

# **PROPOSED CONTRACT FOR TRANSPORT OF RECYCLING MATERIALS**

The parties to this contract (Contract) are the City of Dickinson, acting through its Solid Waste-Recycling Department (City), and Tracker Management having its principal place of business at 500 4<sup>th</sup> Ave SW, New Prague, MN 56071 (CONTRACTOR);

## **1. SCOPE OF WORK**

As set forth in original RFP submitted.

## **2. COMPENSATION**

### **A. Contractual Amount**

City shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed \$2,275 per load (Contractual Amount) with the exception of the EIA fuel surcharge.

The Contractual Amount is firm for the duration of this Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

### **B. Payment**

- 1) Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
- 2) City shall make payment under this Contract within thirty (30) calendar days after receipt of a correct invoice.
- 3) Payment of an invoice by City will not prejudice City's right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by City, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At City's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

- 4) For any amounts that are or will become due and payable to City by CONTRACTOR, City reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

**C. Travel**

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice City for travel costs, including meals and lodging which may be incurred by CONTRACTOR in the performance of duties hereunder.

**D. Prepayment**

City will not make any advance payments before performance by CONTRACTOR under this Contract.

**E. Taxpayer ID**

CONTRACTOR'S federal employer ID number is:41-1684354

**3. TERM OF CONTRACT**

This Contract begins on October 1, 2024 and ends on September 30, 2027.

**A. No Automatic Renewal**

This Contract will not automatically renew.

**B. Renewal Option**

City may renew this Contract upon satisfactory completion of the initial Contract term. City reserves the right to execute up to 1 option to renew this Contract under the same terms and conditions for a period of three (3) years.

**4. TIME IS OF THE ESSENCE**

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the parties.

**5. TERMINATION**

### **A. Termination by Mutual Agreement**

This Contract may be terminated by mutual consent of both parties executed in writing with thirty (30) days notice.

### **B. Termination for Lack of Funding or Authority**

City by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

### **C. Termination for Cause.**

City may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services required by this Contract within the time specified or any extension agreed to by City; **or**
- 2) If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of City provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

## **6. FORCE MAJEURE**

Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

## **7. INDEMNITY**

Contractor agrees to indemnify and hold harmless the City from and against claims based on the vicarious liability of the City or its agents, but not against claims based on the City's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. Contractor also agrees to reimburse the City for all costs, expenses and attorneys' fees incurred if the City prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

## **8. INSURANCE**

In addition to the insurance policy requirements set forth below CONTRACTOR shall also furnish an Owner's Protective Policy in the same amounts with the City of Dickinson as the named insured, issued by the same insurance company as the Contractor's Liability Coverage. Coverage must meet replacement cost of trailers paid in full to City of Dickinson.

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

a) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.

b) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.

c) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.

d) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

In the event of a change or cancellation of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section.

The insurance coverages listed above must meet the following additional requirements:

e) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.

f) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the City.

g) The duty to defend, indemnify, and hold harmless the City under this agreement shall not be limited by the insurance required in this agreement.

h) The City and its employees shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The City shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.

i) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the City.

j) The Contractor shall furnish a certificate of insurance to the undersigned City representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.

k) Failure to provide insurance as required in this agreement is a material breach of contract entitling the City to terminate this agreement immediately.

l) Contractor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

## 9. NOTICE

All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

<b>City</b>	<b>CONTRACTOR</b>
Aaron Praus	Joe Fries
Public Works Director	Owner
3411 Public Works Blvd.	500 4 <sup>th</sup> Ave SW
Dickinson, ND 58601	New Prague, MN 56071

## **10. CONFIDENTIALITY**

CONTRACTOR shall not use or disclose any information it receives from City under this Contract that City has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by City. City shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that City determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, [N.D.C.C. ch. 44-04](#). The duty of City and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Contract.

## **11. COMPLIANCE WITH PUBLIC RECORDS LAWS**

CONTRACTOR understands that, in accordance with this Contract's Confidentiality clause, City must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Contract, except for records that are confidential under this Contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact City promptly upon receiving a request for information under the public records law and to comply with City's instructions on how to respond to the request.

## **12. INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this Contract and is not a City employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this Contract, except to the extent specified in this Contract.

## **13. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without City's express written consent. However, CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of City.

#### **14. SPOILIATION – PRESERVATION OF EVIDENCE**

CONTRACTOR shall promptly notify City of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to City the opportunity to review and inspect the evidence, including the scene of an accident.

#### **15. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS**

This Contract, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence:

- a. The terms of this Contract as may be amended;
- b. City’s Request for Proposal (“RFP”) dated July 10, 2019;
- c. CONTRACTOR’s proposal dated July 22, 2019.

#### **16. SEVERABILITY**

If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if this Contract did not contain that term.

#### **17. APPLICABLE LAW AND VENUE**

This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Stark County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

#### **18. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

City does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. City does not waive any right to a jury trial.

**19. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

CONTRACTOR agrees to comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this Contract all licenses and permits required by law.

**20. AUDIT**

The Contractor shall provide access to the City to review any books, documents, papers, and records of Contractor which are directly pertinent to this contract for the purpose of making an audit or analysis. Contractor shall maintain such records for three (3) months following the term of the contract.

**21. EFFECTIVENESS OF CONTRACT**

This Contract is not effective until fully executed by both parties.

<b>CONTRACTOR</b>	<b>CITY OF DICKINSON</b>
BY:	BY:
Date:	Date: