



SOLID WASTE CONTAINER AND RECYCLING SERVICES REQUEST FOR PROPOSALS (“RFP”)

ISSUE DATE: **September 22, 2017**

PROPOSALS DUE: **11:00 a.m. on October 12, 2017** (the “Submission Deadline”)

INSTRUCTIONS: Proposers must submit eight paper copies of their complete Proposal and one electronic copy (on a flash drive) of their Proposal in a sealed envelope in person, via mail or courier. Please write the Proposer’s name, phone number and email address on the outside of the sealed envelope. Submittals received by email, fax, or after the Submission Deadline will be rejected.

SUBMIT TO: Houston First Corporation, Attn: Mitch Miskowski, 701 Avenida de las Americas, Suite 200, Houston, TX 77010.

CONTACT INFO: Questions concerning this RFP must be sent by email to bids@houstonfirst.com no later than **11:00 a.m. October 4, 2017**.

PURPOSE & OVERVIEW

Houston First Corporation (“HFC”) requests responsive proposals (“Proposals”) from highly-qualified businesses capable of providing solid waste containers and compactors, collection, transportation, and disposal of non-hazardous solid waste, and for development and execution of a recycling program, to collect, transport and recycle paper, corrugated containers, metal cans, and plastic. Proposals will be accepted for either solid waste container services or recycling services, or a combination of both solid waste container and recycling services.

BACKGROUND

HFC is a local government corporation created by the City of Houston to facilitate economic growth through the business of conventions and the arts. HFC is responsible for the management and operation of more than ten City-owned buildings and plazas, and underground and surface parking for nearly 7,000 vehicles. Facilities include the George R. Brown Convention Center (“GRBCC”), Partnership Tower, Jones Hall for the Performing Arts (“Jones Hall”), Wortham Theater Center, Miller Outdoor Theatre, Talento Bilingual de Houston, Albert Thomas office and certain outdoor facilities such as Jones Plaza, Ray C. Fish Plaza, Root Memorial Square, Avenida Houston, and several other small landscaped properties. Proposers should be aware that facilities may be added or deleted to the Scope of Services throughout the term of the Agreement.

RFP PACKETS

A complete copy of this RFP, including all forms, as well as the Agreement and its exhibits, is available on-line at <http://www.houstonfirst.com/do-business/>.

PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held for the benefit of all prospective Proposers at **10:00 a.m. on October 3, 2017** in the O’Connell Board Room at the George R. Brown Convention Center, located at 1001 Avenida de las Americas, Houston, TX 77010. Although attendance at the conference is not mandatory, all prospective Proposers are urged to attend.

LETTERS OF CLARIFICATION

Revisions incorporated into this RFP, and all material questions timely received by HFC, if any, will be confirmed in a letter posted online at www.houstonfirst.com/Do-Business (“Letter of Clarification”). When issued by HFC, Letters of Clarification become part of this RFP and automatically supersede any previous specifications or provisions in conflict therewith. By submitting a response, Proposers shall be deemed to have received all Letters of Clarification and to have incorporated them into their proposal. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein. It is the responsibility of Proposers to monitor the foregoing link and ensure they receive any such Letters of Clarification.

JOINT VENTURE PROPOSALS

Proposals from joint ventures between waste management and recycling companies are welcome and will be considered. If submitting a joint venture proposal, please provide references and contact information for each company indicated within the joint venture.

RESPONSE FORMAT AND EVALUATION

Although HFC prefers substance over form, Proposers should review the following criteria/ information request and respond, in order, to the best of their ability:

- a. **Transmittal Letter:** Write an introductory letter communicating effectively why the Proposer should be selected. The letter must be signed by a person authorized to make representations on behalf of Proposer, including his or her direct phone number and email address. Proposers must make a specific, unambiguous statement accepting and agreeing to comply with the terms and conditions of the Agreement provided below, or identify any objections/exceptions immediately following the letter (proposals including material exceptions will be rejected without further consideration).
- b. **Profile/Experience:** Proposer should provide background information, history, and track record of specific experience providing solid waste container or recycling, or both services to clients at comparable facilities. Provide an organizational chart of staff, including resumes, certifications and/or licenses of key personnel whom will be responsible for the delivery of services. Provide three references, with current contact information and a brief description of the services performed by Proposer.
- c. **Strategies and Operational Plan:** Provide a detailed description and methodology of the proposed plan for non-hazardous solid waste collection transportation or recycling and disposal services under the Scope of Services.
- d. **Proposed Equipment:** Proposer should provide a complete description of all solid waste equipment proposed for usage, including any relevant details about the equipment’s design, function, and technical specifications. All equipment must be labeled with certified capacity (stationary units do not count towards capacity). Compactors must have self-monitoring cell systems to monitor when containers need to be pulled. If proposing recycling services, identify all recycling products, equipment, and services that your company can or will provide in connection with this contract. Describe the types and sizes of recycling containers that are proposed, along with minimum and maximum weights or volumes that will be picked up.
- e. **Proposed Fees:** Proposers should complete the Fee Schedule provided in Exhibit “D” for either solid waste containers or recycling, or both services. Do not alter the official form. Submission of company quotation forms and documents containing alternative or conflicting terms is not acceptable. Contractor should disclose any and all fees associated with the services performed including overage fees charged for overweight tonnage or recycling. Identify any additional opportunities for revenue sharing of recyclables, and provide a listing of proposed recycling credits or payments, if submitting a proposal for recycling services.

- f. Diversity Participation:** Proposers should note all subcontractors they reasonably expect will be used to meet or exceed the Diversity commitment for this RFP.
- g. Additional Information:**
- The George R. Brown Convention Center in particular, accumulates wood and wood products that could be recycled including pallets. Please indicate if your company recycles wood, and include all wood recycling details in the fee schedule, if proposing recycling services.
 - Identify any costs for items required to implement the recycling program. A description of how the company will provide consultation or instruction regarding the marketing or promotion of recycling initiatives within each Facility should be disclosed as well. Multiple strategies may be required to address internal and external considerations.
 - Transparency in all aspects of the recycling program is of high importance to HFC. Explain how your company will ensure that information is fully available to HFC.
 - Identify normal working hours and the hours of operation of the intended landfill or recycling facility, including weekends and holidays, if applicable. Describe the type of trucks that will be used to pick up recyclable materials, and whether materials will be picked up collectively, all at one pick-up time, or individually, in separate trips. Describe any additional services that your company offers, which are relevant to this contract, such as shredding.
- h. Overall Responsiveness:** The conciseness and clarity of every Proposal will be evaluated.

MANNER OF SELECTION

HFC intends to make a selection and enter into a contract with the Proposer providing HFC the highest quality products and services based on the following selection criteria: Proposed Fees (25%), Profile/Experience (25%), Strategies and Operational Plan (15%), Proposed Equipment (15%), Diversity Participation (10%), and Overall Responsiveness (10%).

HFC reserves the right to select or reject all or part of any proposal, waive minor technicalities, and select proposals in the manner and to the extent that they serve its best interests. This RFP does not commit HFC to award a contract, issue a purchase order, or to pay any costs incurred in the preparation of a proposal in response to this RFP. HFC reserves the right to request clarification, additional information, schedule an interview, and/or solicit best-and-final offers from some or all Proposers prior to making a final selection.

FORM OF AGREEMENT

By submitting a response to this RFP, Proposer agrees, upon notice of selection, to enter into a contract with HFC which shall include the Non-hazardous Solid Waste Collection, Transportation, and Disposal and/or Recycling Services Agreement set forth below; the Scope of Service(s), and the completed Fee Schedule (collectively referred to as the "Agreement"). Preprinted or standard terms submitted by a Proposer shall not be included in the resulting Agreement.

RESTRICTIONS ON COMMUNICATIONS

From the date issued until the Submission Deadline, Proposers are directed not to communicate with HFC employees, officers, or board members regarding any matter relating to this RFP, other than through bids@houstonfirst.com and HFC representatives during the pre-proposal conference. HFC reserves the right to reject any Proposal due to the violation of this provision.

