

Exclusive Franchise Contract for the Collection, Hauling, Recycling and Disposal of Municipal and Residential Solid Waste and Recyclable Materials in the City of Pflugerville, Texas

This **Collection, Hauling, Recycling and Disposal of Municipal Solid Waste and Recyclable Materials Contract** ("**Contract**"), is entered as of the Effective Date by and between the **City of Pflugerville** (hereinafter called "**City**"), a Texas home rule municipality, and Waste Connections Lone Star, Inc. (hereinafter called "**Contractor**"), a Texas corporation, acting by and through their duly qualified representatives. (City and Contractor collectively referred to herein as "**Parties**" and individually as "**Party**.")

RECITALS

WHEREAS, the City has found and determined that the public health and safety of City are best promoted and preserved by establishing an arrangement for the collection, transportation, and disposal of solid waste and recyclable materials generated and accumulated by residential properties; and

WHEREAS, the Contractor is engaged in the business of collection and recycling of solid waste and recyclable materials and is familiar with City's need for solid waste services; and

WHEREAS, the City has determined the Contractor to be qualified to provide solid waste collection, transportation, and disposal service upon the terms and conditions and for the consideration set forth in this Contract; and

WHEREAS, the City desires to grant to Contractor the exclusive right to operate and maintain the service of collection, transportation, and disposal of residential, and residential recycling, over, upon, along, and across City's present and future streets, alleys, bridges, and public properties subject to the terms of this Contract; and

WHEREAS, the Contractor desires to operate and maintain the service of collection and transportation of residential solid waste and residential recycling, over, upon, along, and across City's present and future streets, alleys, bridges, and public properties subject to the terms of this Contract; and

WHEREAS, the Contractor has agreed to reimburse the City for the development of this Contract Document in accordance with Section 8.1(f) of this Contract.

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties agree as follows:

I. GRANT OF CONTRACT AND FRANCHISE; TERM

1.1 Grant of Contract and Franchise. To the extent allowed by law, the City hereby grants to Contractor:

- (a) The sole right, duty, and privilege within the City limits to conduct business for the purpose of collection and transportation, disposal and/or processing of solid waste and recyclable materials during the term of this Contract from all Customers located within City's incorporated limits; and
- (b) The sole right, duty, and privilege to collect waste materials and recyclable materials during the term of this Contract from all municipal facilities.

1.2 Initial Term. The Initial Term of this Contract shall commence on October 1, 2026 (the "**Commencement Date**") and shall end on September 30, 2031 (the "**Expiration Date**"), unless otherwise terminated earlier or extended as provided herein.

1.3 Extension Term. City and Contractor, upon written agreement between both Parties, may extend the Initial Term for one (1) additional, successive three (3) year term (the "**Extension Term**") upon the same terms and conditions as stated herein. Notice of intent to extend must be given in writing by City to Contractor, and/or by Contractor to City, on or before July 1, 2030, to be effective.

Notwithstanding anything regarding the City's exercise of the Extension Term, the Parties agree that City may, at any time prior to or after the expiration of the Initial Term and, if applicable, the first Extension Term, solicit bids or proposals for contracting for the collection of Waste Materials or such other services provided for herein for a period commencing after the Expiration Date, as originally established and/or extended by the first Extension Term, if applicable.

II. DEFINITIONS

The words and phrases used in this Contract shall have the following meanings unless the context indicates a different definition. If the definitions provided herein differ from those in the most current version of City of Pflugerville's Solid Waste Ordinance now or in the future, the Ordinance shall prevail.

"Brush" means any cuttings or trimmings from trees, shrubs, or lawns, including green waste. Limbs should not exceed four (4) feet in length and not exceed four (4) inches in diameter. All brush must be stacked in such a way as to allow safe lifting by the employee into the collection vehicle. No stacks, bags, bundles, or containers shall exceed forty (40) pounds in total weight.

The term "Brush" specifically excludes debris resulting from the services of a commercial landscape contractor.

“Bulky Waste” means large rubbish items including, but not limited to, white goods, bicycles, furniture, rugs, mattresses, televisions, fence material, auto parts, and other similar oversized items which are customary to ordinary housekeeping operations of a residential unit.

“Business Day” means a day that is not a Saturday, Sunday, or holiday.

“City” means the City of Pflugerville, Texas.

“City Facility” means a property owned, leased, and/or operated by the City.

“Collection” means the act of removing from a customer’s property (i) Waste in any form for transport to a disposal facility, (ii) Recyclables for transport to a recycling facility.

“Collection Area” means that portion of City’s corporate limits in which the Contractor provides collection services as described in the contract documents.

“Commercial Unit” means any non-manufacturing commercial facility that generates and accumulates municipal solid waste, construction and demolition waste or recyclable materials during, or as a result of, its businesses, including, but not limited to restaurants, stores and warehouses.

“Construction and Demolition Waste” means solid waste resulting from construction or demolition activities, or that is directly or indirectly the byproduct of such activities. (Some of these items may include, but not be limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products.) Construction and demolition waste does not include hazardous waste, municipal solid waste, recyclable materials or bulky items.

“Container” means any receptacle, including, but not limited to roll-offs and carts, provided to the City by the Contractor and utilized by a residential unit for collecting municipal solid waste, construction and demolition waste or recyclable materials. Containers are designed to hold ninety-six (96) gallons and forty (40) cubic yards of solid waste.

“CPI” means the Consumer Price Index for Garbage and Trash Collection (U.S. City Average, All Urban Consumers, Garbage and Trash Collection, Not Seasonally Adjusted. Base Period December 1983=100) <https://www.bls.gov/news.release/cpi.t02.htm>, published by the United States Department of Labor, Bureau of Labor Statistics (“**BLS**”). If the BLS ceases to publish the CPI, the Parties will agree on a comparable index that provides an equally authoritative measure of inflation and the change in the purchasing power of the U.S. dollar as it relates to the provision of solid waste collection services in the United States.

“Contract Administrator” means the City Manager or his/her designee responsible for actively interacting with the Contractor to achieve the Contract’s objectives; monitoring the Contract to ensure Contractor compliance; receiving and maintaining Contractor reports; addressing Contract-related problems on behalf of the City; incorporating necessary modifications or changes into the Contract; mediating and expediting timely resolution of customer/Contractor issues; and other duties necessary to implement the Contract.

“Contract Documents” means, collectively this Contract, all exhibits attached hereto including the Standard Governmental Contract and Purchasing Rider for Contracts with the City of Pflugerville, Texas attached as **Exhibit A**, and any amendments to this Contract.

“Contract Year” means each twelve-month period during the term of this Contract beginning on October 1, 2026, and ending each September 30, 2027, and each subsequent 12-month period.

