier termination of the Contract.
- (v) “Operational Period Commencement Date” means January 6, 2023 or such earlier date that the Contractor assumes full accountability for the provision of the Work as may be agreed to by the Parties in writing.
- (w) "Parties" means both of Niagara Region and the Contractor and a "Party" means either one of them.
- (x) "Person" means any individual, sole proprietorship, partnership, limited partnership, corporation or company (with or without share capital), trust, foundation, joint venture, Governmental Authority or any other incorporated or unincorporated entity or association of any nature.
- (y) “Proposal” has the meaning ascribed to it in the second Recital.
- (z) “RFP” has the meaning ascribed to it in the first recital;
- (aa) "Subcontractor" means an individual, firm, partnership, corporation or design professional having a direct contract with the Contractor or another Subcontractor to perform a part or parts of the Work;
- (bb) “Term” has the meaning ascribed to it in Section 5.1.
- (cc) “Transition Activities” means those activities set out in Schedule “D”
- (dd) “Transition Period” means the period of time commencing on the Effective Date and expiring on the Operational Period Commencement Date.

- (ee) "Transition Plan" has the meaning ascribed to it in Schedule "D"
- (ff) "Work" means all activities, services, goods, equipment, matters and things required to be done, including all of the work, labour, services, goods, equipment, described in the Contract documents.

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the RFP.

## 2.2 **Currency**

- (a) All prices and sums of money and all payments made under this Contract shall be in Canadian dollars.

## 2.3 **Units of Measure**

- (a) All dimensions, quantities, performance specifications, calibrations and other quantitative elements used in this Contract shall be expressed in the International System of Units (SI), except where otherwise indicated.

## 2.4 **Language**

- (a) All communication between Niagara Region the Contractor and each of the Subcontractors with regard to the Work shall be in the English language.

## 2.5 **References**

- (a) Each reference to a statute in this Contract is deemed to be a reference to that statute and to the regulations made under that statute, all as amended or re-enacted from time to time. Following any and all changes to Applicable Laws, the Contractor shall perform the Work in accordance with the terms of this Contract, including in compliance with Applicable Laws.
- (b) Any provision establishing a higher standard of safety, reliability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service.
- (c) Each reference, whether express or implied, to a standard of any technical organization or Governmental Authority is deemed to be a reference, to that standard as amended, supplemented, restated, substituted or replaced.
- (d) Subject to any express definitions contained in this Contract, words and abbreviations which have well known technical or trade meanings are used in this Contract in accordance with such recognized meanings.
- (e) Where used in this Contract, "including" means including without limitation, and the terms "include", "includes", and "included" have similar meanings.
- (f) Each reference to an Article or Section within the Contract or Schedules shall refer to that Article or Section number in the Contract or the Schedule in which the reference occurs unless otherwise specified.

- (g) The division of this Contract into Sections, the insertion of headings, and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Contract.

## 2.6 **Time**

- (a) Unless otherwise specified, references to time of day or date mean the local time or date in Thorold, Ontario. When any period of time is referred to in this Contract by days between two dates, it will be calculated by excluding the first and including the last day of such period.
- (b) If, under this Contract, any payment or other event falls due on or as of a day that is not a Business Day, that payment or other event shall fall due instead on the next day that is a Business Day, unless expressly stated otherwise.
- (c) Unless otherwise specified, references to "day" shall mean calendar day.

## 2.7 **Background Information**

- (a) Niagara Region does not give any warranty or undertaking of whatever nature in respect of the Background Information and, specifically, disclaims any warranty that the Background Information represents all information relevant or material to the Work.
- (b) The Contractor acknowledges and confirms that (i) it has conducted its own analysis and review of the Background Information and has, before the delivery of its Proposal, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and (ii) except as expressly provided for herein it shall not make any claim against Niagara Region, including any claim in damages, for extensions of time, or for additional payments under this Contract on the grounds that the Background Information was incorrect or insufficient.

## 2.8 **Schedules**

The following Schedules attached to this Contract shall constitute an integral part of this Contract and all expressions defined in this Contract shall have the same meanings in such Schedules:

Schedule A - Insurance

Schedule B - Liquidated Damages

Schedule C – Appendix “B” to the RFP

Schedule D – Transition Activities

Schedule E – Contractor’s Proposal - Material Processing Rates

## 3. **PERFORMANCE OF THE WORK**

### 3.1 **Transition Period**

- (a) The Contractor shall provide, perform and complete all work, services, tasks and preparations

required to successfully commence the performance of the Work as at the Operational Period Commencement Date. Without limiting the generality of the foregoing, Contractor shall skillfully and competently carry out the Transition Activities to the satisfaction of Niagara Region during the Transition Period in order to achieve a state of readiness for the assumption of accountability for the Work on or before Operational Period Commencement Date.

- (b) The Contractor acknowledges that Niagara Region is transitioning the Work from its current third party vendor and agrees to fully cooperate and coordinate with Niagara Region and its current vendor in order to ensure a safe, smooth and efficient transition of the Work. The Contractor further agrees that it shall ensure that at all times during the Transition Period no Contractor Personnel shall unreasonably interfere with Niagara Region's current vendor in its provision of the Work.
- (c) The Contractor shall perform the Transition Activities in accordance with and subject to this Agreement, including the Transition Plan.
- (d) If the Contractor fails to complete all Transition Activities during the Transition Period to the satisfaction of Niagara Region or otherwise fails to commence the performance of the Work as at the Operational Period Commencement Date (a "**Commencement Date Failure**"):
  - (i) Contractor shall pay liquidated damages the amount set out in Schedule B (the "**Commencement Date Liquidated Damages**") commencing on the first day following the expiry of the Transition Period and concluding on the earlier of (i) the date upon which the Contractor commences performance of the Work; and (ii) the date on which the termination of the Agreement takes effect in accordance with its terms.
  - (ii) The Parties agree that the Commencement Date Liquidated Damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that Niagara Region will suffer as a result of the Contractor's failure to commence performance of the Work as at the Operational Period Commencement Date. Such payment shall constitute full and final settlement of any and all damages that may be claimed by Niagara Region as a result of a Commencement Date Failure. The Parties agree that such liquidated damages shall be payable whether or not Niagara Region incurs or mitigates its damages, and that Niagara Region shall not have any obligation to mitigate any such damages.
- (e) From and after the Effective Date, during the period of time leading up to the Operational Period Commencement Date, the Contractor shall attend transition/implementation meetings as Niagara Region may require. The Contractor's preparation for, attendance at and participation in meetings pursuant to this Section 3.1(e) shall be included in the material processing rates set out in Schedule E.

### 3.2 **Operational Period**

- (a) Contractor shall assume full accountability for the provision of the Work as at the Operational Period Commencement Date.
- (b) Niagara Region makes no guarantee of the value or volume of Work to be assigned to the Contractor.