COLLUSION

Proposers represent that the contents of their proposal have not been communicated, directly or indirectly, to any potential proposer and that their submissions are made in compliance with federal and state antitrust laws without previous understanding, agreement or connection with any competitor or other potential Proposer; this restriction is not, however, intended to preclude preliminary negotiations with diversity subcontractors.

CONFLICTS OF INTEREST

Proposers are required to disclose any affiliations or business relationships that might cause a conflict of interest with HFC. The disclosure form, if required, is available online at: www.ethics.state.tx.us/forms/CIQ.pdf. By submitting a proposal, Proposers represent that they are in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

DIVERSITY COMMITMENT

The Proposer selected will be required to use good faith efforts to award subcontracts to diversity participants certified by any of the identified certification agencies as defined in the HFC Diversity Program Instructions (<http://www.houstonfirst.com/static/media/uploads/attachments/hfcdiversityprograminstructions/biddersproposers.pdf>). The specific goal for this proposal is **10%** of the [total solid waste container services] provided. HFC encourages Proposers of recycling services to utilize diverse subcontractors, however, no diversity goal is set for this RFP. Proposers should note if they are certified as a diversity participant in their proposal; however, such certification shall **not** lessen or otherwise alter the requirement to use good faith efforts to award subcontracts to diversity participants. Proposers are required to comply with HFC's Diversity Program Instructions to Contractors; failure to comply may cause your response to be considered non-responsive.

PUBLIC INFORMATION

HFC is subject to the Texas Public Information Act ("TPIA"), all information submitted by Proposers is subject to release under the provisions of the TPIA set forth in Chapter 552 of the Texas Government Code. Each page where confidential or proprietary information appears must be labeled as such clearly and unambiguously. Proposers will be advised of any request for public information that implicates their materials and will have the opportunity to raise objections to disclosure with the Texas Attorney General at their expense.

GREEN ALTERNATIVES INCLUDING RECYCLING

GRB is a LEED Silver Certified Building. We have an extensive recycling program, and the solid waste container and recycling contract is a major part of the program. HFC is committed to buying products with recycled content or environmentally sustainable alternatives that meet Leadership in Energy and Environmental Design (LEED) compliance standards. If your company uses or offers any green alternatives that are an acceptable substitution for products required herein, please provide all relevant specifications and information with your response.

ESTIMATED QUANTITIES NOT GUARANTEED

The estimated quantities specified herein are not a guarantee of actual quantities, as HFC does not guarantee any particular quantity of Solid Waste Container and Recycling Services during the term of this Agreement. The quantities may vary depending upon the actual needs of HFC. The quantities specified herein are good faith estimates of usage during the term of this Agreement. Therefore, HFC shall not be liable for any contractual agreements or obligations the Proposer enters into with third parties based on HFC requiring all the quantities specified herein

WITHDRAWAL OF PROPOSAL

Proposals may be withdrawn only by written request received by bids@houstonfirst.com prior to the Submission Deadline.

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

I. PARTIES

1.0 ADDRESS

This Non-hazardous Solid Waste Collection, Transportation and Disposal and/or Recycling Services Agreement (“Agreement”) is between **HOUSTON FIRST CORPORATION** (“HFC”), a Texas local government corporation, and **[TBD]** (“Contractor”).

The initial addresses of the Parties, which one Party may change by giving written notice to the other

<u>Houston First Corporation</u>	<u>Contractor</u>
Dawn Ullrich, President & CEO	[TBD]
701 Avenida de las Americas, Suite 200	
Houston, TX 77010	

The Parties agree as follows:

EXHIBITS

- A. DEFINITIONS
- B. SCOPE OF SERVICES-SOLID WASTE CONTAINERS
- C. SCOPE OF SERVICES- RECYCLING SERVICES
- D. FEE SCHEDULE

2.0 PARTS INCORPORATED

2.1 The below described sections and exhibits are incorporated into this Agreement.

3.0 CONTROLLING PARTS

3.1 If a conflict arises among the sections or exhibits of this Agreement, the sections of this Agreement control over the exhibits.

4.0 DEFINITIONS

4.1 Certain terms used in this Agreement are defined in Exhibit “A.”

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES

- 1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all supervision, labor, and specified equipment necessary to perform the services described in [Exhibit “B”, “C,” or Exhibits “B” and “C”].

2.0 RELEASE AND INDEMNIFICATION

- 2.1 CONTRACTOR AGREES TO AND SHALL RELEASE HOUSTON FIRST CORPORATION, THE CITY OF HOUSTON, AND THEIR AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, “INDEMNITEES”) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS CONTRACT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE INDEMNITEES' CONCURRENT NEGLIGENCE AND/OR THE INDEMNITEES' STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, AS WELL AS FROM ALL LIABILITY FOR DAMAGES OR OTHER RELIEF ARISING UNDER FEDERAL OR STATE EMPLOYMENT LAWS RELATING TO OR INVOLVING PERSONNEL EMPLOYED BY CONTRACTOR UNDER THE CONTRACT.
- 2.2 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HOUSTON FIRST CORPORATION, THE CITY OF HOUSTON, AND THEIR AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, “INDEMNITEES”) HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COPYRIGHT INFRINGEMENT, ATTORNEY’S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY OR RELATING TO: CONTRACTOR AND/OR ITS AGENTS’, EMPLOYEES’, OFFICERS’, DIRECTORS’, CONTRACTORS’, OR SUBCONTRACTORS’ (COLLECTIVELY, “CONTRACTOR”) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; THE INDEMNITEES’ AND CONTRACTOR’S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; INDEMNITEES’ AND CONTRACTOR’S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL OR STATE EMPLOYMENT LAWS, INCLUDING WITHOUT LIMITATION, ALL CLAIMS AND CAUSES OF ACTION BROUGHT AGAINST INDEMNITIES BY CONTRACTOR’S PERSONNEL AND/OR GOVERNMENT AGENCIES ARISING FROM, RELATING TO, OR INVOLVING SERVICES OF CONTRACTOR’S PERSONNEL UNDER THIS AGREEMENT.
- 2.3 CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE INDEMNITEES HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CATERER SHALL NOT INDEMNIFY THE

INDEMNITEES FOR THEIR SOLE NEGLIGENCE. CATERER SHALL REQUIRE ALL OF ITS CONTRACTORS AND SUBCONTRACTORS TO RELEASE AND INDEMNIFY THE INDEMNITEES TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE INDEMNITEES.

3.0 INDEMNIFICATION PROCEDURES

- 3.1 If HFC or Contractor receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include a description of indemnification event in reasonable detail, the basis on which indemnification may be due, and the anticipated amount of indemnified loss. This notice does not stop or prevent HFC from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If HFC does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.
- 3.2 Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to HFC. Contractor shall then control the defense and any negotiations to settle the claim. Within ten days after receiving written notice of the indemnification request, Contractor must advise HFC as to whether or not it will defend the claim. If Contractor does not assume the defense, HFC may assume and control the defense, and all defense expenses constitute an indemnification loss.
- 3.3 If Contractor elects to defend the claim, HFC may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of HFC, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require Indemnitees to comply with restrictions or limitations that adversely affect Indemnitees, (ii) would require Indemnitees to pay amounts that Contractor does not fund in full, (iii) would not result in Indemnitees' full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

4.0 INSURANCE AND PERFORMANCE BOND

- 4.1 With no intent to limit Contractor's liability under indemnification provisions herein, Contractor shall provide and maintain in full force and effect, for the duration of the Term and any Renewal Term, at least the following insurance and limits of liability:
 - a. Commercial General Liability Combined single limit of \$1,000,000 per occurrence, subject to a general aggregate of \$2,000,000
 - b. Automobile Liability Insurance \$1,000,000 combined single limit including Owned, Hired, and Non-Owned and Auto Coverage
 - c. Workers' Compensation Statutory amounts for Workers' Compensation (Contractor is not allowed to self-insure Workers' Compensation)
 - d. Employer's Liability Bodily Injury by accident \$1,000,000 (each accident); Bodily Injury by disease \$1,000,000