“Curbside” means (i) in the case of a street or highway with a defined asphalt or concrete curb establishing a vertical boundary separation between a roadway and an adjacent lot or tract, the area within three (3) feet of the curb that provides primary access to the unit as designated by the City; and (ii) in the case of a street or highway that is not constructed with a curb, the area within three (3) feet of the edge of the paved area of the street or highway that provides primary access to the Unit as designated by City; and (iii) with respect to a Unit where the placement of Waste for collection at defined in (i) or (ii), whichever is applicable, interferes with or endangers the movement of vehicles or pedestrians, such other place as close to the Unit’s adjacent roadway as approved by the Contract Administrator.

“Customer(s)” means the owner or tenant of a Residential Unit located within the City and identified by the City as being eligible for and in need of the services provided by the Contractor under the Contract.

“Disposal Facility” means a Class I Municipal Solid Waste landfill permitted by the Texas Commission on Environmental Quality (TCEQ) as may be approved by the City during the term of this Contract, which approval shall not be unreasonably withheld, delayed, or denied.

“Disposal” means the disposition, injection, dumping, spilling, leaking, or placing of solid waste into or on the land or water in a manner that the solid waste, or a constituent of the solid waste, enters the environment, is emitted into the air, or is discharged to the waters of the State of Texas.

“Excluded Waste” means large dead animals, hazardous waste, offal waste, stable matter, vegetable waste, construction and demolition debris, special waste, and other types of waste expressly excluded from this contract.

“Food Waste” means vegetable and other food scraps, including meat, dairy products, grease, and bones; paper which has been contaminated with food, fat, or grease; and compostable paper including paper towels, paper plates, tissue, and waxed paper.

“Garbage” means Municipal Solid Waste (MSW) consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling and sale of produce and other food products, and all dead animals of less than ten pounds (10 lbs.) in weight, except those slaughtered for human consumption.

“Generator” means a person or municipality that produces or creates MSW.

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“Hazardous Waste” means any solid waste identified or listed as hazardous waste by the administrator of the Environmental Protection Agency under the Federal Solid Waste Disposal Act as amended by Resource Conservation and Recovery Act (RCRA), (42 U.S.C. S6901, et, seq., as amended).

“Holiday” means New Years Day, Thanksgiving Day, and Christmas Day.

“Large Dead Animals” means animals or portions thereof equal to or greater than ten pounds (10 lbs.) in weight that have expired from any cause, except those slaughtered or killed for human use.

“Medical Waste” means waste generated by healthcare-related facilities and associated with healthcare activities, not including garbage or rubbish generated from offices, kitchens, or other non-healthcare activities. The term includes special waste from healthcare-related facilities which is comprised of animal waste, bulk blood, and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC, Part 1, Ch. 1, Subch. K, §1.132 (relating to Definitions).

“Municipal Solid Waste” (MSW): means waste consisting of everyday items such as product packaging, grass clippings, furniture, clothing, bottles and cans, food scraps, newspapers, appliances, consumer electronics, and batteries. These wastes come from homes, institutions such as schools and hospitals, and commercial sources such as restaurants and small businesses. MSW does not include municipal wastewater treatment sludges, industrial process wastes, automobile bodies, combustion ash, or Construction and Demolition Waste. The term does not include source-separated recyclable materials.

“Negotiated Collection” means any residential unit waste placed curbside for collection which does not meet the specifications defined by this Contract for regular Municipal Solid Waste or Recycling placed in the cart. Contractor has the right to take photographic evidence of Negotiated Collections, and the option to provide for the collection of Negotiated Collections for a fee after inspection and pricing by the Contractor.

“Non-Recyclables” means any materials in the single stream materials or recyclables that are not recyclable.

“Offal Waste” means waste animal (land or marine) matter from establishments such as butcher shops, slaughterhouses, food processing and packing plants, rendering plants, and fertilizer plants.

“Overage” refers to any waste, recyclables, brush or bulky waste placed curbside for residential collection that exceeds the volumes permitted by this Contract and that the Customer has not requested the Contractor collect for a fee as a Negotiated Collection.

“Performance Bond” means a corporate surety bond that guarantees compensation to the City if it must assume the obligations and/or duties of the Contractor to continue the service as defined in the contract documents.

“Permit” means a permit issued by the State of Texas to operate a municipal solid waste landfill or processing facility, or to beneficially use municipal waste. The term includes a general permit, permit-by-rule, permit modification, permit reissuance, and permit renewal.

“Poly Cart” means a 96-gallon poly cart plastic container provided by Contractor, clearly marked for MSW or recycling, equipped with wheels, handles, and a tight-fitting cover, capable of being mechanically unloaded into Contractor’s collection vehicles. The terms “Cart” and “Wheeled Container” shall be considered interchangeable.

“Processing” means recycling of single stream materials at a properly permitted recycling facility.

“Recyclable Material” or **“Recyclables”** means a material that has been recovered or diverted from the non-hazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste, with respect to the party abandoning or disposing of such material.

“Recycling Container” means a plastic receptacle with a capacity of ninety-six (96) gallons designed for the curbside collection of recyclable materials, equipped with wheels, handles, and a tight-fitting cover, designed for automated, or semi-automated, collection vehicles. The weight of a cart and its contents shall not exceed approximately one hundred seventy (170) pounds.

“Residential Recyclables” include, but are not limited to, juice boxes, glass containers (clear, brown, and green), tin-steel cans, paper board, cardboard, magazines, aluminum cans, newspapers, junk mail, phone books, office paper, and plastics all codes (#1 through #7, except for # 6, which is Styrofoam products).

“Recycle” or **“Recycling”** means the collection, separation, recovery, and sale or reuse of metals, glass, paper, leaf waste, or, plastics, and other materials which would otherwise be disposed or processed as municipal waste or the mechanized separation and treatment of municipal waste and creation and recovery of reusable materials other than a fuel for the operation of energy.

“Recycling Facility” means a facility employing a technology that is a process that separates or classifies municipal waste and creates or recovers reusable materials that can be sold to or reused by a manufacturer as a substitute for or a supplement to virgin raw materials. The term “Recycling Facility” shall not mean transfer stations, municipal solid waste landfills, composting facilities, or resource recovery facilities.

“Refuse” means the same as rubbish.

“Residential Construction Debris” means waste building materials generated by the homeowner at their residence resulting from construction, remodeling, repair, or demolition operations. The term Residential Construction Debris does not include dirt, concrete, rocks, bricks, roofing shingles, or waste generated as a result of contractor services used for the activities herein described.

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“Residential Curbside Recycling” means the collection of Recyclable Materials placed at curbside by customers residing in single-family structures for collection, the delivery of such materials to a recycling facility, and the subsequent recycling of the collected materials.

“Residential Unit” means a residential dwelling occupied by a person or group of persons comprising not more than four families. A Residential Unit shall be deemed occupied when water service is being supplied to the Residential Unit. Each condominium dwelling, whether of single or multi-level construction, consisting of four units, shall be treated as a separate Residential Unit but on one bill presented to the owner of each complex.

“Residential Waste” means all refuse, garbage, rubbish, brush and bulky, and other solid waste generated by a customer at a residential unit.