#### 4. **REPRESENTATION AND WARRANTIES**

##### 4.1 **Contractor's Performance Warranty**

- (a) The Contractor hereby represents and warrants that the Work shall be performed and provided as outlined in the RFP and its Proposal, as applicable, fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations, and furthermore that all Work shall be provided in accordance with the Contract, Industry Standards and all Applicable Laws. The Contractor shall also comply with all requirements of all municipal and licensing authorities, including but not limited to the Ministry of the Environment, Conservation and Parks, the Ministry of Labour and all other lawful authorities respecting the Work to be provided by the Contractor and more specifically comply with the Certificate of Approval(s) issued for the MRF.
- (b) The Contractor shall provide, at the sole cost and expense of the Contractor, save as otherwise provided in this Contract, all necessary equipment, goods, materials, analysis, transportation, accommodation, labour, staff and technical assistance and incidentals required in performing the Work and further agrees to undertake, perform and complete its undertakings, obligations and responsibilities provided for in this Contract.

##### 4.2 **Contractor's Corporate Warranties and Covenants**

- (a) The Contractor represents and warrants as follows:
  - (i) the Contractor is validly existing under the laws of the location of its head office and the Contractor has all necessary corporate power, authority and capacity to enter into this Contract and to perform its obligations hereunder;
  - (ii) the entering into of this Contract by the Contractor and the performance of its obligations hereunder has been authorized by all necessary corporate action;
  - (iii) the execution and delivery of this Contract, the consummation of the transactions contemplated herein and compliance with and performance of the provisions of this Contract does not and shall not:
    - (A) result in a breach of or constitute a default under, or create a state of fact, which after notice or lapse of time or both, or otherwise, would constitute a default under any term or provision of the constating documents of the Contractor, the by-laws or resolutions of the Contractor or any agreement or instrument to which the Contractor is a party or by which it is bound, or
    - (B) require the Contractor to obtain any Approval or action of any other Persons and, if required, any such Approvals have already been obtained as of the date of this Contract;
  - (iv) this Contract constitutes a legally valid and binding obligation of the Contractor enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of the rights of creditors generally, the principles of equity and that equitable remedies such as specific performance and injunction are available only in the discretion of a court of competent jurisdiction;



- (v) the Contractor has carefully reviewed the whole of this Contract, including all of the Contract documents, and all other documents made available to the Contractor by Niagara Region, and, to the Contractor's knowledge, nothing contained herein or therein inhibits or prevents the Contractor from performing the Work so as to achieve and satisfy the requirements of this Contract;
  - (vi) the Contractor has engaged and shall engage only Subcontractors and Contractor Personnel that are qualified and competent to perform the portions of the Work they are responsible for;
  - (vii) the Contractor has available the resources and personnel to complete all of its obligations under this Contract in a timely, efficient and professional manner;
  - (viii) the Contractor is not aware of any legal action instituted, threatened or pending against the Contractor that could have a material adverse effect on its ability to perform its obligations under this Contract;
  - (ix) Except as disclosed in the Proposal, the Contractor is free of any actual or potential Conflict of Interest;
  - (x) the Contractor is registered as an employer pursuant to the Workplace Safety and Insurance Act (Ontario) and has completed all filings and paid all assessments as required pursuant to that Act and the regulations thereunder;
  - (xi) the Contractor is familiar with the obligations imposed on an "employer" as defined in OHSAA, and that it has in place a health and safety program to ensure that it takes all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under that Act; and
  - (xii) the Contractor represents, warrants and covenants to Niagara Region that the Contractor is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act.
- (b) The Contractor hereto agrees that its covenants, representations and warranties contained in this Section 4 are continuing covenants, representations and warranties and shall apply and be true and correct at all times during the Term.

#### 4.3 **Niagara Region's Representations and Warranties**

- (a) Niagara Region hereby represents, warrants, on a continuous basis, to the Contractor and acknowledges that the Contractor is entering into the Contract in reliance on such representations, and warranties:
- (i) The Contract has been authorized, executed and delivered by Niagara Region and constitutes a legal, valid, and binding obligation of Niagara Region, enforceable against it in accordance with its terms;
  - (ii) There is no action, suit, proceeding, claim, application, complaint or investigation in any court or before any arbitrator or before or by any regulatory body or governmental or nongovernmental body pending or threatened by or against Niagara Region which would

materially affect its ability to enter into or perform its obligations pursuant to the Contract; and, there is no factual or legal basis which could give rise to any such action, suit, proceeding, claim, application, complaint or investigation.

## 5. **CONTRACT TERM**

5.1 This Contract shall take effect on the Effective Date and shall continue in full force and effect until the earlier of:

(i) the date upon which Niagara Region no longer bears responsibility for operating its blue box program in accordance with the *Resource Recovery and Circular Economy Act, 2016* (Ontario) and the regulations thereunder (the “**Transition to Producer Responsibility Date**”); or

(ii) December 31, 2024,

(the “**Term**”)

unless otherwise terminated sooner in accordance with the provisions hereof. The Parties acknowledge and agree that Niagara Region’s Transition to Producer Responsibility Date is currently set for January 1, 2024. In the event that there is a change to Niagara Region’s Transition to Producer Responsibility Date Niagara Region shall inform the Contractor of any such date change as soon as reasonably possible.

## 6. **HEALTH AND SAFETY**

6.1 The Contractor shall ensure that all Work performed under this Contract shall be carried out in accordance with OHSA, as amended from time to time, and shall cause all Contractor Personnel to comply with same. The Contractor shall report to Niagara Region any non-compliance with the OHSA in the performance of the Work.

6.2 All required Ministry of Labour documentation shall be obtained and filed by the Contractor and kept in good standing during the term of this Contract. Copies of same shall be provided to Niagara Region as they become available.

6.3 The Contractor shall maintain applicable records with respect to all health and safety instruction and training, which will include frequency and course content, and shall supply Niagara Region with such records, as required or requested.

6.4 The Contractor specifically covenants and agrees that:

(i) it shall comply with Good Industry Practice in Ontario respecting health and safety in a manner that recognizes and minimizes the risk to workers, other individuals, property and the operations of Niagara Region, to the extent that such practices are not inconsistent with an express instruction set out in this Contract or provided by Niagara Region;

(ii) it shall comply, and shall ensure that all Contractor Personnel comply, in all regards with the safety requirements set out in the Contract Documents;

- (iv) it shall maintain, strictly enforce and comply, and ensure that all Contractor Personnel comply, in all regards with the Contractor's own health and safety program;
- (v) it shall take all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under OHSA; and
- (vii) it shall make available, at Niagara Region's request, such policies and procedures relating to its occupational health and safety matters as Niagara Region may from time to time request, and hereby covenants that all Contractor Personnel have been properly trained and are knowledgeable with respect to these policies and procedures.

6.5 The Contractor shall be responsible for any delay in the progress of the Work as a result of any violation of provincial or municipal health and safety requirements by the Contractor, it being understood that such delay shall be not be a Force Majeure for the purposes of this Contract, and the Vendor shall take all necessary steps to avoid delay in the completion of the Work without additional cost to Niagara Region, who shall not be responsible for any additional expense or liability resulting from any such delay.

## **7. CONTRACT PERSONNEL**

### **7.1 Contractor Personnel**

- (a) The Contractor shall select and employ a sufficient number of suitably qualified and experienced Contractor Personnel to perform and provide the Work, as determined with reference to the requirements of the Work to be performed by each individual or otherwise as required pursuant to the Contract. All Contractor Personnel shall possess or, where permitted, shall be supervised by persons who possess, the professional accreditation required to complete the Work.
- (b) The Contractor shall provide effective and efficient supervision to ensure that the performance of the Work meets the requirements of the Contract.
- (c) The Contractor shall ensure that the Contractor Personnel assigned to perform the Work shall:
  - (i) act in a proper and professional manner in accordance with Good Industry Practice; and
  - (ii) comply with all applicable Niagara Region policies and procedures, provided that the Contractor has been made aware of same.
- (d) Niagara Region may, where it determines that it is reasonably necessary to do so, direct the Contractor to remove and replace any Contractor Personnel.
- (e) The Contractor shall abide by the hours of work for occupations involved in accordance with the regulations of the Ministry of Labour or other appropriate legislation of the Province of Ontario.
- (f) The Contractor represents and warrants that all employees, both permanent and temporary, and all employees of Subcontractors, if any, prior to commencing performance of the Work, are fully trained and understand the requirements of the Work to be performed.
- (g) The Contractor agrees that it has adopted and shall maintain a policy of non-discrimination in

accordance with the Ontario Human Rights Code.

- (h) Labour disruption, strike or other concerted efforts to disrupt the Work by employees or others are not acceptable as reasons for non-performance of the Work or any obligations under this Contract and non-performance based on these reasons shall be treated pursuant to the events of Default clause and remedies.

## 7.2 **Subcontractors**

- (a) Other than the Subcontractors identified in the Proposal, if any, the Contractor shall not subcontract the Work to any Person without the prior written consent of Niagara Region. No subcontracting by the Contractor shall relieve the Contractor of any responsibility for the full performance of all obligations of the Contractor under this Contract. Notwithstanding the approval of any Subcontractors by Niagara Region, the Contractor shall be fully responsible for every Subcontractor's activities, works, services and acts or omissions. Consent may be revoked by Niagara Region at any time regarding any particular Subcontractor for just cause or business requirement of Niagara Region, without cost to Niagara Region and the Contractor shall be required to perform that portion of the Work itself or have the Work carried out by a different Subcontractor upon approval of same by Niagara Region.
- (b) In the event that Subcontractors are performing some of the Work as proposed by the Contractor in its Proposal or otherwise consented to by Niagara Region, the Contractor shall discharge all liabilities incurred by the Contractor to any Subcontractor, for labour, equipment or services, used or reasonably required for use in the performance of this Contract on the date upon which each liability becomes due. The Contractor shall indemnify, release and hold harmless Niagara Region, its Council, officers and employees from any claims, either direct or indirect, by any Subcontractor of the Contractor.
- (c) The Contractor shall co-ordinate the services of all Subcontractors employed, engaged or retained by the Contractor and, without limiting the generality of any other provision of this Contract, the Contractor shall be liable to Niagara Region for costs or damages arising from errors or omissions of such Subcontractors or any of them. It shall be the Contractor's responsibility to control and review the Work of its own forces and of all its Subcontractors and to ascertain that all Work is performed in accordance with this Contract.
- (d) In any subcontract, the Contractor shall ensure that the Subcontractor is bound by conditions compatible with, and no less favorable to Niagara Region than, the conditions of this Contract.
- (e) The Contractor warrants and represents that all of its permitted Subcontractors and the respective workforce of each are fully qualified to perform the Work and perform this Contract and hold all requisite Approvals.
- (f) The Contractor shall not remove or change any Subcontractors, or materially reduce the responsibilities of any Subcontractors in relation to the provision of the Work except with the prior written consent of Niagara Region in its sole discretion. The proposed replacement Subcontractor shall possess the requisite expertise and similar qualifications, experience and ability as the outgoing Subcontractor.

## 7.3 **Niagara Region Representative**

- (a) Niagara Region shall designate an individual to act as its representative (the "Niagara Region Representative") who will transmit instructions to, and receive information from the Contractor.

#### 7.4 **Contractor Representative**

- (a) The Contractor shall assign a Contractor's representative (the "Contractor's Representative") who will direct the provision of the Work. During the Term, the Contractor's Representative will maintain ongoing contact with Niagara Region to ensure that issues are dealt with in an efficient, effective and timely manner. The Contractor's Representative shall be the primary point of contact for Niagara Region for significant issues including commercial issues and disputes and shall have overall responsibility for coordinating the performance of the Contractor's obligations under this Contract.

### 8. **SUPPORT AND COOPERATION**

- 8.1 Niagara Region reserves the right to expand, undertake or enter into additional contracts pertaining to the provision of the Work or similar services, in accordance with Niagara Region's purchasing policies and by-laws.
- 8.2 The Contractor shall properly coordinate the Contractor's Work with the work of any other contractors, including Niagara Region's collection contractor, or that is performed by the Niagara Region itself. If any part of the Contractor's Work depends for its proper execution or result upon the work of another contractor of Niagara Region, the Contractor shall report in writing immediately to Niagara Region any disputes regarding the work of such other contractor of Niagara Region as may interfere with the proper execution of the Contractor's Work.
- 8.3 It is the intent of this Contract to ensure that the Contractor delivers excellent quality in the performance of the Work, which is at all times for the benefit of residents of Niagara region. Niagara Region requires that excellence be displayed and evident in all dealings of the Contractor with members of the public and the Contractor agrees to correct or adjust its practices at the request of Niagara Region to this end.
- 8.4 The Parties shall exchange information on a continuing basis, cooperate in planning and coordinating their activities hereunder and in carrying out their respective obligations under all Applicable Laws and this Agreement.

### 9. **AUDITING OF THE WORK**

- 9.1 Niagara Region will conduct periodic audits of Contractor performance throughout the Contract Term. At any time, Niagara Region may inspect any place where the Work is being performed, at all reasonable times and without prior notice.
- 9.2 The purpose of the audit is to assist Niagara Region to verify that the Contractor is performing all Work and is in compliance with the Contract. The Contractor shall cooperate with Niagara Region's auditor(s) or staff and shall provide all reasonable access to the MRF and associated Contract records.

### 10. **PERMITS, LICENSES AND APPROVALS**

- 10.1 The Contractor shall obtain at its own expense and shall remain in compliance with all necessary permits, licenses and/or Approvals required to perform the Work and shall provide, at the request of Niagara Region, evidence of same. The Contractor shall give all necessary notices and pay all fees required by Applicable Law. Further, the Contractor shall comply with all work orders that may be issued by any Government Authority. These approvals or work orders are incorporated by reference into this Contract and shall become part of the Contract, such that a breach of an Approval, including for greater certainty the MRF's Environmental Compliance Approvals(s) or work order shall be deemed to be a breach of this Contract.
- 10.2 The Contractor shall ensure that all persons supplying services or materials to the Work hold all valid and current licenses required by Applicable Law with respect to the service or materials to be supplied by them respectively.