(policy limit); and Bodily Injury by disease
\$1,000,000 (each employee)

- 4.2 Insurance may be in one or more policies of insurance, the form of which is subject to approval by HFC. It is agreed, however, that nothing HFC does or fails to do with regard to reviewing the foregoing insurance policies relieves Contractor from its duties to provide required coverage and HFC's actions or inactions will never be construed as waiving HFC's rights.
- 4.3 Each policy, except those for Workers' Compensation, must include an endorsement naming HFC and the City of Houston as additional insureds.
- 4.4 Each policy except must include an endorsement to the effect that issuer waives any claim or right in nature of subrogation to recover against HFC and the City of Houston.
- 4.5 The issuer of any policy shall have a Certificate of Authority to transact insurance business in Texas or be an eligible non-admitted insurer in the State of Texas and have an A.M. Best rating of at least A- with a financial size category of Class VI or better.
- 4.6 Contractor shall furnish a performance bond for \$500,000.00, renewable each year of the Term, including any Renewal Terms, conditioned on Contractor's full and timely performance of the Agreement. The bond must be in a form approved by HFC's General Counsel and issued by a corporate surety authorized and admitted to write surety bonds in Texas. The surety must be listed Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list.

5.0 WARRANTIES

- 5.1 Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement as more fully described in the Scope of Services.

With respect to any parts and goods it furnishes, Contractor warrants:

- (a) that all items are free of defects in title, design, material, and workmanship,
- (b) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
- (c) that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and will not cause any manufacturer's warranties to lapse or become invalid, and
- (d) that no item or its use infringes any patent, copyright, or proprietary right.

Contractor shall enforce all warranties on behalf of HFC and shall promptly repair or replace any part or equipment that fails in normal use and service.

- 5.2 (a) Contractor warrants that all services it performs under this Agreement will, at the time of Acceptance, be free from defects in workmanship for a period of one year and conform to the requirements of this Agreement.
- (b) HFC will give written notice of any defect or non-conformance to Contractor within one year from the date of Acceptance by HFC. In the written notice, HFC will either require (1) Contractor to Correct the services to conform to the Agreement or (2) state that HFC does not require Correction of services identified in the written notice.
- (c) In the event HFC requires Contractor to Correct services already provided to HFC, then, Contractor shall do so at no cost to HFC and such services are subject to this Section to the same extent as was the work initially performed by Contractor under this Agreement. If Contractor fails to or refuses to Correct services as requested by HFC, then, HFC may have a third-party vendor correct or replace services initially performed by Contractor at Contractor's cost or make equitable adjustments to the contract price.
- (d) HFC has the option either to require Contractor to Correct services as set out above, or to make an equitable adjustment to the contract price for the services initially performed by Contractor and later found to be incorrect or not Acceptable by HFC under this Agreement.

6.0 LICENSES AND PERMITS

- 6.1 Contractor shall obtain and pay for all licenses, permits, and certificates required by any applicable statute, ordinance, rule, or regulation.

7.0 DRUG FREE WORKPLACE

- 7.1 Contractor shall endeavor to achieve a drug-free workforce and workplace by, amongst other measures, instructing its employees in writing that the manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol in the workplace is prohibited and specifying the actions that will be taken against employees for violations of such prohibition. If a Contractor employee, agent or subcontractor is reasonably suspected of being under the influence of illegal drugs or alcohol while on HFC property, then Contractor shall remove such individual from the premises immediately. Further, Contractor shall prevent such employee, agent or subcontractor from performing additional work under this Agreement. Upon request, Contractor shall provide a copy of its drug-free workplace policies to HFC.

8.0 ENVIRONMENTAL LAWS

- 8.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse HFC for any fines or penalties levied against HFC because of Contractor's failure to comply.

- 8.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Laws, and HFC shall not provide any Hazardous Materials to Contractor for transportation or disposal. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the storm sewer system or sanitary sewer system or elsewhere on HFC property in violation of Environmental Laws.

9.0 CONTRACTOR'S PERFORMANCE

- 9.1 Contractor shall make customer satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with patrons and guests when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in HFC's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

10.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

- 10.1 Contractor shall make timely payments in accordance with applicable State and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.
- 10.2 Failure of Contractor to pay its employees as required by law shall constitute a default under this Agreement.
- 10.3 Contractor shall defend and indemnify HFC from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law.

11.0 TAXES

- 11.1 Contractor shall pay before delinquent all taxes and assessments of every nature which are lawfully levied, assessed or charged by any political subdivision and for whatever purpose upon Contractor's (i) proceeds received under this Agreement and/or (ii) from the Facilities. Contractor's liability for such taxes shall only exist with respect to taxes which accrue during the time periods falling within the Agreement Term. If in good faith Contractor desires to protest or contest the validity or amount of any tax or assessment, Contractor shall notify HFC in writing of its intention to do so not less than 30 days prior to the date on which any such tax or assessment would become delinquent, then Contractor may defer payment of any such tax or assessment so long as the validity or amount thereof shall be protested or contested by Contractor in good faith and by appropriate proceedings; it being understood that the entire expense of any such protest or contest by Contractor shall be borne solely by Contractor, which, likewise, shall be solely liable for all interest, penalties, and other charges of any type imposed

as a result of any such protest or contest. Further, Contractor shall promptly furnish HFC with copies of all proceedings concerning such contest and if any collection proceeding of any nature is begun and not stayed or enjoined by Contractor at least 60 days prior to the commencement of any collection actions, Contractor shall immediately pay all sums claimed to be due.

12.0 PUBLIC INFORMATION

12.1 HFC is subject to the Texas Public Information Act (“TPIA”), all information submitted by Contractor is subject to release under the provisions of the TPIA set forth in Chapter 552 of the Texas Government Code. Each page where confidential or proprietary information appears must be labeled as such clearly and unambiguously. Contractor will be advised of any request for public information that implicates their materials and will have the opportunity to raise objections to disclosure with the Texas Attorney General at Contractor's cost and expense.

13.1 DIVERSITY PARTICIPATION

13.1 Contractor shall make good faith efforts to award subcontracts equal to **10%** of the value of the [total solid waste container services] to certified, diverse suppliers of goods and services in accordance with the Contractor Diversity Program established by HFC, which is incorporated herein by this reference. Contractor shall disclose to HFC the manner and extent to which it has made good faith efforts to achieve such goal and submit reports on forms provided by HFC on a quarterly basis.

III. DUTIES OF HFC

1.0 PAYMENT TERMS

1.1 HFC shall pay and Contractor shall accept fees provided in Exhibit “D” for all services rendered by Contractor. Invoices shall be submitted electronically to the Facility Managers by the fifth (5th) day of the month following each month in which services are performed.

2.0 TAXES

2.1 HFC is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to HFC must not contain assessments of any of these taxes. HFC will furnish HFC's exemption certificate and federal tax identification number to Contractor if requested.

3.0 METHOD OF PAYMENT

3.1 HFC shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Facility Managers, showing the specific tasks completed in the preceding month and the corresponding prices. HFC shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.0 METHOD OF PAYMENT-DISPUTED PAYMENTS

4.1 If HFC disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, HFC shall temporarily delete the disputed item and pay the remainder of the invoice. HFC shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

5.0 CHANGES

5.1 At any time during the Agreement Term, HFC may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as HFC may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

5.2 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. HFC's decision regarding a time extension is final.

5.3 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

IV. TERM AND TERMINATION

1.0 AGREEMENT TERM

1.1 This Agreement is effective ____, 2017 and remains in effect for three years ("Initial Agreement Term") unless sooner terminated according to the terms of this Agreement.

2.0 RENEWALS

2.1 HFC may renew this Agreement for two additional one-year terms by sending written notice to Contractor at least 30 days before expiration of the then-current term.