“Roll-off Container” means a Container provided to a residential unit by a Contractor measuring twenty (20), thirty (30), or forty (40) cubic yards, intended for high-volumes of refuse, and capable of collection and transport to a MSW landfill by loading of the container onto the rear of transporting vehicle, but excluding a stationary compactor.

“Rubbish” means non-putrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

“Solid Waste” means Garbage, Rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include: a) Solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26; b) Solid, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvement; c) Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or re-pressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 USC, §§6901 et seq.), or d) Unacceptable Waste.

“Special Needs Residential Unit” means any residential dwelling that is inhabited by persons, all of whom are physically unable to place MSW or recyclable materials at the curbside, and that generates and accumulates MSW and recyclable materials. The identities of the members of a Special Needs Residential Unit shall be certified by the City Manager and agreed to by the Contractor.

“Special Waste” means waste that requires special handling and management due to the nature of the waste, including, but not limited to, the following: (A) containerized waste (e.g. a drum, barrel, portable tank, box, pail, etc.), (B) waste transported in a bulk tanker, (C) liquid waste, (D) sludge waste, (E) waste from an industrial process, (F) waste from a pollution control process, (G) residue and debris from the cleanup of a spill or release of a chemical, or (H) any other waste defined by Texas law, rule or regulation as "Special Waste".

“Stable Matter” means all manure and other waste matter normally accumulated in or about a stable, or any animal, livestock, or poultry enclosure, and resulting from the keeping of animals, poultry, or livestock.

“Structure” means all single-family homes, multi-family dwellings, and small businesses, included in the specifications, and city facilities that the City may at its sole discretion include in this Contract.

“Unacceptable Waste” means any waste or material that (i) is or contains motor oil or paint, (ii) is or contains televisions, (iii) is or contains information (in hard copy or electronic format) that is protected or regulated under any local, state or federal privacy or data security laws, including without limitation, the Health Insurance Portability and Accountability Act, (iv) is or contains fluorescent light bulbs, (v) is or contains treated/de-characterized wastes, (vi) is or contains any waste tires, (vii) is or contains sludge, (viii) is or contains waste or materials that may adversely affect the operations of the disposal facility regardless if such waste or materials could be legally received, (ix) is or contains other solid or liquid waste specifically prohibited for disposal at the disposal facility by TCEQ or any other regulatory agency having jurisdiction over such landfill, in accordance with applicable law; or (x) is or contains Excluded Waste, Special Waste, Hazardous Waste, Medical Waste, and Large Dead Animals. Title to and liability for unacceptable waste shall remain with the generator all times. Contractor has no obligation to accept, transport, process or dispose of any Unacceptable Waste. Unacceptable Waste means any waste, the acceptance, and handling of which by the Contractor would cause a violation of any permit, or any legal or regulatory requirement, substantial damage to the Contractor's equipment or facilities, or present a danger to the health or safety of the public or the Contractor's employees, including, but not limited to, hazardous waste, special waste (except as otherwise provided herein), untreated medical waste, dead animals weighing ten pounds (10 lbs.) or greater, solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit, soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements.

“Unit” means, collectively, residential units.

“Vegetable Waste” means putrescible solid waste resulting from the processing of plants for food by a commercial establishment such as canneries. This definition does not include waste products resulting from the preparation and consumption of food in food service establishments.

“Waste” or **“Waste Materials”** means all residential Municipal Solid Waste to be collected by the Contractor pursuant to this Contract. The term "Waste" specifically excludes Unacceptable Waste.

“White Good” means any item measuring more than either three (3) cubic feet in size, and that is manufactured primarily from metal, including, but not limited to, a bathtub, heater, hot water heater, refrigerator, sink or washer and dryer.

III. RATES

3.1 Base Rates. Subject to adjustment as provided herein, the rates and fees to be charged and received by the Contractor are:

1 time per week MSW collection in Contractor-supplied ninety-six (96) gallon cart, plus up to 6 additional item or bags of trash, or brush and bags of grass (brush and grass are included within the 6 items) each week, placed next to the cart. Construction debris will not be collected.	\$17.49 per residence per month
Every other week recycling collection in Contractor-supplied ninety-six (96) gallon cart	
Extra MSW Cart (each)	\$6.93 per residence per month
Extra Recycling Cart (each)	\$3.81 per residence per month

3.2 Modification of Rates. Base Rates charged by the Contractor for services will remain fixed and will not be adjusted until October 1, 2028. Commencing on October 1, 2028, and continuing annually on the first day of each Contract Year thereafter, the Contractor may adjust the Base Rates (each an “Annual Adjustment”), subject to the following:

- (a) Not later than the later of (i) June 1 prior to the effective date of the Annual Adjustment, and (ii) the fifth (5th) business day after publication of the CPI described in Section 3.2(b)(1), below, Contractor must provide the City written notice of the new schedule of Base Rates for the immediately-following Contract Year based on the Annual Adjustment, which notice must include a copy of the new Base Rates schedule (the “Adjustment Notice”);
- (b) Each Annual Adjustment shall not result in an increase in the Base Rates exceeding the lesser of:
 - (1) The percentage increase in the CPI for the twelve-month period ending on December 31 immediately prior to the effective date of the Annual Adjustment; or
 - (2) Five Percent (5%) of the then current Base Rates
- (c) If the percentage change in the CPI for the twelve-month period ending on December 31 before the effective date of the Annual Adjustment would result in a decrease in the Base

Rates, the Base Rates shall remain unchanged for the immediately following Contract Year;

- (d) If Contractor fails to timely deliver the Adjustment Notice as provided in Section 3.2(a), the Base Rates shall not be adjusted for the immediately following Contract Year; and
- (e) If no Annual Adjustment is applied to a Contract Year following the Contractor's failure to timely deliver an Adjustment Notice to City, the Annual Adjustment for the following Contract Year shall continue to be based on the percentage change in CPI for the twelve-month period ending on December 31 prior to the first day of the next Contract Year (i.e., there is no "catch-up" for the missed increase).

3.3 Regulatory Rate Adjustment. Contractor may petition the City at any time for additional payment rate adjustments on the basis of certain unusual and unanticipated changes in the cost of operations, including, but not limited to, new or revised Federal or State laws, ordinances, or regulations that place a direct fee or tax per ton on MSW generated by the City. The increase per month shall be calculated using the annual reported waste generation data per account in the City. The City shall have the right, as a condition for its approval, to demand inspections by itself or by an independent auditor of pertinent records that demonstrate the need for an adjustment to the payment rates. If the City fails to approve such requested increase within thirty (30) days after receipt of such request, the Contractor shall have the right to terminate the Contract not earlier than 180 days after providing written notice to City.

3.4 Operating Cost Adjustment. In addition to any other rate adjustments provided for herein, beginning on October 1, 2026, and at any time thereafter during the term of this Contract, Contractor may petition the City for additional rate and price adjustments at reasonable times on the basis of material or unusual changes in its cost of operations, not otherwise the basis of any other rate adjustments herein. At the time of any such petition, the Contractor shall provide the City with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment.