## 11. **PAYMENT**

### 11.1 **Rates**

- (a) Niagara Region shall, subject to the Contractor's compliance with the provisions of the Contract, pay the Contractor for the Work cost of material processing rate (expressed as an amount per tonne) set out in Schedule "E". The prices shall be adjusted as at the Operational Period Commencement Date, to account for any increases in the cost of living during the period of time between the Effective Date and the Operational Period Commencement Date, as follows:
- (i) The per tonne rate set out in Schedule "E" multiplied by the percentage increase in the Consumer Price Index, monthly, Ontario, Category All-items (Table 18-10-0004-01 (formerly 326-0200)) from the Effective Date to the Operational Period Commencement Date as published by Statistics Canada ("CPI") (i.e., the difference, expressed as a percentage, between the value of the CPI published most recently prior to the Effective Date and the value of the CPI published mostly recently prior to the Operational Period Commencement Date)
- (b) The Contractor hereby acknowledges and agrees that the prices set out in Schedule "E" are final and may not be increased or altered by the Contractor as a result of any proposed, future or unanticipated changes to legislation and regulations, including changes in market prices arising directly or indirectly from such legislative or regulatory changes, even if they impact the Contractor's pricing and overhead costs. For greater certainty, the Contractor acknowledges and agrees that Niagara Region will not entertain requests to change submitted bid prices for the Work based on changes to the minimum wage, changes to public health requirements (e.g. COVID-19 prevention), legislative or regulatory amendments made under any statute, or unanticipated changes to market prices arising directly or indirectly from such changes. The Contractor assumes the risk and responsibility for any cost increases due to legislative, regulatory and market changes. For further clarity, the Contractor takes on all risks due to health, environmental, social, emergency or other factors which may arise and which may result in unforeseen or otherwise unexpected costs or legal circumstances to the Contractor in order to complete the Work, to keep its workers or the public safe according to Applicable Law and government order, or to address other intervening circumstances.

## 11.2 Invoice Requirements

- (a) The Contractor shall submit an invoice within five (5) Business Days of the end of each month representing billing for the Work done in the previous month. The Contractor must use the invoice format that Niagara Region provides, if any, which may be altered from time to time. Such payment shall not in any way imply acceptance of any hidden defect in any part of the Work performed, which may be determined at a later date. Niagara Region shall pay all undisputed amounts for Work performed in accordance with the terms and conditions of this Contract within thirty (30) days. No interest shall be payable by Niagara Region to the Contractor, as a result of late or held payments. All payments to the Contractor shall be made by cheque or by electronic transfer in Canadian funds unless otherwise noted. For greater certainty, no payments will be due to the Contractor during the period from the start of the Term of this Contract and the Operational Period Commencement Date (i.e, during the Transition Period) it being understood that period of time exists to allow the Contractor to prepare for commencement of Work at Contractor's expense.
- (b) On all invoices, the Contractor shall provide the following information, where applicable, failing which, Niagara Region may withhold payment:
- (i) The monthly payment amount
  - (ii) H.S.T. amount;
  - (iii) Contractor's H.S.T. number;
  - (iv) Contractor's Name and Address;
  - (v) Date of Invoice;
  - (vi) Period which the Invoice represents;
  - (vii) Complete goods and/or services description (including number of tonnes processed in the billing period);
  - (viii) Contract Reference Number;
  - (ix) Unique invoice number and identification of revised invoices.
  - (x) PO number provided by Niagara Region.
- (c) The Contractor shall pay all government sales taxes, customs duties and excise taxes with respect to the Work set out in this Contract.
- (d) Niagara Region shall pay all applicable amounts for the H.S.T. The Contractor shall in turn, be responsible for paying all applicable amounts for the H.S.T. to its Subcontractors, suppliers and all other parties which provide either goods or services to the Contractor.

## 12. EMERGENCY SITUATIONS

- 12.1 If the Contractor is of the opinion that there is an Emergency arising with respect to any portion of

the Work, the Contractor shall advise the Niagara Region Representative as soon as reasonably practical.

### **13. INSURANCE REQUIREMENTS**

#### **13.1 Insurance Coverages**

- (a) The Contractor shall purchase and maintain or cause to be purchased and maintain at all times during the Operational Period of the Contract the insurance coverage set out in Schedule “A”.

#### **13.2 WSIB Certificate of Clearance**

- (a) The Contractor shall furnish its Workplace Safety and Insurance Board (W.S.I.B.) certificate of clearance on or before the Effective Date and agrees to maintain its good standing with W.S.I.B. during the Term of the Contract. Renewals of certificates of clearance may be requested by Niagara Region at any time and shall be delivered by the Contractor to Niagara Region within seven (7) days of request.
- (b) Niagara Region may require the Contractor to furnish W.S.I.B. coverage proof for any Subcontractor.
- (c) In addition to the indemnification provided by the Contractor elsewhere in this Contract, the Contractor agrees to indemnify Niagara Region and its respective elected officials, directors, officers, agents, employees, and volunteers, successors and assigns for all losses, claims, expenses (including reasonable legal fees) or other charges related to the Contractor’s status with W.S.I.B.

### **14. CONTRACT PERFORMANCE SECURITY**

#### **14.1 Irrevocable Standby Letter of Credit**

- (a) Prior to or upon execution of the Contract, the Contractor shall provide at its cost an Irrevocable Standby Letter of Credit from a recognized financial institution licensed to operate in Ontario naming The Regional Municipality of Niagara as the sole beneficiary in an amount equal to \$350,000. The Letter of Credit is to be valid for a period of one (1) year and is to be automatically renewed each year of this Contract. It shall be in a form acceptable to Niagara Region and shall have an acknowledgement by the issuer that Niagara Region shall be entitled to draw upon it upon providing certification that the Contractor is in breach of this Contract and an undertaking by the issuer to promptly honour and pay any draws made by Niagara Region. It shall also have an acknowledgement that if this Contract is terminated with cause or if the Contractor has an uncured event of Default, or if the Letter of Credit cannot or will not be annually renewed, then Niagara Region may draw down upon the Letter of Credit in an amount sufficient, as determined in good faith by Niagara Region, to cover all costs, damages and expenses for which the Contractor has been, is, or will be responsible under the terms of this Contract. If Niagara Region draws upon the Letter of Credit during the Contract Term, the Contractor shall replenish the value of the Letter of Credit in the amount drawn down upon by Niagara Region, provided that the Contractor shall only be required to replenish the value of the Letter of Credit over the Term of this Contract to a maximum of twice its original face value.