3.0 TIME EXTENSIONS

3.1 HFC may, in his or her sole discretion, extend the Agreement Term, including any renewal term, so long as the extension does not exceed 180 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delays regardless of the cause of the delays.

4.0 TERMINATION FOR CONVENIENCE BY HFC

- 4.1 HFC may terminate this Agreement at any time by giving 30 days' written notice to Contractor. HFC's right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.
- 4.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. HFC shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III.
- 4.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR HFC'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM HFC'S TERMINATION FOR CONVENIENCE.

5.0 TERMINATION FOR CAUSE BY HFC

- 5.1 If Contractor defaults under this Agreement, HFC may either terminate this Agreement or allow Contractor to cure the default as provided below. HFC's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies, which exist now or in the future. Default by Contractor occurs if:
- 5.1.1 Contractor fails to perform any of its duties under this Agreement;
 - 5.1.2 Contractor becomes insolvent;
 - 5.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
 - 5.1.4 a receiver or trustee is appointed for Contractor.
- 5.2 If a default occurs, HFC may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. HFC, at its sole option, may extend the termination date to a later date. If HFC allows Contractor to cure the default and Contractor does so to HFC's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, HFC may terminate this Agreement on the termination date, at no further obligation of HFC.
- 5.3 To effect final termination, HFC must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

6.0 TERMINATION FOR CAUSE BY CONTRACTOR

6.1 Contractor may terminate its performance under this Agreement only if HFC defaults and fails to cure the default after receiving written notice of it. Default by HFC occurs if HFC fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to HFC describing the default and the proposed termination date.

6.2 The date must be at least 30 days after HFC receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If HFC cures the default before the proposed termination date, then the proposed termination is ineffective. If HFC does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

7.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS

7.1 Upon expiration, or termination of this Agreement, Contractor is permitted ten days within which to remove Contractor-owned material and equipment from HFC's premises. HFC shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by HFC. HFC reserves the right to deny any extension of time.

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR

1.1 Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of HFC.

2.0 FORCE MAJEURE

2.1 Timely performance by both Parties is essential to this Agreement. However, neither Party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

2.2 This relief is not applicable unless the affected Party does the following:

2.2.1 uses due diligence to remove the Force Majeure as quickly as possible, and

2.2.2 provides the other Party with prompt written notice of the cause and its anticipated effect.

2.3 HFC may perform contract functions itself or contract them out during periods of Force

Majeure. Such performance does not constitute a default or breach of this Agreement by HFC.

- 2.4 If the Force Majeure continues for more than 30 days, HFC may terminate this Agreement by giving 30 days written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

3.0 SEVERABILITY

- 3.1 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

4.0 ENTIRE AGREEMENT

- 4.1 This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

5.0 WRITTEN AMENDMENT

- 5.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of HFC and Contractor.

6.0 APPLICABLE LAWS

- 6.1 This Agreement is subject to the laws of the State of Texas, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.
- 6.2 Venue for any litigation relating to this Agreement is Harris County, Texas.

7.0 NOTICES

- 7.1 All notices to either Party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the Party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving Party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the Party giving the notice.

8.0 NON-WAIVER

- 8.1 If either Party fails to require the other to perform a term of this Agreement, that failure does

not prevent the Party from later enforcing that term and all other terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

- 8.2 An approval by HFC, or by any other employee or agent of HFC, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law.

9.0 INSPECTIONS AND AUDITS

- 9.1 HFC representatives may perform, or have performed, (1) audits of Contractor's books and records directly relating to this Agreement, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least three years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

10.0 ENFORCEMENT

- 10.1 HFC General Counsel or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to HFC General Counsel all documents and records that HFC General Counsel requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

11.0 AMBIGUITIES

- 11.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

12.0 SURVIVAL

- 12.1 Contractor shall remain obligated to HFC under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

13.0 PARTIES IN INTEREST

- 13.1 This Agreement does not bestow any rights upon any third party, but binds and benefits HFC and Contractor only.

14.0 SUCCESSORS AND ASSIGNS

- 14.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of HFC.

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS

- 15.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without HFC's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406(c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish HFC with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.
- 15.2 Contractor shall not delegate any portion of its performance under this Agreement without HFC's prior written consent.

16.0 REMEDIES CUMULATIVE

- 16.1 Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

17.0 RESTRICTIONS ON SPONSORSHIP AND ADVERTISING

- 17.1 Contractor shall not display or permit to be displayed any advertisement or sponsor information at the Facilities (including on its Solid Waste Containers) without prior written approval from HFC. The term "sponsor information" includes any third party name, logo, brand, symbol, motto, trademark, service mark, or any other indicia of service, product and/or corporate identification.
- 17.2 Contractor shall not enter into any advertising or sponsorship agreements in connection with this Agreement or otherwise related to the Facilities, including but not limited to sponsoring or supporting an event or licensee at the Facilities for consideration or name/brand promotion without prior written consent of HFC or separate written agreement, as determined by HFC in its sole discretion.
- 17.3 Contractor shall not display or use the name, logo, trademark or service mark of HFC or the Facilities in any manner without prior written permission from HFC.
- 17.4 This Agreement shall not be construed to restrict or otherwise affect the right of HFC to use third party services (including but not limited to competitors of Contractor) or enter into agreements relating to advertising or sponsorship in any manner.
- 17.5 Failure of Contractor to comply with the provisions of this section shall constitute a default under this Agreement.

EXHIBIT "A"

DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Acceptance," "Accept," "Acceptable," or "Accepted" means HFC's written approval of the particular item or service specified herein.

"Agreement" means this contract between the Parties, including all exhibits, change orders, and any written amendments authorized by HFC and Contractor.

"Agreement Term" is defined in Article IV.

"Contract Administrator" means the HFC employee designated to administer certain provisions of this Agreement on behalf of the HFC, or his or her designee.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Correction" or "Correct" means the re-performance of the services identified in HFC's written notice to Contractor for failure to meet the requirements of this Agreement as set out in the "Warranties" Section.

"Corrugated Containers" means cardboard containers.

"Excluded Waste" Waste materials collected under this Agreement specifically exclude hazardous, radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or listed or characteristic hazardous waste or Hazardous Materials as defined by federal, state, provincial or local law or any otherwise regulated waste.

"Facilities" includes the following HFC buildings: the George R. Brown Convention Center ("GRBCC"), Partnership Tower, Avenida Plaza, the Wortham Theater Center, Jesse H. Jones Hall for the Performing Arts ("Jones Hall"), , Miller Outdoor Theatre, and Talento Bilingue de Houston. Facilities may be added or deleted from this Agreement by written notice from HFC to the Contractor.

"Facility Manager" means HFC's manager for any of the Facilities, as defined herein, or their respective designees, each of whom shall be the Facility Manager for purposes of the Agreement as to the Facilities or properties each manages for HFC.

"HFC" is defined in the preamble of this Agreement and includes its successors and assigns.

"Hazardous Materials" is defined in Article II (Environmental Laws).

"Metal Cans"- means aluminum, tin, steel, and or bi-metal cans.

"Paper"- means office paper, which is either "high-grade" and or "mixed" paper, newspapers and magazines.

“Parties” mean all the entities set out in the preamble who are bound by this Agreement, and **“Party”** means either one of them individually.

“Plastic”- means products that are PET (polyethylene terephthalate) or HDPE (high density polyethylene) numbers 1 through 7.

“Recyclable Materials”- means Paper, Corrugated Containers, Metal Cans, and Plastic. Title to all Recyclable Materials shall remain with HFC until Contractor collects and removes Recyclable Materials from HFC property.

“Solid Waste Container” means any kind of solid waste container, including but not limited to compactors, open-tops, dumpsters, and other containers used to contain solid waste.