IV. SERVICE SPECIFICATIONS

4.1 General/ Service Contracts. The work to be performed by the Contractor pursuant to this contract consists of collection, transportation, and disposal, at its own expense, of waste and recyclable materials collected from residential units, within the corporate limits of the City as the present and future boundaries exist, and the furnishing of all labor, methods or processes, tools, equipment and transportation necessary to meet the requirements of this Contract.

4.2 Residential Solid Waste Collection.

- (a) Contractor will provide one (1) time per week collection of Acceptable Waste with the Contractor supplying one ninety-six (96) gallon poly cart per residence.
- (b) Each resident shall place its Cart(s) at the curb by 7:00 a.m. on the designated collection

day. Residents are required to place their Cart(s) next to the curb in front of the residence for pickup. It is the City's intention to continue all residential collection at the same location each residence has used for set-out in the past. No MSW Carts or other containers will be placed on the curb line earlier than twenty-four (24) hours prior to the time of collection and empty Carts and all other containers will be removed from the curb by the respective resident within twenty-four (24) hours after the time of collection.

- (c) All materials to be collected shall be placed within the Cart. Collections shall be made from residences on a regular schedule on the same day and at approximately the same time each week. This service will be provided Monday through Friday.
- (d) Contractor is not responsible for collecting carts weighing more than one hundred and seventy (170) pounds. Contractor shall collect Carts/Containers that are placed curbside or at the front of the home in the area of the drainage ditch (the exception being for Special Needs Residential Units). Contractor shall be responsible for providing notice first to the Customer and then to the City staff if they believe the cart is not prepared and/or located correctly by a Customer. However, the City shall be the sole and final judge as to such conditions and locations.
- (e) Collection of waste materials should not start before 7:00 a.m. or continue after 7:00 p.m. on the same day. Exceptions to collection hours shall be affected only upon the mutual agreement of the City and Contractor, or when Contractor reasonably determines that an exception is necessary to complete collection on an existing collection route due to unusual circumstances.
- (f) Residential Unit and Municipal Facilities collection routes shall be established by the Contractor. The Contractor shall communicate route day changes via direct mailings at its own expense, a map of the Residential Unit collection routes of such size to clearly show all pertinent information. Contractor may, from time to time, make changes in routes or days of collection affecting Residential Units or municipal facilities, provided such changes in routes or days of collection are submitted to the City at least two (2) weeks in advance of the commencement date for such changes. Contractor shall properly give written notice to the affected Residential Units.

4.3 Residential Collection not covered under the Base Rates. The following are not covered under the Base Rates:

- (a) The collection or disposal of Excluded Materials or Unacceptable Waste, and
- (c) The collection or disposal of any increased volume resulting from a flood, hurricane, tornado, ice storm, or similar or different act of God over which the Contractor has no control. In the event of such a flood, hurricane, tornado, ice storm, or other act of God, the Contractor and City may negotiate the work to be performed by the Contractor.

4.4 **Residential Collection of Recyclable Materials.** Contractor shall provide one collection every other week, on the same day that MSW is collected, of recyclable materials placed in the Residential Unit's Contractor-supplied Recycling Cart. Contractor shall not be required to collect any recyclable materials from a residential unit that are not placed in the Residential Unit's designated Recycling Container. Contractor may, but is not required to, treat as trash any recyclable materials placed curbside but not in the recycling container.

4.5 **Changes in Recycling Market Conditions.** If market conditions develop that limit or inhibit the Contractor from selling some or all of the collected Recyclables, Contractor may give written notice to the City regarding (i) a need to redefine Acceptable Recycling Material and Non-Recyclables, (ii) an update the processing facility's average commodity mix, (iii) the need to suspend or discontinue any or all recycling services, or (iv) the need to dispose of Acceptable Recycling Material (as currently defined) at the disposal facility and update the pricing to the City accordingly. Such actions may be reversed, upon approval from the City, if market conditions dictate.

4.6 **Acceptable Recycling Material.** Recyclables that are eligible for collection ("**Acceptable Recycling Materials**") must be dry, loose (not bagged), un-shredded, and empty, and shall include only the following:

Aluminum cans	Newspaper
PET bottles with the symbol #1 – with screw tops only	Mail
HDPE plastic bottles with the symbol #2 (milk, water bottles, detergent, shampoo bottles, etc.)	Uncoated paperboard (ex. cereal boxes; food and snack boxes)
PP plastic bottles and tubs with symbol # 5 - empty	Uncoated printing, writing, and office paper
Steel and tin cans	Old corrugated containers/cardboard (uncoated)
Glass food and beverage containers – brown, clear, or green	Magazines, glossy inserts, and pamphlets
Plastics not listed above, including but not limited to those with symbols #3, #4, #7	Cartons, Aseptic Containers

4.7 **Non-Recyclables.** Waste that is not eligible for recycling and shall not be treated and collected as Acceptable Recycling Materials ("**Non-Recyclables**") include, but are not limited to the following:

Plastic bags and bagged materials (even if containing Recyclables)	Microwavable trays
Porcelain and ceramics	Mirrors, windows, or auto glass
Light bulbs	Coated cardboard
Soiled paper, including paper plates, cups, and pizza boxes	
Expanded polystyrene and #6 plastics	Coat hangers
Glass and metal cookware/bake ware	Household appliances and electronics

Hoses, cords, wires	Yard waste, construction debris, and wood
Flexible plastic or film packaging and multi-laminated materials	Needles, syringes, IV bags, or other medical supplies
Food waste and liquids, containers containing such items	Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.)
Excluded Materials or containers that contained Excluded Materials	Napkins, paper towels, tissue, paper plates, paper cups, and plastic utensils
Any paper Recyclable materials or pieces of paper, Recyclables less than 4 inches in size in any dimension.	Propane tanks, batteries

4.8 Residential Brush/Bulk. Contractor will collect brush and bulk items once per week on the same day as the MSW and Recycling collections are performed. There is a maximum of six (6) items outside of the cart that may be composed of the following:

Bulk items must be less than two (2) cubic yards, and each item cannot exceed 40 pounds in weight. The bulk items are included in the six (6) item limit. Construction debris will not be collected.

Brush or limbs (including Christmas trees) must be securely bundled, no longer than 4 feet, or 40 pounds in weight. The bundled items are included in the six (6) item limit.

Contractor shall collect larger amounts of brush outside of the six (6) item limit on a pay per pickup basis. The resident(s) shall schedule such pickup by contacting Contractor directly. The residents(s) shall pay Contractor directly in advance for the scheduled pickup in an amount not to exceed thirty-five dollars (\$35.00), plus applicable sales tax. Any and all loads to be picked up shall not exceed four (4) cubic yards per pickup, per residence.