### **15. INDEMNIFICATION**



## 15.1 Contractor Indemnity

- (a) The Contractor hereby agrees to indemnify and hold harmless Niagara Region, its Council, elected officials, officers, employees, and agents (together, the “Indemnified Parties”) from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings (collectively, “Claims”), by whomever made, sustained, incurred, brought or prosecuted, including for breaches of confidentiality or privacy or intellectual property rights or for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Contractor, Contractor Personnel or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Contractor’s obligations under, or otherwise in connection with, the Contract. The Supplier further agrees to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, Niagara Region, claimed or resulting from such Claims. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Supplier in accordance with this Contract. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

## 16. NOTICE

- 16.1 Any notice given under this Agreement shall be in writing and may be given by personal delivery or electronic mail as follows:

- i. In the case of notices sent to Niagara Region:

The Regional Municipality of Niagara Region

1815 Sir Isaac Brock Way

P.O. Box 1042 Thorold, ON L2V 4T7

Attention: **Director, Waste Management Services**

Email: [catherine.habermehl@niagararegion.ca](mailto:catherine.habermehl@niagararegion.ca)

- ii. In the case of notices sent to Service Provider:

**[INSERT NAME]**

**[INSERT ADDRESS]**

Attention: **[INSERT]**

Email: **[INSERT]**

provided, however, that a Party may change its address for purposes of receipt of any such communication to another address in Canada by giving 10 days' prior written notice of such

change to the other Party in the manner above prescribed. Any notice delivered as aforesaid shall be deemed to have been received on the day of delivery if received on or before 5:00 p.m. on any Business Day, or if not, on the next Business Day following the day of delivery.

## 17. DISPUTE RESOLUTION

- 17.1 Unless the Contract has been terminated or completed, the Contractor shall in every case, regardless of a claim or dispute continue to proceed with the Work with due diligence and in accordance with the Contract pending the outcome of the dispute resolution process. It is understood by the Parties that such actions will not jeopardize any claim that the Parties may have against the other.
- 17.2 Niagara Region and the Contractor agree that at all times each of them will make bona fide efforts to resolve by amicable negotiations, on a without prejudice basis, any and all disputes arising between them. If a dispute occurs between the Parties concerning any matter governed by this Contract, the contract representative of the Party raising the dispute shall promptly advise the contract representative of the other Party in writing, and the two (2) contract representatives shall work together and use all reasonable efforts to resolve the dispute. Such notice shall be sent in accordance with the notice requirements of this Contract and shall: (i) contain a single written claim with a concise statement of the relevant facts including the extent and value of the claim, (ii) identify any potential impact to the Contract or delivery of the Work; (iii) include all relevant supporting documentation; and (iv) identify the relevant sections of the Contract, if any.
- 17.3 If the Contract representatives are unable to resolve the dispute informally within five (5) Business Days of it being referred to them, the dispute shall be forwarded in writing to the next level manager/director designate of the Contractor and the Director Waste Management Services, Public Works Department of Niagara Region for resolution (together, the "Directors"). Using direct communications, these representatives shall have fifteen (15) Business Days from the matter being referred to them to resolve the dispute.
- 17.4 If the Directors do not resolve the dispute, the dispute may, with the consent of both Parties, be referred to a higher level of management within their respective organizations (in the case of Niagara Region, the Commissioner level).
- 17.5 The Parties may agree to utilize the services of an independent third party mediator or expert who shall be mutually agreed upon by the Parties. The mediator or expert shall be knowledgeable of the issues related to the dispute. The mediator or expert shall meet with the Parties together and separately, as necessary. The mediator or expert shall provide, without prejudice, a non-binding recommendation for settlement. Each Party shall bear its own costs of mediation and the cost of the mediator or expert shall be shared equally by the Parties. The place of mediation shall be the Regional Municipality of Niagara in the Province of Ontario.
- 17.6 The Parties may, but are not obligated to agree to refer the dispute for final resolution by arbitration under the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended. The place of arbitration shall be the Regional Municipality of Niagara in the Province of Ontario. All costs shall be borne by each Party as they are incurred, and the cost of the arbitrator shall be shared equally by the Parties, except that an arbitrator shall have authority to make a costs award according to his/her discretion.

## 18. DEFAULT AND TERMINATION

### 18.1 Contractor Events of Default

- (a) The Contractor shall be in "Default" of the Contract if one or more of the following events occur:
- (i) the Contractor fails to perform or observe any of its obligations under this Contract on its part to be observed and performed and such failure continues unremedied until the expiry of five (5) calendar days following notice thereof (giving particulars of the failure in reasonable detail) from Niagara Region to the Contractor or, where immediate action is required, in such lesser time as specified in the notice. If the correction of the Default cannot be completed within five (5) calendar days or the lesser time specified where immediate action is required, the Contractor shall not be in Default if:
    - (A) the Contractor commences the correction of the Default or provides Niagara Region with a schedule for such correction acceptable to Niagara Region, within the specified time; and
    - (B) completes the correction of the default in accordance with such schedule.
  - (ii) any representation or warranty made by the Contractor in this Contract or in any document or certificate given pursuant to this Contract shall prove to have been incorrect in any material respect when made and such incorrect representation or warranty if capable of being remedied, has not been remedied within five (5) calendar days following notice thereof (giving particulars of the incorrect representation, warranty or covenant in reasonable detail) from Niagara Region to the Contractor. If the correction of the default cannot be completed within five (5) calendar days, the Contractor shall not be in Default if:
    - (A) the Contractor commences the correction of the default or provides Niagara Region with a schedule for such correction acceptable to Niagara Region, within the specified time; and
    - (B) completes the correction of the default in accordance with such schedule.
  - (iii) any proceedings are commenced or taken for the dissolution, liquidation or winding-up of the Contractor or for the suspension of operations of the Contractor, whether by extra-judicial means or under any statute of any applicable jurisdiction or otherwise;
  - (iv) the Contractor becomes insolvent, commits any act of bankruptcy, acknowledges its insolvency, makes an assignment in bankruptcy or any other assignment for the benefit of creditors, makes any proposal under, indicates its intentions to do so or files for relief under the Bankruptcy and Insolvency Act (Canada), the Companies Creditors Arrangement Act (Canada), the Winding-Up Act (Canada) or any other bankruptcy, insolvency or analogous law or is adjudged bankrupt, or consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator, agent or a person with similar powers, in respect of the Contractor or all or a substantial portion of its property or assets, or any proceedings are commenced in respect of the Contractor seeking a reorganization, arrangement, compromise, composition, compounding, extension of time, moratorium or readjustment under any applicable bankruptcy, insolvency,

moratorium, reorganization or other similar law affecting creditors rights'

- (v) there is a change in the financial condition, business or affairs of the Contractor which has material and adverse effect on the ability of the Contractor to meet its obligations under this Contract;
- (vi) the Contractor ceases to carry on all or substantially all of its business or makes a sale in bulk, or except as approved by Niagara Region (which approval may be unreasonably or arbitrarily withheld), transfers all or substantially all of its undertaking and assets;
- (vii) there is an abandonment or attempted abandonment of the Work or any part thereof; or
- (viii) any of the insurance policies required to be obtained and maintained by the Contractor under this Contract are terminated or cancelled, or amended in a manner which is materially adverse to Niagara Region as a result of any matter in respect of which the Contractor is obligated to indemnify the Owner.