EXHIBIT "B"

SOLID WASTE CONTAINER

SCOPE OF SERVICES

1.0 SOLID WASTE CONTAINER SERVICES

Contractor shall supply all supervision, labor, tools, materials, supplies, vehicles, and equipment necessary for the performance of the work described herein, unless otherwise provided by HFC, in accordance with the terms and conditions provided herein.

Prior to contract inception, and throughout the Agreement, Contractor shall meet or communicate with the Facility Managers to create schedules indicating when solid waste pick-ups are to occur. To prevent disruption of scheduled events, Contractor must receive approval of the schedules from the Facility Managers. The frequencies of pick-up service will fluctuate from time to time, and Contractor shall make accurate adjustments to the contract pricing reflecting such fluctuations. Specifically at Jones Hall, Contractor must be able to pick-up between the hours of 2:00A.M.-6:00A.M to prevent disruption of scheduled events.

2.0 COLLECTION VEHICLES

Contractor shall furnish the necessary vehicles for collection of solid waste. The vehicles must be equipped with non-leakable containers or compartments, and tops or coverings to guard against spillage, which shall conceal contents from view. Contractor's vehicles shall be kept covered or closed at all times except when being loaded or unloaded, and Contractor's company name shall be clearly displayed on the exterior of the vehicles.

3.0 VEHICLE DRIVERS

Contractor shall ensure that its vehicle drivers meet the following requirements. At least annually, or as requested by HFC, Contractor shall obtain and review the motor vehicle record of each of its employees who drive collection vehicles to determine whether the drivers are qualified to drive said vehicles. The motor vehicle records shall be submitted to HFC upon request.

- A. Any of Contractor's employees or subcontractors who drive collection vehicles must obtain and provide to Contractor a copy of their motor vehicle records or alternatively, execute authorization for the release of their motor vehicle records from the State of Texas, or their state of residence, for the past three years.
- B. Refusal or failure to supply the authorization to obtain motor vehicle records or to supply the actual motor vehicle records when requested, shall disqualify Contractor's employee from driving onto HFC property.
- C. Any of Contractor's employees who drive a collection vehicle must report an accident of any kind to the investigating police officer or appropriate law enforcement authority in the jurisdiction in which the accident occurred within 24 hours of its occurrence; and to his supervisor, immediately if on-duty, or upon return to work if off-duty:

- 1) when property occurs and
- 2) upon the occurrence of any of the following:
 - i. Moving violation conviction(s); or
 - ii. A conviction for DWI or DUI, or flying or boating while intoxicated; or
 - iii. A felony conviction of any kind including intoxication assault or intoxication manslaughter, etc., involving the use of a motor vehicle; or
 - iv. A cancellation, revocation or expiration of the employee's license without immediate renewal or reinstatement; or
 - v. A suspension of an operator's license or a temporary (60/120 day) suspension for nonpayment of child support, habitual violations, revocation for medical reasons, criminal mischief, fraud, or drug offenses, "serious" traffic violations, etc., or as set forth in Section 521.201 *et seq.* Tex. Transportation Code; or
 - vi. A suspension, cancellation, revocation or expiration of Contractor's personal liability or automobile liability insurance coverage

D. Collection vehicles may be operated only by Contractor's employees who:

- 1) Have a valid and current Class C Texas Commercial Driver's License, issued by the Texas Department of Public Safety, which meets all requirements of the Texas Department of Public Safety for operating such vehicles (a temporary or provisional commercial driver's license is not acceptable.); and
- 2) Have successfully passed pre-employment and random drug tests.

Any driver who moves to the State of Texas after employment must, within 30 days after such move, obtain a valid Texas driver's license and surrender any other driver's license(s) in compliance with Texas law.

E. Contractor's employee is disqualified from driving onto HFC property if he or she:

- 1) Has been convicted of a felony involving the use of a motor vehicle within a period of three years immediately before the date of hire by the Contractor; or
- 2) Has been convicted of DWI and/or DUI within the last three years; or
- 3) Has been convicted of any combination of moving violations and/or motor vehicle accidents, whether in Texas or out of state, totaling three or more within the last three years.

F. Accidents and/or criminal conduct carry the same weight, whether on or off duty. If Contractor's employee's driving records show violations, driving duties will be removed from the Contractor's employee's designated responsibilities. HFC may require Contractor to terminate or remove one of its employees from driving responsibilities, if HFC or his or her designee determines that the magnitude of any incident indicates such action is appropriate for the safety of the public.

4.0 SOLID WASTE COLLECTION TRANSPORTATION AND DISPOSAL

- A. Contractor shall provide Solid Waste Containers for the collection, transportation and disposal of non-hazardous solid waste at those collection sites designated and at the frequencies specified in Exhibit “D” or as otherwise requested by HFC or Facility Managers. Pick-up receipts shall be provided as proof of services rendered at each site serviced, at the time of service.
- B. Contractor shall provide compactor units at those collection sites designated and at the frequencies specified in Exhibit “D” or as otherwise requested by Facility Managers or HFC.
- C. Contractor shall not be required to collect Excluded Waste. Notwithstanding anything to the contrary in this Agreement, title to and liability for any Excluded Waste shall at no time pass to Contractor but shall remain with the generator of such waste.

5.0 SOLID WASTE EQUIPMENT AND SUPPLIES

Contractor shall ensure that equipment meets the following requirements:

- A. Contractor shall provide Solid Waste Containers of the highest quality materials and workmanship available in the commercial industry and shall maintain these containers in good working order at all times. The Solid Waste Containers shall be constructed and maintained to prevent rain from entering and the loss of liquids and solid waste. To avoid storm water pollution violations, Contractor shall ensure that liquids do not leak from Solid Waste Containers.
- B. Each Solid Waste Container shall have a closeable lid to prevent the infiltration of insects, snakes, rodents and other such creatures. Solid Waste Container lids shall be maintained in good working order at all times and shall comply with the Houston Fire Code. Solid Waste Containers shall be cleaned and disinfected on a quarterly basis or as otherwise required by HFC to prevent disease, odors and insect breeding.
- C. All Solid Waste Containers shall be painted prior to installation at HFC's collection sites and repainted at regularly scheduled intervals thereafter or at any time during the term of this Agreement to maintain appearance standards acceptable to HFC.
- D. All Solid Waste Containers shall be clearly marked with Contractor's name and telephone number affixed in a prominent, visible position on the container.
- E. Contractor shall provide “No Parking” signs at or near the Solid Waste Containers, when requested by a Facility Manager.
- F. Provide appropriately colored Solid Waste Containers for the Facilities, as requested by the Facility Managers. All Solid Waste Containers at a particular Facility shall be painted the Facility colors or as requested by the Facility Managers. Unpainted or substitute containers in other colors shall not be used.
- G. Compactor units shall be constructed of high-quality steel channel, tubing, plate and sheet, in accordance with the latest, published, applicable A.N.S.I. standards. Each unit shall be equipped with rubber door seals and dual ratchets and must have working gauges, conforming with the

most current technology, showing remaining storage capacity. All equipment must be labeled with the certified capacity. The stationary unit does not count towards the capacity.

- H. Doors and rubber gaskets shall be constructed and maintained so as to prevent leakage of liquids from the unit. Controls shall be designed to completely and safely compact all solid wastes placed in the compactor units, which shall be fitted with all the latest safety devices to ensure safe operations. The units shall be marked with bilingual safety decals (English and Spanish) in accordance with the most recently published applicable A.N.S.I. standards.
- I. Contractor shall train HFC employees on proper and safe operating procedures before the units are operated by HFC personnel. Contractor shall maintain the units in good operating condition at all times. The receiver container component of compactor units shall be transported and emptied by Contractor in accordance with the frequency schedule detailed in Exhibit "D." Contractor personnel shall ensure that dual ratchets are closed and tightened when reinstalling the units at collection sites.
- J. If any Contractor-owned compactor is not working properly, Contractor must supply an open 40 yard Solid Waste Container in its place the same day and empty it daily at its own expense, until the compactor is replaced or repaired.
- K. Contractor shall inspect all designated collection sites and determine the exact scope of services to facilitate installation of dumpsters and compactor units or other Solid Waste Containers.
- L. Contractor shall install required Solid Waste Containers and compactor units at the collection sites on or before the effective date of this Agreement. Contractor shall train HFC personnel within 60 days following the effective date, and as needed throughout the term of this Agreement.
- M. HFC may change solid waste collection sites by notifying the Contractor in writing, pursuant to the addition/delete provisions of this Agreement.