The brush pickup service is for the collection and disposal of brush, limbs, and branches, including clean woody vegetative material, not greater than six (6) inches in diameter, and no longer than four (4) feet in length, generated and accumulated by Residential Units, that result from landscaping maintenance of those Residential Units. This service specifically excludes stumps, roots, or shrubs with thorns or intact root balls. Landscaping materials such as pickets or any items with nails are also excluded from the definition of acceptable waste with this brushy pickup service.

Bags of grass clippings may be placed next to the cart, with no bag exceeding 40 pounds and be securely tied in a bag with sufficient wall strength to maintain physical integrity when lifted by the top of the bag. The bags of grass will be counted as part of the six (6) item limit.

4.9 Negotiated Collections. It is understood that the service provided under Section 4.2 does not include the collection of bulky items, bags, and bundles comprised of construction and demolition waste, white goods or any materials resulting from remodeling, general property clean-up or clearing property for the preparation of construction. Customers may request Negotiated Collections, wherein the Contractor may negotiate an agreement on an individual basis with the owner or occupant of a Residential Unit regarding the collection of such items. Payment for such services will be between the Contractor and the generator of the materials.

4.10 Residential Carts. Upon written notice from City, Contractor agrees to provide one (1) new MSW Cart and one (1) new Recycling Cart to new Residential Units constructed within City during the

Contractor's Initial 

Term of the Contract. New carts will be delivered to the Residential Unit with written instructions for proper use, including information regarding any actions taken by a Customer that may void manufacturer warranties, such as the placement of hot ashes in the cart. New Recycling Carts and replacement lids for existing recycling carts will have recycling guidelines heat-molded on the top of the lid determined by Contractor, subject to City's approval, which approval shall not be unreasonably withheld or delayed. In addition:

- (a) Contractor shall not be required to collect any waste or recyclable materials that are not placed in the designated cart or any waste or recyclable materials from a cart that weighs more than one hundred seventy (170) pounds, or a cart and/or bags that are not properly placed curbside; provided, however, prior to refusing to collect any waste from a Residential Customer because such waste is not properly prepared (*i.e.*, placed in a Poly Cart) and/or placed at curbside. Contractor shall notify the Residential Customer and then the City Manager if it believes the waste is not prepared and/or located correctly by the Customer, in which case the City Manager shall be the sole and final judge as to whether or not such waste was properly placed for collection and should be collected; and
- (b) Carts shall remain at the location of the residential unit where delivered by the Contractor. Should a cart be lost or stolen from a residential unit, the Contractor shall provide a replacement cart. Contractor shall assess a \$75 charge to the resident for a new replacement cart and shall look solely to the Customer to pay such charge. If a cart is damaged while at a residential unit, the Customer shall contact the Contractor directly to request a replacement cart. Contractor shall replace a damaged cart with a reconditioned cart at no additional charge.

The Contractor will be responsible for promptly responding to requests from and delivering carts to Customers who need a damaged cart replaced. Contractor shall deliver a reconditioned cart not later than five (5) business days after written notice from City or the Customer. Reconditioned carts must be clean prior to delivery to the Customer. Damaged carts shall be removed at the same time a reconditioned or replacement cart is delivered.

4.11 Special Needs Waste Placement for Collection Assistance. If the City Manager determines that all residents of a Residential Unit are physically disabled or because of age or verified physical limitations cannot safely move their carts to the curb for collection, Contractor personnel will collect the carts at the side yard or garage door and return to the same place once emptied ("**Special Needs Collection**"). Contractor shall provide Special Needs Collection to any such Customer designated by the City Manager and identified in writing to Contractor.

4.12 Right to Reject Unacceptable Waste. Contractor may, in its sole discretion, reject Unacceptable Waste placed curbside for collection by a Customer, in which case neither title to, nor liability for, such unacceptable waste shall pass to Contractor. Contractor shall notify Customer and the City. Customer shall be responsible for removing Unacceptable Waste at their own expense.

4.13 **Adding Residential Customers.** Contractor will establish new residential customer service not later than the next collection day for the subject residential unit following receipt of the written request for such commencement of service from the City.

4.14 **Unacceptable Waste.**

- (a) Contractor has no obligation to collect Unacceptable Waste pursuant to this Contract. Unless otherwise provided in this Contract, the City has no obligation to pay Contractor for the collection of Unacceptable Waste.
- (b) If Unacceptable Waste is discovered before it is collected by the Contractor, Contractor may refuse to collect the entire bin, container, bag, or bundle of waste containing the Unacceptable Waste. Contractor shall contact the City upon the discovery of Unacceptable Waste that has been placed for collection. City shall be responsible for taking any appropriate action to ensure that such Unacceptable Waste is removed and properly disposed of by the depositor or generator of the Unacceptable Waste and/or require the Customer to pay for the removal of the Unacceptable at the Customer's expense.
- (c) If any Unacceptable Waste is not discovered by Contractor before it is collected, Contractor may, in its sole discretion, remove, transport, and dispose of such Unacceptable Waste at a location authorized to accept such Unacceptable Waste in accordance with all applicable laws and charge the generator of such Unacceptable Waste all direct and indirect costs incurred due to removal, remediation, handling, transportation, delivery, and disposal of such Unacceptable Waste. The City will reasonably assist the Contractor in determining the identity of the depositor or generator of the Unacceptable Waste to enable the Contractor to collect from the depositor or generator the cost incurred by the Contractor in connection with such Unacceptable Waste.

V. COLLECTION OPERATIONS – GENERAL PROVISIONS

5.1 **Disposal.** Contractor shall deliver all waste collected pursuant to this Contract to a Disposal Facility.

5.2 **Hours of Collection.**

- (a) Unless otherwise agreed by the Contract Administrator in accordance with Section 5.2(b), collection of Waste from Customers shall not start before 7:00 a.m. Central Time or continue after 7:00 p.m. Central Time on the same day in any residentially zoned area of City's corporate limits or otherwise within five hundred (500) feet of a residential unit. Collection from residential units shall not occur on Sundays unless authorized in writing by the Contract Administrator following a weather-related event (e.g. winter storm event) or other circumstance that has resulted in the Contractor being unable to perform regular collections on scheduled days.



- (b) Notwithstanding the foregoing to the contrary, collection on all routes will be completed no later than 7:00 p.m. Central Time each service day unless:
 - (1) Contractor provides written notice to the City Manager with a description and justification of the unusual circumstances prior to the collection that justifies a later completion time for the route or Customer identified in the request; and
 - (2) The City Manager determines that the collection will not result in a violation of City's ordinances, including those regarding excessive noise; and
 - (3) The City Manager approves the later completion time in writing.

5.3 Collection Routes. Contractor may request changes to collection routes that are determined to be more efficient than those that would otherwise be in effect on the Commencement Date or to which the Parties later agree; provided, however, no change in collection routes shall be made unless:

- (a) such change has been approved in writing by the City Manager, which shall not be unreasonably withheld or delayed; and
- (b) if the change will require a change in the days MSW and/or Recyclable Materials are collected from a Customer, Contractor has provided written notice to each Customer whose collection dates will change not later than fifteen (15) days prior to the date the new collection dates become effective.