## 18.2 **Termination for Contractor Default**

- (a) Where the Contractor is in Default of the Contract, Niagara Region may, where applicable, and without prejudice to any other right or remedy Niagara Region may have:
  - (i) Correct such Default and recover the costs thereof from the Contractor by any means available including by deducting the cost from any payment then or thereafter due to the Contractor;
  - (ii) Draw down on the letter of credit described in Section 14.1;
  - (iii) Terminate the Contractor's right to continue with the Work in whole or in part; and/or
  - (iv) Immediately terminate the Contract.
- (b) In the case of termination under Section 18.2(a), all rights of the Contractor under this Contract shall cease and Niagara Region shall be under no further obligation or liability whatsoever to the Contractor with respect thereto. Without limiting the foregoing, Niagara Region shall be entitled without hinderance or interference, to enter into such contracts, agreements and instruments with such other person or persons (other than the Contractor), as Niagara Region shall, in its sole discretion, determine with respect to the Work, and the Contractor shall have no right or basis to make any claim or pursue, initiate or take any action against Niagara Region for doing so.

## 18.3 **Termination for Reasons other than Default**

- (a) Niagara Region may terminate this Contract at any time without cause, by giving Contractor at least sixty (60) calendar days written notice designating the termination date. In the event that a purported termination for Default by Niagara Region is determined by a competent authority not to be properly a termination for Default, then such termination by Niagara Region shall be deemed to be a termination for convenience under this Section 18.3.
- (b) Such termination shall be effective in the manner specified in said notice and shall be without

prejudice to any claims which either Party may have against the other. Niagara Region's right to terminate the Contract pursuant to this Section 18.3 shall be absolute and unconditional and exercisable by Niagara Region in its sole discretion.

#### **18.4 Contractor's Obligations on Termination**

- (a) On termination of the Contract, the Supplier shall, in addition to its other obligations under the Contract and at law (a) provide Niagara Region with a report detailing: (i) the current state of the provision of Work by the Contractor at the date of termination; and (ii) any other information requested by Niagara Region pertaining to the provision of the Work and performance of the Contract; (b) execute such documentation as may be required by Niagara Region to give effect to the termination of the Contract; and (c) comply with any other instructions provided by Niagara Region, including but not limited to instructions for facilitating the transfer of its obligations to another Person. This paragraph shall survive any termination of the Contract.
- (b) Notwithstanding the termination of this Contract, whether as a result of the Contractor's Default or otherwise, the Contractor shall remain liable to Niagara Region for any breach or Default committed by the Contractor hereunder prior to such termination. In addition, the Contractor's obligation under the Contract as to quality, correction, and warranty of the Work performed by the Contractor up to the time of termination shall continue in force after termination.

#### **18.5 Contractor's Payment Upon Termination**

- (a) On termination of the Contract, Niagara Region shall only be responsible for the payment of Work performed in accordance with the Contract up to and including the date of termination. In addition to its other rights of hold back or set off, Niagara Region may hold back payment or set off against any payments owed if the Contractor fails to comply with its obligations on termination.

### **19. LIQUIDATED DAMAGES**

#### **19.1 General**

- (a) With respect to certain obligations under this Contract, the Parties acknowledge and agree that any failure by the Contractor or any Contractor Personnel to comply with such obligations would expose Niagara Region to damages the precise amount of which would be extremely difficult to calculate (but which may include direct and indirect costs resulting from operational delays, staff time and resources, and fines and penalties imposed by Applicable Law). Accordingly, the Parties have agreed that, liquidated damages shall be payable by the Contractor upon the occurrence of any of the events described in Schedule "B", in the amounts identified in Schedule "B".
- (b) The Parties acknowledge and agree that amounts payable pursuant to this Section 19 and Schedule "B" represent a reasonable pre-estimate of the damages which Niagara Region would suffer if any of the events described in Schedule "B" were to occur, and are payable as liquidated damages and not as a penalty.
- (c) Nothing in this Section 19 shall limit Niagara Region's rights in respect of any Default of the Contractor or any other express rights of Niagara Region in this Contract.
- (d) In the event that this Section 19 is found for any reason to be void, invalid or otherwise

inoperative, Niagara Region shall retain its entitlement to claim damages at law.

## 19.2 **Procedure**

- (a) Upon the occurrence of an event for which liquidated damages may be assessed pursuant to Schedule “B”, Niagara Region shall provide the Contractor with notice of its intent to assess and claim liquidated damages, including the amount of liquidated damages assessed and claimed. Subject to Section 19.2(b), the Contractor shall credit Niagara Region the amount of any liquidated damages assessed and claimed on the next monthly invoice issued by the Contractor.
- (b) If the event that the Contractor disputes the assessment or quantum of liquidated damages claimed by Niagara Region, the matter shall be resolved pursuant to the dispute resolution process set out in Section 17.

## 20. **FORCE MAJEURE**

- 20.1 The time which a Party is required to perform any step or action in this Contract is postponed to the extent and for the period of time that the Party is prevented from meeting such time by reason of causes which cannot reasonably be foreseen or provided against or are beyond its reasonable control including pandemics, acts of God, war, riots, fire, flood, explosions or lawful acts of public authorities including but not limited to decrees of federal or provincial government (in each case a “Force Majeure”), provided that the Party prevented from rendering such performance notifies the other Party immediately and furnishes details of the commencement and nature of such a cause and continues to act reasonably to resolve the delay or non-performance, taking all reasonable steps to eliminate or work around the cause. Causes do not include labour disruptions including but not limited to strikes or other concerted acts by the Contractor’s workers, subcontractor delays or non-performance, regularly occurring severe weather, increases in pricing of supplies or vehicle breakdown, all of which can be planned or compensated for.
- 20.2 In the event that an event of Force Majeure event renders performance of this Contract permanently impossible in the reasonable opinion of either Party, then either Party shall notify the other in writing and Niagara Region shall either terminate this Contract forthwith and without any further payments being made or being due to the Contractor, or authorize the Contractor to continue the performance of the Contract with such adjustments as are required by the existence of the Force Majeure and agreed upon by both Parties. In the event that the Parties cannot agree upon the aforementioned adjustments or both Parties are satisfied that no reasonable adjustments are available to allow continuance of the Contract, this Contract shall be terminated. Provided if Niagara Region is of the opinion in its discretion that there are feasible and commercially reasonable adjustments that can be made but the Contractor disagrees, then the feasibility and fair compensation for adjustments supported by Niagara Region shall be resolved through binding arbitration in accordance with Section 17.

## 21. **BOOKS, ACCOUNTS AND RECORDS**

- 21.1 The Contractor shall maintain and keep sufficiently complete and accurate books, accounts and records relating to the performance of the Contract to permit their verification and audit and they shall have no claim to payment unless such books, accounts and records have been so maintained and kept.