6.0 SOLID WASTE DISPOSAL

- A. Contractor shall transport and dispose of all solid wastes collected pursuant to this Agreement safely and in the manner prescribed by law. Contractor warrants that each disposal site has been approved by all governing authorities with jurisdiction over the disposal of solid wastes, that it shall not dispose of solid wastes at any disposal site which has had its permit revoked, and that the vehicles used to transport the solid waste meet or exceed the operating standards established by all regulatory authorities with jurisdiction over the transportation of solid wastes.
- B. Contractor shall comply with all standards established by the City's Health & Human Services Department in regard to the waste containers and compactor units and maintenance of the areas immediately adjacent to them.
- C. Upon request by the Facility Managers, Contractor shall identify the disposal sites it will use for the disposal of HFC-generated waste products during the term of this Agreement by

submitting a written list of the disposal sites to the Facility Managers. The complete geographic locations and associated permit numbers shall be included with each disposal site description.

- D. Contractor shall empty Solid Waste Containers and compactor units and perform all other services called for in this Agreement during HFC's approved hours for service as described in Section 1.0 of the Scope of Services. An appointment with HFC personnel is required for after hours, unmanned facilities, enclosed or secure areas. On Call services may include Saturday and Sunday if requested. ("On Call" services are services requested at fluctuating times, as determined by the Facility Managers, and may be requested by telephone.) Contractor shall respond to On Call pick-up requests within twenty-four (24) hours after notification by a Facility Manager.
- E. If the Contractor fails to provide services as scheduled, Contractor shall deduct the unit price for pick up at the missed location from the monthly invoice, or HFC may deduct the unit price for pick up from future payments.
- F. The frequency of collection depicted in Exhibit "D" may be increased or decreased if requested by the Facility Managers or HFC. When the frequency of collection is changed, Contractor shall adjust the fees accordingly, by either adding or subtracting the correct and proportionate fees as set out in Exhibit "D." For those Facilities where no separate per haul rate is listed, Contractor agrees to increase the frequency of collection occasionally, at no additional charge to HFC, as long as the additional pickups do not exceed two per month.
- G. Contractor shall empty Solid Waste Containers and compactor units and dispose of solid wastes from HFC's collection sites listed in Exhibit "D". Compactors shall be emptied within 24 hours of notification by HFC.
- H. Contractor shall remove waste or clean areas, pavers, driveways or street areas that become contaminated from spillage from waste or liquids deposited by the Contractor's truck during pick up while on site. Contractor shall repair or replace any damage it causes to HFC property within two weeks, or HFC may either invoice the Contractor for the cost of repairs or subtract the cost from future payments.
- I. Contractor agrees to record every delivery to a disposal site of all solid wastes collected from any of HFC's collection sites and to retain such records for a period of three years after the date the waste was delivered to the disposal site. Records shall include, but not be limited to, the identity of the specific collection site from which the solid waste was collected, the disposal site, the location on the disposal site, and the date the solid waste was delivered. Contractor shall make these records available to the Facility Managers, HFC, or anyone designated to act on their behalf, upon request.

7.0 WASTE STREAM MANAGEMENT

- A. Contractor shall complete a Waste Stream Management Audit within 90 days following receipt of a written request from HFC. The Waste Stream Management Audit shall contain, at minimum:
 - 1) The actual volume of solid wastes collected from each Solid Waste Container or

compactor unit.

- 2) Suggested changes in number and types of Solid Waste Containers, compactor units, and frequency of collection; etc., based upon historical needs for solid waste collection and disposal services.
 - 3) An analysis to identify those Facilities that may benefit from roll-off container service.
- B. HFC may request audits, but not more often than once each Agreement year.
- C. The audits shall assess services needed for each Facility, to ensure there is sufficient waste containment capacity and collection frequency at each collection site at least 95% of the time. HFC may elect to increase or decrease service as a result of the audit, in accordance with the "Additions and Deletions" section of this Agreement.

8.0 SEASONAL SERVICE CHANGES

Certain collection sites designated in Exhibit "D" with an asterisk (*) are subject to seasonal service changes or adjustments. When requested by a Facility Manager, Contractor shall remove one or more trash containers from seasonal locations and return the containers at a later date, as specified by the Facility Manager, when the volume of solid waste is expected to increase. Contractor shall adjust its invoices accordingly, whenever services are either increased or decreased. Facility Managers' requests for seasonal service changes may be sent to Contractor in writing by email or fax, with a courtesy copy to HFC's Contract Administrator.

9.0 CLEANLINESS

When collecting solid waste, Contractor shall not place the same upon or suffer the same to be placed or scattered upon HFC property and shall, upon collection, leave the premises in a neat and clean condition. Contractor shall not be allowed to store trucks of any kind on HFC property, and there will be no scavenging by the Contractor or any authorized Contractor personnel. If an unsightly or unsanitary condition results from Contractor's action or failure to act, Contractor shall respond within four hours following notification by HFC or HFC Facility Manager's, and shall restore the area to the satisfaction of HFC.

10.0 COMPLAINT RESOLUTION

Contractor shall resolve all complaints within 24 business hours after receiving them and report resolution to Facility Manager. Contractor shall provide current complaint contact information, including telephone numbers, fax, e-mail, and website information, to HFC Facility Managers and the Contract Administrator, along with updates to the contact information whenever any changes occur. Contractor shall also provide business and cellular telephone numbers for one or more persons in its office who will respond promptly to On Call pick-up requests and emergency service requests.

11.0 EMERGENCY SERVICES AND RESPONSE TIMES

- A. Contractor shall provide emergency services within two hours when HFC contacts Contractor's supervisor on duty during nights and weekends.

- B. Contractor shall meet with HFC management to discuss implementation of a hurricane or other disaster relief plan for all Facilities, if requested by HFC.
- C. Contractor shall provide on call roll-off service on a next day basis; however, same day service can be provided if HFC requests it by 9:00 a.m. on the same day.
- D. All roll-offs and compactors will be serviced early in the morning to allow each site to have full capacity during the work day.
- E. If a driver is held up due to weather or traffic, Contractor's dispatchers will notify HFC contacts immediately.

12.0 SILENCE OF THESE SPECIFICATIONS

The specifications set forth herein cover the minimum requirements for non-hazardous solid waste collection, transportation, disposal services. The descriptions contained in these specifications shall be considered as instructive to the Contractor as to the type and quality of containers and compactor units desired. The apparent silence of these specifications as to any detail, or the apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices shall prevail. All interpretation of these specifications shall be made based upon this statement.

13.0 ADDITIONS AND DELETIONS

At any time during the term of this Agreement, HFC may add or delete equipment, supplies, locations, and services to or from this Agreement, by written notice to Contractor. Any such written notice shall take effect on the date stated in the notice from HFC, and all additional equipment, supplies, and services shall meet the requirements of this Agreement. Charges for similar equipment, supplies, or services added to this Agreement, or deletions, shall be at the same rates as specified in the fee schedule. If additional equipment, supplies, or services are not identical to items already under contract, the charges therefor shall be Contractor's normal and customary charges for such equipment, supplies, and services, or at lower rates if mutually agreed upon by HFC and Contractor.

14.0 ESTIMATED QUANTITIES NOT GUARANTEED

The estimated quantities specified herein are not a guarantee of actual quantities, as HFC does not guarantee any particular quantity of solid waste, solid waste containers, or number of sites for services during the term of this Agreement. The quantities may vary depending upon the actual needs of HFC. The quantities specified herein are good faith estimates of usage during the term of this Agreement and may fluctuate over time. Therefore, HFC shall not be liable for any contractual agreements or obligations the Contractor enters into based on the possibility that HFC may purchase or require all the quantities specified herein.