5.4 Holidays. Contractor may, at Contractor's option, suspend collection on a holiday. If Contractor elects not to provide collection services on a holiday, the Contractor shall notify the City not less than two (2) weeks in advance of the holiday of the dates that collection will occur for those Customers whose regular collection day falls on the holiday on which a collection did not occur, provided such delayed collection shall be not later than the next business day following the holiday unless otherwise agreed by the Contract Administrator.

5.5 Complaints. Customer complaints, including complaints for missed collections, shall be directed to the Contractor. At the end of each business day, before 4:00 p.m. (and, in the case of complaints received on a Saturday, Sunday, or a holiday, on the immediately following business day), Contractor shall email to the City a summary of Customer complaints received on that day setting forth at least the following relating to each complaint:

- (a) The address of the Customer making the complaint;
- (b) The time the call or e-mail was received from the Customer;
- (c) A summary of the follow-up action taken by Contractor to resolve open complaints from the same or prior days, including the date of the original complaint, the date(s) and time(s)

of subsequent communications with the Customer regarding the complaint, the name of Contractor's employee(s) who interacted with the Customer regarding the complaint, a summary of the contents of the communications between Contractor's employee(s) and the Customer, and the date when Contractor has deemed the complaint to be resolved and closed.

5.6 Collection Vehicles and Equipment. All vehicles, facilities, equipment, and property used in the performance of this Contract shall be provided by Contractor and comply with the following:

- (a) All vehicles shall be not older than ten (10) model years at any time during the term of this Contract;
- (b) All vehicles shall be kept in good operating order and a clean and sanitary condition with the interior of the cab free of clutter;
- (c) All collection equipment shall be operated and maintained in compliance with all applicable state and federal safety standards;
- (d) Contractor shall obtain and maintain current all required operating permits and registrations for the collection vehicles;
- (e) Collection vehicles shall be painted in Contractor's color schemes. Vehicle numbers, at least six-inch (6.0") high shall be painted on each side of the rear of the vehicle in a contrasting color from the body color;
- (f) No advertising shall be permitted on the collection vehicle other than the name and address of Contractor;
- (g) Contractor shall place the appropriate customer service telephone number on all collection trucks;
- (h) The type, number, and capacity of collection vehicles shall be sufficient to service all structures at the frequency and level of collection specified in the Contract and capable of handling, in the safest and most efficient method available, the Carts, and material specified for each structure on its route;
- (i) All vehicles shall be operated in conformity with applicable federal and state laws and regulations;
- (j) All vehicles used by Contractor's management personnel, including route supervisors, shall be equipped with cell phones with voice mail so they can be contacted by the City;
- (k) Collection vehicles will be equipped with two-way communication devices so that Contractor's staff and the driver may communicate during the route collection; and

- (I) All collection vehicles shall be equipped with Global Position System (“GPS”) tracking equipment to allow for tracking and locating collection vehicles, which tracking information can be stored and retrieved by the Contractor and is provided to City upon written request.

Contractor shall furnish to City an inventory of all equipment and vehicles to be used pursuant to this Contract (the “Equipment Inventory”). Contractor shall provide the City with an updated Equipment Inventory not later than ten (10) business days after Contractor adds and/or deletes a vehicle or piece of equipment that is being used in the City unless the addition or deletion is only for a temporary period to allow for the repair of a vehicle or piece of equipment on the Equipment Inventory that has been temporarily removed from service. Contractor may use replacement and/or additional equipment and vehicles for a period not exceeding fifteen (15) consecutive days or sixty (60) days during any Contract Year without updating the Equipment Inventory if the use of such equipment and/or vehicles is reasonably necessary to maintain a consistent level of collection services as required by this Contract during a period of an abnormally high volume of Waste needing to be collected or to cover extra collections as the result of a holiday collection schedule. Contractor may include on the Equipment Inventory equipment or vehicles Contractor intends to regularly use for collection during such temporary periods of high volume or during holiday collection schedules, provided such equipment and/or vehicles are identified as “standby” or “reserve” equipment or vehicles on the Equipment Inventory.

- 5.7 **Spillage.** Contractor shall not litter premises in the process of making collections. In the event of spillage by the Contractor, Contractor will be responsible for the cleanup of any spills, including, but not limited to, garbage, fuel, oil, and other fluids from Contractor’s vehicles or resulting from the collection of waste material. Contractor shall not be responsible for the collection of any scattered waste that has not been caused by Contractor’s employees.

It is understood and agreed that the Contractors shall not be required to clean up, collect or dispose of any loose or spilled municipal solid waste or recyclable materials not caused by the Contractor’s rendering of the services, or be required to collect and dispose of any excess municipal solid waste or recyclable materials improperly placed outside of the containers by any residential unit. The Contractor may report the location of such conditions to the City so that the City can issue proper notice to the owner or occupant of the residential unit, instructing the owner or occupant to properly contain such municipal solid waste or recyclable materials. Should excess municipal solid waste or recyclable materials continue to be improperly placed outside of the containers, the City shall require the residential unit to utilize additional carts to provide sufficient capacity so that the excess municipal solid waste or recyclable materials will be regularly contained. Contractor shall be compensated for these additional services as provided for in Section 3.1 and shall be entitled to receive an extra collection charge for each additional container requiring an extra collection.

- 5.8 **Point of Contact.** All dealings and contacts between Contractor and the City shall be directed between the Public Sector representative of Contractor, or such other individual identified by Contractor, and the Contract Administrator.

5.9 Contractor's Employees.

- (a) Contractor's officers, employees, or agents assigned to perform collection services to Customers pursuant to this Contract shall:
- (1) at all times when collecting MSW and/or Recyclable Materials, wear uniforms and carry identification cards and/or badges bearing the name and photo of the officer or employee and identifying the person as an officer or employee of Contractor;
 - (2) possess at all times the appropriate State of Texas operator's license for the vehicle being operated when driving any vehicles used in connection with the performance of this Contract;
 - (3) never identify themselves, or in any way represent themselves, as being employees or agents of the City;
 - (4) not possess or consume alcoholic beverages or controlled substances while on duty or in the course of performing duties under this Contract, and Contractor shall maintain and enforce a policy consistent with this prohibition;
 - (5) interact with Customers and other members of the public in a neat, orderly, courteous, helpful, and impartial manner and refrain from belligerent behavior and/or profanity when interacting with Customers;
 - (6) conduct collection services with as little noise and as little disturbance to Customer as reasonably possible taking into consideration the noise customarily generated by the normal operation of Collection Vehicles and other collection equipment;
 - (7) not disturb or otherwise unreasonably interfere with a Customer's property that is adjacent to where the Customer's container(s) are located for collection; and
 - (8) take reasonable precautions to prevent damage to property, including lawns, shrubs, flowers, and other plants while performing collection services.
- (b) Contractor shall be solely responsible for managing and disciplining Contractor's employees. If Contractor receives a report alleging one or more of Contractor's employee(s) was wanton, discourteous, belligerent, profane, or in any way intimidating, either physically or verbally, or appeared to be under the influence of drugs or alcohol, Contractor shall submit a written report to the City providing the details of the incident, which report shall include: the nature of the incident, time, date, and location of the incident; name, address, and telephone number of the person alleging the violation; the name and title Contractor's officer(s) and/or employee(s) involved in the incident; and what disciplinary action, if any, was taken by Contractor. If an employee of Contractor is the



subject of repeated allegations or a single egregious allegation of the type described above, such employee shall be removed from an assignment from providing collection services under this Contract not later than ten (10) days after receipt of the City's written request for such removal, which removal shall continue for the duration of the Term of this Contract (including Initial Term and any Extended Term) unless otherwise agreed in writing by the Contract Administrator.