- 21.2 Niagara Region may inspect and audit the books, accounts and records of the Contractor as it pertains to this Contract at any time during the period of the Contract and thereafter, as deemed necessary, and the Contractor shall supply records as required whenever requested by Niagara Region.
- 21.3 The Contractor shall preserve all original books, accounts, and records relating to the performance of the Contract or to claims arising out of the Contract for a period of three (3) years after the end of the Term of the Contract and any extensions or the final settlement of all claims, whichever is longer.
22. **CONFIDENTIALITY, FREEDOM OF INFORMATION AND PUBLICITY**
- 22.1 The Contractor shall not at any time before, during or after the completion of the Contract, divulge any confidential information communicated to or acquired by the Contractor or disclosed by Niagara Region in the course of carrying out the Work provided for herein. No such information shall be used by the Contractor before, during or after the completion of the Contract on any project without the prior written consent of Niagara Region. For the purposes of this Contract, "confidential information" means any information that is not in the public domain.
- 22.2 Without limiting the generality of other sections of this Contract relating to compliance with all Applicable Laws, the Contractor acknowledges that Niagara Region is governed by the *Municipal Freedom of Information and Protection of Privacy Act ("MFIPPA")* and the *Personal Health Information Protection Act ("PHIPA")*.
- 22.3 In accordance with MFIPPA and PHIPA or other applicable privacy legislation, the Contractor agrees that any personal information it has provided as a bidder in the course of submitting its Proposal has been collected under the authority of the *Municipal Act, 2001*, and has been properly used in the RFP evaluation process and is now properly used for the purposes of this Contract. All correspondence, documentation and information, including the Proposal, provided to Niagara Region or its employees, agents or representatives by the Contractor as a bidder or now or in the future in connection with, or arising out of the RFP, or this Contract, is or shall become property of Niagara Region and a record of Niagara Region. Such records and the Contract documents are subject to the provisions of MFIPPA and PHIPA and Niagara Region's obligations under this or other privacy legislation and may be released pursuant to such Acts. The Contractor's name at a minimum will be made public on request. In addition, certain contractual information must be disclosed to Council and accordingly may become part of the public record. All correspondence, documentation and information provided to Niagara Region may have been reproduced for the purposes of evaluating the Contractor's Proposal or for purposes of this Contract.
- 22.4 Subject to the paragraph below, Niagara Region shall use its best efforts not to disclose any parts of this Contract and related communications marked as confidential information, but shall not be liable in any manner to the Contractor or any other person where information is disclosed by virtue of an order of the Privacy Commissioner (as defined under MFIPPA), a court of competent jurisdiction or otherwise as required by law. Niagara Region further makes no representations or warranties that the identification of a document as confidential will prevent its release under the provisions of MFIPPA, PHIPA or otherwise under any law. Any information in the Contractor's Proposal underlying this Contract that was not specifically identified as confidential may be treated by Niagara Region as public information. Information regarding the application of

MFIPPA and PHIPA is available from the Information and Privacy Analyst of Niagara Regional Clerk's office at Niagara Region Headquarters, Thorold, Ontario.

22.5 All correspondence, documentation and information provided by Niagara Region to any bidder in connection with or arising out of the RFP or the acceptance of any proposal remains the property of Niagara Region and must not be used for any purpose other than as related to the RFP or for the fulfillment of this Contract. Confidentiality of records and information of Niagara Region relating to the projects described in the RFP and this Contract must be maintained at all times by the Contractor. Where any proprietary or confidential information belonging to or in the care of Niagara Region is disclosed to the Contractor, the Contractor shall:

- (i) Safeguard all information provided by Niagara Region at the request of Niagara Region;
- (ii) Maintain in strict confidence and not reproduce or disclose any such information to any person except as required by law or as expressly permitted in advance and in writing by Niagara Region;
- (iii) Return forthwith upon demand all such information as may be in documentary form or recorded electronically; and
- (iv) Not use any such information for any purpose other than the purpose for which it was provided by Niagara Region or by any other person at the request of Niagara Region.

22.6 Any publicity or press releases with respect to this Contract shall be within the sole discretion and control of Niagara Region. The Contractor shall obtain prior approval from Niagara Region before making any information public with regard to this Contract at any time before, during or after the term of the Contract.

## 23. **SUCCESSORS AND ASSIGNS/ASSIGNMENT**

23.1 This Contract shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors and permitted assigns. Neither this Contract nor any rights or obligations hereunder shall be assignable by the Contractor without the prior written consent of Niagara Region, in its sole discretion.

## 24. **AMENDMENT**

24.1 No amendment to this Contract shall be valid or binding unless set forth in writing and duly executed by an authorized representative of each of these Parties.

## 25. **FURTHER ASSURANCES**

25.1 Each Party shall from time to time promptly execute and deliver all further documents and take all further action necessary or appropriate to give effect to and perform the provisions and intent of the Contract and to complete the transactions contemplated hereby and to fulfill any reporting requirements described herein.

## 26. **INDEPENDENT PARTIES**



- 26.1 This Contract does not create and is not intended to create an agency or employment relationship, partnership, joint venture or other similar association between the Parties. The relationship between the Parties is to be considered at all times as that of a purchaser and an independent contractor. Neither Party shall have the right to bind the other to any agreement with any third party or to incur any obligation or liability on behalf of the other Party. Except as expressly provided for in this Contract, neither Party shall represent, directly or indirectly by conduct, to any third party that it is an agent, employee, partner or joint venturer of the other.
- 26.2 The Contractor Personnel and all other personnel providing the Work are solely the employees of the Contractor and applicable Subcontractors (and not Niagara Region) for all purposes under this Contract, including for all purposes under any Applicable Laws. Accordingly, none of the foregoing personnel is entitled to any benefits respecting any pension or other benefit plan, program or policy of Niagara Region.
27. **WAIVER**
- 27.1 The failure of a Party to insist upon strict performance of any provisions of this Contract shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of such provisions on any future occasion.
- 27.2 No waiver of any breach of any term or provision of this Contract shall be effective or binding unless made in writing and signed by the Party purporting to give the waiver and, unless otherwise provided in writing, shall be limited to the specified breach waived.
28. **GOVERNING LAW**
- 28.1 This Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and each of the Parties hereto agrees irrevocably to attorn to the non-exclusive jurisdiction of the Courts of such Province. Any legal actions arising out of this Contract must be commenced in the Regional Municipality of Niagara in the Province of Ontario.
29. **ENTIRE AGREEMENT**
- 29.1 This Agreement, together with the schedules attached hereto, constitutes the entire agreement between the Parties concerning the subject matter hereof. The Agreement and the schedules attached hereto may be added to, deleted or amended by an agreement in writing signed by each of the Parties.
30. **SEVERABILITY**
- 30.1 Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.
31. **COUNTERPARTS**
- 31.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same

instrument.

**[signature page follows]**

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date first above written.