15.0 WARRANTY OF SERVICES

Definitions:

“**Acceptance**” as used in this section, means the act of an authorized representative of HFC by which HFC assumes for itself, approval of specific services as partial or complete performance of the contract.

“**Correction**” as used in this section, means the elimination of a defect.

Notwithstanding inspection and acceptance by HFC or any provision concerning the conclusiveness thereof, Contractor warrants that all services performed under this Agreement will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement. HFC shall give written notice of any defect or nonconformance to Contractor within a one-year period from the date of acceptance by HFC. This notice shall state either (1) that Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to HFC, or (2) that HFC does not require correction or re- performance.

If Contractor is required to correct or re-perform, it shall be at no cost to HFC, and any services corrected or re-performed by Contractor shall be subject to this section to the same extent as work initially performed. If Contractor fails or refuses to correct or re-perform, HFC may, by contract or otherwise, correct or replace with similar services and charge to Contractor the cost occasioned to HFC thereby, or make an equitable adjustment in contract fees.

If HFC does not require correction or re-performance, HFC shall make an equitable adjustment in the contract fees, if Contractor's work was defective or did not conform to the requirements of this Agreement.

EXHIBIT “C”
RECYCLING
SCOPE OF SERVICES

1.0 RECYCLING SCOPE OF SERVICES

Contractor shall supply all supervision, labor, tools, materials, supplies, vehicles, and equipment necessary for the performance of the work described herein, unless otherwise provided by HFC, in accordance with the terms and conditions provided herein.

Prior to contract inception, and throughout the Agreement, Contractor shall meet or communicate with the Facility Managers to create schedules indicating when recycling pick-ups are to occur. To prevent disruption of scheduled events, Contractor must receive approval of the schedules from the Facility Managers. The frequencies of pick-up service will fluctuate from time to time, and Contractor shall make accurate adjustments to the contract pricing reflecting such fluctuations. Specifically at Jones Hall, Contractor must be able to pick-up between the hours of 2:00A.M.-6:00A.M to prevent disruption of scheduled events.

2.0 COLLECTION VEHICLES

Contractor shall furnish the necessary vehicles for collection of Recyclable Materials. The vehicles must be equipped with non-leakable containers or compartments, and tops or coverings to guard against spillage, which shall conceal contents from view. Contractor's vehicles shall be kept covered or closed at all times except when being loaded or unloaded, and Contractor's company name shall be clearly displayed on the exterior of the vehicles.

3.0 VEHICLE DRIVERS

Contractor shall ensure that its vehicle drivers meet the following requirements. At least annually, or as requested by HFC. Contractor shall obtain and review the motor vehicle record of each of its employees who drive collection vehicles to determine whether the drivers are qualified to drive said vehicles. The motor vehicle records shall be submitted to HFC upon request.

- A. Any of Contractor's employees or subcontractors who drive collection vehicles must obtain and provide to Contractor a copy of their motor vehicle records or alternatively, execute authorization for the release of their motor vehicle records from the State of Texas, or their state of residence, for the past three years.
- B. Refusal or failure to supply the authorization to obtain motor vehicle records or to supply the actual motor vehicle records when requested, shall disqualify Contractor's employee from driving onto HFC property.
- C. Any of Contractor's employees who drive a collection vehicle must report an accident of any kind to the investigating police officer or appropriate law enforcement authority in the jurisdiction in which the accident occurred within 24 hours of its occurrence; and to his supervisor, immediately if on-duty, or upon return to work if off-duty:

- 1) when property occurs and
- 2) upon the occurrence of any of the following:
 - i. Moving violation conviction(s); or
 - ii. A conviction for DWI or DUI, or flying or boating while intoxicated; or
 - iii. A felony conviction of any kind including intoxication assault or intoxication manslaughter, etc., involving the use of a motor vehicle; or
 - iv. A cancellation, revocation or expiration of the employee's license without immediate renewal or reinstatement; or
 - v. A suspension of an operator's license or a temporary (60/120 day) suspension for nonpayment of child support, habitual violations, revocation for medical reasons, criminal mischief, fraud, or drug offenses, "serious" traffic violations, etc., or as set forth in Section 521.201 *et seq.* Tex. Transportation Code; or
 - vi. A suspension, cancellation, revocation or expiration of Contractor's personal liability or automobile liability insurance coverage

D. Collection vehicles may be operated only by Contractor's employees who:

- 1) Have a valid and current Class C Texas Commercial Driver's License, issued by the Texas Department of Public Safety, which meets all requirements of the Texas Department of Public Safety for operating such vehicles (a temporary or provisional commercial driver's license is not acceptable.); and
- 2) Have successfully passed pre-employment and random drug tests.

Any driver who moves to the State of Texas after employment must, within 30 days after such move, obtain a valid Texas driver's license and surrender any other driver's license(s) in compliance with Texas law.

E. Contractor's employee is disqualified from driving onto HFC property if he or she:

- 1) Has been convicted of a felony involving the use of a motor vehicle within a period of three years immediately before the date of hire by the Contractor; or
- 2) Has been convicted of DWI and/or DUI within the last three years; or
- 3) Has been convicted of any combination of moving violations and/or motor vehicle accidents, whether in Texas or out of state, totaling three or more within the last three years.

F. Accidents and/or criminal conduct carry the same weight, whether on or off duty. If Contractor's employee's driving records show violations, driving duties will be removed from the Contractor's employee's designated responsibilities. HFC may require Contractor to terminate or remove one of its employees from driving responsibilities, if HFC or his or her designee determines that the magnitude of any incident indicates such action is appropriate for the safety of the public.

4.0 EQUIPMENT AND SUPPLIES

Contractor shall ensure that equipment meets the following requirements:

- A. Contractor shall provide a sufficient quantity of recycling equipment and supplies (the “Equipment”, e.g., carts and other recycling containers, to perform the recycling services specified herein.
- B. Contractor shall deliver the following recycling Equipment to HFC Facilities on or before the commencement of this Agreement.

A sufficient quantity of seven (7) gallon desk-side recycling containers and beverage container recycling receptacles to contain Recyclable Materials for the Facilities listed in Exhibit “D” and other recycling containers as agreed upon by HFC and Contractor.

Upon delivery of the recycling Equipment to HFC offices, HFC agrees to assume full responsibility for:

- (i) The risk of loss or damage to Equipment, howsoever caused, other than normal wear and tear; and
 - (ii) any claims, damages, or injuries caused by, or arising from or relating to improper usage of the Equipment by HFC. “Improper usage” means the actions of involving, using, or directing the usage of the Equipment in manner of for a purpose which the Equipment was not designed or intended for use, including, but not limited to, climbing on the Equipment, entering the Equipment, improperly moving or lifting the Equipment, placing volatile, hazardous, or pathogenic materials into the Equipment, overloading the Equipment in weight or volume, and making modifications to the Equipment. Upon termination of this Agreement, HFC shall return the Equipment to Contractor in the same condition as received except for normal wear and tear.
- C. Recycling containers must have self-monitoring call systems so that containers can automatically monitor when the containers need to be emptied.
 - D. Recycling compactors must have locks.
 - E. HFC acknowledges that all the equipment provided under this Agreement by Contractor will remain the property of Contractor. In no circumstances will, the ownership, title or any other interest in the equipment be transferred to HFC during the term of the Agreement.

5.0 RECYCLING PROGRAM EDUCATION, PROMOTION, AND BRANDING

- A. Contractor shall work with each Facility Manager to teach site coordinators at the Facilities the recycling process and the use of proper signage. Signage is subject to HFC’s approval.
- B. Upon request from HFC, Contractor will assist in the development of promotional materials, and proof news articles and releases in regard to HFC’s recycling program.