VI. REPORTING REQUIREMENTS

- 6.1 **Reports Generally.** Contractor shall provide to the City the reports or notifications to the Contract Administrator described in this Article VI in addition to any daily reports required by this Contract. If not established by an outside authority, the Parties shall agree on the required report format, provided each report contains at least the information required by Article VI. The reports delivered by Contractor to City pursuant to this Article VI becomes the property of City. City shall have the right to use the reports provided by Contractor for whatever purposes City deems appropriate.
- 6.2 **Monthly Reports.** Not later than the tenth of each month during the term of this Contract, Contractor shall deliver to the City Manager, or their designee, in the agreed format a report relating to the collection activity during the prior calendar month ("**Monthly Reports**"). Monthly Reports shall include route-by-route information regarding Participation Rates, Recycling Rates, and Tonnage Collected and contain, as a minimum, the following information:
- (a) Number of Residential Units served;
 - (b) Tonnage of Waste collected during the month and delivered to the Disposal Facility;
 - (d) Tonnage of Residential Recycling Materials collected and delivered to the Disposal Facility;
 - (e) Residential Recycling Participation Rate, being the percentage of Residential Units participating in recycling collection services;
 - (f) Summary of motor vehicle accidents or moving violations involving Contractor's vehicles occurring while providing services under the Contract during the month;
 - (g) Summary of property damage claims or personal injury claims received by Contractor during the month as a result of providing services under the Contract, even if the events giving rise to such claim occurred in a prior month; and
 - (h) List of Customer complaints received by Contractor arranged and listed by category, including the date the complaint was received, the address of the complainant, the address

of the property about which the complaint was made (if different than Customer's address), name of the complainant, nature of the complaint, how the complaint was resolved, the date the complaint was resolved , and if the complaint has not been resolved as of the date of the Monthly Report, when and how Contractor expects the complaint to be resolved.

6.3 Annual Reports. No later than November 1 after the end of each Contract Year, Contractor shall submit to the Contract Administrator an annual report (the "**Annual Report**") covering the immediately preceding Contract Year and include at least the following information:

- (a) A collated summary of the information contained in the monthly reports, including reconciliation of any and/or adjustments from prior reports;
- (b) A discussion of highlights and other noteworthy experiences, along with measures to resolve problems, increase efficiency, and increase participation;
- (c) A description of all public information programs undertaken with audiences reached and media used; and
- (d) With respect to the final Annual Report, including all information required for the Monthly Report relating to the last calendar month prior to the date of termination of the Contract.

The obligation to submit the Annual Report for the last Contract Year shall survive the termination or expiration of this Contract. Contractor shall cooperate fully with providing information relevant to reporting requirements. The reporting requirements are part of the material consideration and failure to comply with reporting requirements shall constitute a material default and shall be subject to penalties and/or termination of this Contract.

VII. PUBLIC EDUCATION CAMPAIGN SERVICE AND CITY FACILITY SERVICE

7.1 Public Education Campaign. Contractor will work with the City's Public Information Officer to determine the best methods of providing information regarding municipal solid waste and recycling services to the residential units.

The Contractor agrees to pay Two Thousand Dollars (\$2,000) by the end of each month to the City to sponsor the City's monthly newsletter as a means for continued recycling program education.

Contractor will schedule, publicize, and conduct an ongoing single-stream recycling education program annually that has had the prior review and approval of the City Council and Contract Administrator.

In addition, the Contractor will present at least one educational or marketing event to the City each year. The Contractor will help in developing recycling programs to City sponsored events that require recycling assistance.

7.2 **City Facilities and Special Events.** Contractor will provide, at no cost to the City, a reasonably adequate number of carts, dumpsters and recycling containers to collect municipal solid waste at all current and future municipal locations within the City serviced one to three times per week as needed.

Contractor will provide, at no cost to the City, a reasonably adequate number of containers to collect municipal solid waste at four (4) special events in the City per calendar year, provided that the City gives the Contractor reasonable prior written notice of the date of such special event, as well as a number of containers that will be required.

VIII. CONTRACTOR RESPONSIBILITIES

8.1 **Generally.** In providing the collection services required by this Contract, Contractor's responsibilities shall include:

- (a) Furnishing all skill, labor, equipment, materials, supplies, and utility services required for providing all services in accordance with this Contract;
- (b) All actions and activities of its subcontractors;
- (c) Supplying all records and information required by this Contract;
- (d) Securing at Contractor's expense all governmental permits and licenses and required regulatory approvals, including those required by City ordinances;
- (e) Paying all applicable taxes;
- (f) Paying to the City not later than the thirtieth (30) day after the Effective Date the one-time reimbursement of fifty percent (50%) of the City's costs for the development of the Contract Documents including, but not limited to, this Contract, the estimated cost is \$37,467;
- (g) Complying with applicable laws and regulations;
- (h) Performing all work in a timely, thorough, and professional manner;
- (i) Disposing of all collected MSW at a permitted MSW Landfill;
- (j) Processing and marketing Recyclable Materials collected by Contractor from Residential Units;
- (k) All wage increases for Contractor's collectors or other employees, any benefits or added costs resulting from changes in technology, laws, and regulations, labor practices,

availability of equipment, and other business risks that may affect the performance of this Contract; and

- (l) Collecting all missed collections for any service provided within one (1) business day after being notified of the missed collections; provided, however, missed pick-ups for which Contractor receives a notification on a Saturday will be collected on the immediately following Monday.

8.2 Contractor's Office. Contractor shall maintain an office or such other facilities through which it can be contacted by direct visit or by local (toll-free) call from anywhere in the City on regular collection days, as follows: (i) Monday through Friday between 7:00 a.m. and 7:00 p.m. Central Time; and (ii) Saturday between 9:00 a.m. and 3:00 p.m. Central Time. Such office shall be staffed by a responsible person in charge and an adequate number of additional staff available to answer the phone from 7:00 a.m. to 7:00 p.m. on regular collection days. When the collection is postponed one day for scheduled or unscheduled reasons, Contractor's customer service personnel must be available to answer phones on all days during which collection service is provided. An informative recording answering frequently asked questions shall be available at all other hours.