**The Regional Municipality of Niagara**

Per: \_\_\_\_\_

Name:

Title:

Date of Signature:

Per: \_\_\_\_\_

Name:

Title:

Date of Signature:

*I/We have authority to bind the corporation*

**/\*\*Insert Full Legal Name of Contractor\*\*]**

Per: \_\_\_\_\_

Name:

Title:

Date of Signature:

Per: \_\_\_\_\_

Name:

Title:

Date of Signature:

*I/We have authority to bind the corporation*

## **Schedule “A” – Insurance**

The Contractor shall obtain and maintain or cause to be obtained and maintained at all times during the Term of the Contract, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Supplier would maintain including, but not limited to, the following:

### **(a) Commercial General Liability Insurance**

Commercial General Liability insurance for all Work to a limit of not less than five million dollars (\$5,000,000) per occurrence.

The policy will be extended to include:

- Bodily injury, death and property damage
- Cross liability and severability of interest
- Blanket contractual
- Premises and operations
- Personal and advertising injury
- Products and completed operations
- Owner’s and contractors protective
- Non-owned Automobile to a limit of not less than two million dollars (\$2,000,000)

The policy shall be endorsed to:

- Include Niagara Region as an additional insured; and
- Contain an undertaking by the insurers to give thirty (30) days prior written notice in the event that there is a material change in the foregoing policies or coverage affecting the Additional Insured(s) or cancellation of coverage before the expiration date of any of the foregoing policies.

### **(b) Automobile Insurance**

Automobile Insurance (OAP1) for both owned and leased vehicles with inclusive limits of not less than five million dollars (\$5,000,000). Coverage must also apply in the event the operations of the insured resulted in a pollution condition including remediation costs.

Proof of automobile insurance will not be required if the Contractor provides a signed letter stating that they do not own or lease vehicles.

### **(c) Contractor’s Pollution Liability Insurance**

The Contractor shall be required to provide, maintain, and pay for Contractor’s Pollution Liability Insurance to a limit of no less than FIVE MILLION DOLLARS (\$5,000,000) per claim insuring all services and operations of the Contractor for third party losses arising from a

pollution event performed by or on behalf of the Contractor and shall include coverage for but not limited to, bodily injury including death, property damage and remediation costs which are reasonable and necessary to investigate, neutralize, remove, remediate (including associated monitoring) or dispose of soil, surface water, groundwater or other contamination. The policy shall be endorsed to:

- Include Niagara Region as an additional insured;
- Contain an undertaking by the insurers to give thirty (30) days prior written notice in the event that there is a material change in the foregoing policies or coverage affecting the additional insured or cancellation of coverage before the expiration date of any of the foregoing policies; and
- The policy shall be maintained continuously during the term of this Contract and for two (2) years after the termination or expiration of this Contract and shall cover insurable losses arising out of or in association with an error or omission in the rendering of or failure to render the services in respect of the Work. If coverage under the policy is cancelled within the two (2) year period after the termination or expiration of this Contract the Contractor shall provide Niagara Region with notice within thirty (30) days of cancellation and shall be required to purchase an extended reporting endorsement to confirm that coverage is maintained.

**(d) Broad Form Contractor's Equipment**

Broad Form Contractor's Equipment insurance coverage covering machinery and equipment used by the Contractor for the performance of the work including costs to cleanup and restore property damaged by sudden and accidental escape of pollutants. This policy shall be in a form acceptable to Niagara Region and shall not allow subrogation claims by the insurer against Niagara Region. The policies shall be endorsed to provide Niagara Region with not less than 30 days written notice in advance of cancellation, change or amendment restricting coverage Subject to satisfactory proof of financial capability by the Contractor for self-insurance of the Contractor's Equipment, Niagara Region may agree to waive the equipment insurance requirement.

**(e) Property Insurance**

Property Insurance upon all property, improvements and contents owned by the Contractor or for which the Contractor is legally liable, or which is installed by or on behalf of the Contractor, and which is located at the MRF including, but not limited to, fittings, installations, alterations, additions, partitions, trade fixtures, and anything in the nature of an improvement as well as the Contractor's furniture and contents in an amount of no less than full replacement cost.

**Schedule “B” – Liquidated Damages**

<b>Infraction</b>	<b>Amount</b>	<b>Unit</b>
Failure to submit reports in the required time and/or submitting inaccurate reports as set out in Section 2.21 of Appendix “B” to the RFP	\$500	Per Incident
Failure to scale collection vehicles in/out of the MRF as required by Section 2.21 of Appendix “B” to the RFP	\$500	Per Incident
Failure to scale in/out and/or unload vehicles within the prescribed timeline set out in Section 2.15 of Appendix “B” to the RFP.	\$75	Per Incident
Failure to respond to inquiries from the Region within the prescribed timeframe as set out in Section 2.19 of Appendix “B” to the RFP.	\$750	Per Incident
Failure to provide sufficient receiving capacity to receive Niagara Region’s Collected Material without interruption as required by Section 2.4 of Appendix “B” to the RFP.	\$1,200	Per Collection Vehicle
Failure to commence Work as at the Operational Period Commencement Date as required by Section 3.1(d) of the main body of this Contract	\$28,575	Per Day
Failure to provide the required notice of a scheduled MRF shutdown as set out in Section 2.17 of Appendix “B” to the RFP.	\$500	Per Incident
Failure to meet the prescribed Diversion Rate on a quarterly basis as set out in Section 2.7 of Appendix “B” to the RFP.	\$60,500	Per % Below Diversion Rate



**Schedule “C” – Appendix “B” from the RFP**

**[NTD: to be attached]**



## Schedule “D” – Transition Activities

- (a) Contractor shall submit a transition plan setting out the Contractor’s plan for the completion of the transition of the Work to achieve a state of readiness to assume responsibility and accountability for Work by the Operational Period Commencement Date (the “**Transition Plan**”). The Transition Plan shall:
- (i) satisfy the requirements set out in Section 2.3 of Appendix “B” to the RFP and include any other components, activities and requirements as may reasonably be required by Niagara Region; and
  - (ii) be submitted in accordance with the timelines set out in Section 2.3 of Appendix “B” to the RFP.

After the Transition Plan has been reviewed and approved by Niagara Region in accordance with Section 2.3 of the Appendix “B” Contractor shall not amend the Transition Plan unless such amendments are first approved by Niagara Region] The Transition Plan shall, once approved, form part of the Contract documents.

- (b) Contractor shall submit an operating plan in setting out a description of the Contractor’s approach to operationalizing the MRF (the “**MRF Operating Plan**”). The MRF Operating Plan shall:
- (i) satisfy the requirements set out in Section 2.2 of Appendix “B” to the RFP and include components, activities and requirements as may reasonably be required by Niagara Region; and
  - (ii) be submitted in accordance with the timelines set out in Section 2.2 of Appendix “B” to the RFP.

After the MRF Operating Plan has been reviewed and approved by Niagara Region in accordance with Section 2.2 of the Appendix “B” Contractor shall not amend the MRF Operating Plan unless such amendments are first approved by Niagara Region. The MRF Operating Plan shall, once approved, form part of the Contract documents.

**Schedule “E” – Material Processing Rates**

**[NTD: material processing rate to be populated from the Contractor’s completed Appendix “C” – Pricing of the RFP]**