- C. If requested by HFC management, Contactor will provide facility tours to City officials and employees as well as community minded groups and residents.
- D. In cooperation with HFC, Contractor will offer support in planning large events, such as Earth Day, Texas Recycles Day, etc. as well as participate during events to further educate the community about the benefits of recycling.
- E. Contractor shall provide a local telephone number and web access to request additional service, issue notification or general questions to be used by all Facility Managers.
- F. Contractor agrees to attend one or more environmental fairs annually to promote the recycling program.

6.0 RECYCLING SERVICES

- A. Contractor shall provide the following recycling services at the Facilities listed in Exhibit “D.”
 - 1. Collect Recyclable Materials from the Facilities, transport them to appropriate recycling facilities, and ensure that the materials are recycled.
 - 2. Assess Facilities’ operations to identify additional waste streams that should be considered for incorporation into the recycling program.
 - 3. Develop a recycling plan, for HFC’s review and approval, within the first 90 days following the effective date, which addresses the following:
 - i. types of collection receptacles to be used in private and public areas;
 - ii. placement of collection receptacles and signage;
 - iii. collection of recyclables from the receptacles and maintenance of the receptacles;
 - iv. transportation of recyclables from office space or public areas to the storage/collection areas;
 - v. recommended types of storage bins or compactors for each of the Recyclable Materials and a description of how they should be used;
 - vi. recommendations regarding the location of storage areas and compactors, to encourage use without disrupting operations;
 - vii. estimates regarding the frequency of pick-up; and
 - viii. other considerations required to make informed decisions regarding the recycling program.
 - 4. Work with HFC Facility Managers to develop pick-up schedule for Recyclable Materials, based on actual volume, as the Agreement progresses.
 - 5. Expand the program to include additional HFC locations and recyclables as deemed necessary.
- B. Contractor agrees to meet with the Facility Managers and other HFC representatives, both at the beginning of this Agreement and as needed throughout the term of the Agreement, to provide information and recommendations about the best methods of handling the Recycling Materials.

- C. Contractor shall furnish recycling storage containers for the storage of Recyclable office paper and other Recyclable Materials. Contractor shall ensure that recycling containers are compatible with its trucks and related Equipment. Contractor shall review all Facilities listed in Exhibit "D" to determine the optimal type of containers suitable for each Facility. Contractor shall provide labor to deliver and empty recycling containers and remove full containers from the recycling storage areas, at no expense to HFC. Facility Managers will contact the Contractor twenty-four (24) hours in advance to pick up full recycling containers.
- D. Contractor's personnel shall furnish signed receipts to the Facility Managers indicating the amount of any and all Recyclable Material pick-ups. Credits for Recyclable Materials shall be included in Contractor's statements/invoices to HFC, and shall clearly describe the amount of Recyclable Materials attributable to each of the Facilities participating in the recycling program, for the previous month.
- E. One month following the end of each Agreement year, including any renewal years, Contractor shall send, HFC, Facility Managers, and the Contract Administrator, an annual Waste Stream Management report, as described below, listing the total amount of Recyclable Materials collected at each of the Facilities participating in the recycling program for the previous Agreement year, by Facility, so that HFC and Contractor make informed decisions concerning whether any adjustments are needed to improve the recycling program. The annual report should be sent by electronic mail and must be clearly typed and legible.

7.0 WASTE STREAM MANAGEMENT

- A. Contractor shall complete a Waste Stream Management Audit within 90 days following receipt of a written request from HFC. The Waste Stream Management Audit shall contain, at minimum:
 - 1) The actual volume of Recyclable Materials collected from each Facility listed in Exhibit "D."
 - 2) Suggested changes in number and types of recycling containers, frequency of collection; etc., based upon historical needs for recycling and disposal services.
 - 3) An analysis to identify those Facilities that may benefit from recycling services or front-end corrugated cardboard recycling.
- B. The audits shall assess services needed for each Facility, to ensure there is sufficient waste containment capacity and collection frequency at each collection site at least 95% of the time. HFC may elect to increase or decrease service as a result of the audit, in accordance with the "Additions and Deletions" section of this Agreement.
- C. Additionally, Contractor shall provide an annual tonnage report, detailing the total volume of Recyclable Materials recycled by each Facility for the calendar year. The annual tonnage report will approximate the weights recovered by type of commodity based on Contractor's Waste Stream Management Audit.

8.0 SEASONAL SERVICE CHANGES

Certain collection sites designated in Exhibit "D" with an asterisk (*) are subject to seasonal service changes or adjustments. When requested by a Facility Manager, Contractor shall remove one or more recyclable containers from seasonal locations and return the containers at a later date, as specified by the Facility Manager, when the volume of Recyclable Materials is expected to increase. Contractor shall adjust its invoices accordingly, whenever services are either increased or decreased. Facility Managers' requests for seasonal service changes may be sent to Contractor in writing by email or fax, with a courtesy copy to HFC's Contract Administrator.

9.0 CLEANLINESS

When collecting Recyclable Materials, Contractor shall not place the same upon or suffer the same to be placed or scattered upon HFC property and shall, upon collection, leave the premises in a neat and clean condition. Contractor shall not be allowed to store trucks of any kind on HFC property, and there will be no scavenging by the Contractor or any authorized Contractor personnel. If an unsightly or unsanitary condition results from Contractor's action or failure to act, Contractor shall respond within four hours following notification by HFC or HFC Facility Manager's, and shall restore the area to the satisfaction of HFC.

10.0 COMPLAINT RESOLUTION

Contractor shall resolve all complaints within 24 business hours after receiving them and report resolution to Facility Manager. Contractor shall provide current complaint contact information, including telephone numbers, fax, e-mail, and website information, to HFC Facility Managers and the Contract Administrator, along with updates to the contact information whenever any changes occur. Contractor shall also provide business and cellular telephone numbers for one or more persons in its office who will respond promptly to On Call pick-up requests and emergency service requests.

11.0 SILENCE OF THESE SPECIFICATIONS

The specifications set forth herein cover the minimum requirements for recycling services. The descriptions contained in these specifications shall be considered as instructive to the Contractor as to the type and quality of containers and compactor units desired. The apparent silence of these specifications as to any detail, or the apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices shall prevail. All interpretation of these specifications shall be made based upon this statement.

12.0 ADDITIONS AND DELETIONS

At any time during the term of this Agreement, HFC may add or delete equipment, supplies, locations, and services to or from this Agreement, by written notice to Contractor. Any such written notice shall take effect on the date stated in the notice from HFC, and all additional equipment, supplies, and services shall meet the requirements of this Agreement. Charges for similar equipment, supplies, or services added to this Agreement, or deletions, shall be at the same rates as specified in the fee schedule. If additional equipment, supplies, or services are not identical to items already under contract, the charges therefor shall be Contractor's normal and customary charges for such equipment, supplies, and services, or at lower rates if mutually agreed upon by HFC and Contractor.

EXHIBIT “D”

FEE SCHEDULE

[SEE HFC WEBSITE FOR EXCEL DOCUMENT]

Collection Site	Street Address
George R. Brown Convention Center	1001 Avenida de las Americas
Jones Hall	615 Louisiana #101
Wortham Theater Center	510 Preston
Miller Outdoor Theatre	6000 Hermann Park Drive
Partnership Tower	701 Avenida de las Americas
Talento Bilingue de Houston	333 South Jensen

In the pricing sheets that follow, asterisks (*) designate seasonal locations: These Facilities typically require a change in the number of containers, depending on event schedules.

*Wortham Theater Center may request fewer containers in July and August (two instead of three).

*Miller Outdoor Theatre may request fewer containers mid-November through mid-March (two instead of three).

Note: “OBM Mixed Paper” means Official Board Markets (OBM) Mixed Paper, high-side, Southwest region. Although, the OBM Mixed Paper rate has been set at \$8.00 in the following tables, both parties acknowledge that the rate fluctuates from month-to-month, and Contractor’s invoices shall include the current OBM Mixed Paper rate each month.