8.3 Newsworthy and Emergency Notifications. Contractor must contact Contract Administrator as soon as reasonably practical and, in no case, later than twenty-four (24) hours after the occurrence of one of the following:

- (a) any news coverage or sudden event that could impact the service Contractor provides to City pursuant to this Contract;
- (b) any news coverage or sudden event that is reasonably anticipated to result in Customer phone calls to City;
- (c) an environmental emergency or incident, including spills, that involves Contractor, a related business of Contractor, or one or more of Contractor's employees that occurs within City;
- (d) a motor vehicle accident that occurred while providing services under the Contract;
- (e) personal injury accidents which occurred while providing services under the Contract; and/or
- (f) property damages that occurred while providing services under the Contract.

8.4 Street Damages. Contractor shall be responsible for the repair of damage to paved surfaces on public streets, alleys, bridges, or easements when such damage is caused by Contractor's negligent or inappropriate operation of its collection equipment. Contractor shall not be responsible for normal wear and tear of public rights of way or regular maintenance of such rights of way.

Substantiation of cause shall be determined by the mutual agreement of City and Contractor. At no time shall Contractor operate a vehicle within City's corporate limits that:

- (a) is loaded to the extent that the load exceeds the weight allowed by law for the rating of said vehicle; or
- (b) is loaded to the extent that the combined weight of the load and vehicle exceeds the weight allowed on the public streets, alleys, thoroughfares, bridges, or easements on which the vehicle is traveling if such street, alley, or bridge has received a weight limitation rating.

Contractor shall, not later than forty-five (45) days following written demand, reimburse the City for all costs related to the City's repair of damages resulting from Contractor's negligent or inappropriate operation of its collection equipment. Notwithstanding anything in this Section 8.4 to the contrary, Contractor shall not be responsible for damage which is not negligently or willfully caused by Contractor to any private pavement or accompanying sub-surface, or any drive approach connecting said private pavement to a public street or alley, of any route reasonably necessary to perform the services in the Contract.

8.5 City Facilities. Contractor shall not charge City for collection services from City Facilities or from any additional City Facilities that City may add.

8.6 Enforcement. Contractor has the right to seek an injunction against any third party which is believed to be infringing upon the rights of Contractor to this Contract, including Contractor's right to be the sole provider of Residential Waste and Recyclable Materials collection within City per this Contract.

8.7 Damage to Property. Contractor shall take all reasonable precautions to protect public and private property during the performance of this Contract. Contractor shall repair or replace any private or public property which is damaged by Contractor's officers' or employees' negligence or willful misconduct. Such property damages shall be resolved by Contractor either by repair or replacement, at no charge to the property owner, within forty-eight (48) hours of the earlier of knowledge of or notice to Contractor of such damage unless a longer period of time is approved in writing by the City Manager and any replacement of property shall be accomplished with property of the same or equivalent value at the time of the damage. If Contractor fails to address the repair and replacement of damaged property within forty-eight (48) hours of earlier knowledge of or notice to Contractor of such damage or the longer period of time approved in writing by the City Manager, the City Manager may, but shall not be obligated to, cause the repair or replacement of such damaged property and the cost of doing so shall be deducted from any payment to be made to Contractor by City. Notwithstanding anything to the contrary, Contractor shall not be liable for any damages to pavement, curbing, or other driving surfaces to the extent that such damages result solely from the legally allowable weight of its trucks and equipment on the surfaces as necessary to perform the services.

IX. LIQUIDATED DAMAGES

9.1 Generally. In no event will the Contractor be liable for Liquidated Damages unless such failure is caused by Contractor. Contractor shall not be fined for unverified complaints, and no fines should be imposed during a force majeure event. The City shall be required to notify Contractor of any alleged unexcused complaint and Contractor shall have an opportunity to investigate and cure if the complaint is valid before the City may impose any Liquidated Damages on Contractor. The Contract shall provide that City may charge Liquidated Damages to Contractor in accordance with the Summary of Liquidated Damages monthly in connection with the Contract and shall, at the end of each month during the term of the Contract, notify Contractor in writing of the amount of Liquidated Damages assessed for such month, if any. In the event Contractor wishes to contest any Liquidated Damages assessment, Contractor will be authorized to request in writing a meeting with the City Manager or his/her designee to attempt to resolve the issue. In the event the Contractor wishes to contest a decision by City Manager or their designee it shall, within ten (10) days after receiving such notice, request in writing that City Manager or their designee requests a hearing date before City Manager to present its defense to such assessment. City Manager or their designee will notify Contractor in writing of any action taken concerning Contractor's claims.

The sum of money thus deducted or charged as Liquidated Damages is not to be considered as a penalty, but shall be deemed, taken, and treated as reasonable liquidated damages, representing a reasonable estimate of damages, or a reasonable forecast of just compensation, because the harm caused by the breach is incapable or extremely difficult of estimation due to the public nature of the work and the likely loss to be sustained by the City and the general public, estimated at or before the time of executing this Contract. Further, the Parties acknowledge the City's paramount purposes and duty to protect the general health, safety, and welfare of the public, and the Parties agree that any alleged disparity between actual and Liquidated Damages shall be construed as bridgeable and acceptable as a matter of law and public policy and shall be calculated and construed in favor of the City.

Should the City neglect or opt not to enforce a claim of Liquidated Damages for any given breach on any given date or time, it shall not remove or limit the ability of the City to enforce such claim retroactively or in the future.

9.2 Liquidated Damages Assessed. City may assess Liquidated Damages to Contractor as follows:

- (a) Missed collection: \$100 per missed collection in excess of five (5) missed collections on the same collection day. A missed collection occurs when a Customer reports a missed collection, the address was not reported by Contractor as an unacceptable set-out, and Contractor cannot provide data demonstrating the collection vehicle traveled on the street and collections occurred on the street on the day on which the complaint relates;
- (b) \$500 per incident for Contractor failing to collect Waste on an entire block containing Residential Units. A missed Residential Unit block is where three (3) Residential Units on one side of a street between cross streets, or an entire cul-de-sac, report a missed collection. A missed Residential Unit block occurs when the addresses reporting missed collections were not reported by Contractor as unacceptable setouts, and Contractor cannot provide

data demonstrating the collection vehicle traveled on the block during the day of the complaint:

- (c) Commencement of residential collection prior to 7 a.m., or operating within City after 7 p.m. or within five hundred (500) feet of a residential unit except as expressly permitted: \$250 per route per occurrence;
- (d) Failure to complete a majority (+50%) of the collections on a given day: \$5,000 for each incident (unless Contractor has reported to City that collections cannot be made due to unsafe conditions (roadway freezing, etc.));
- (e) Failure to clean up spilled Solid Waste or Recyclables resulting from Contractor loading and/or transporting within two (2) hours of notification: \$250 per impacted address;
- (f) Failure to resolve properly reported bona fide Customer complaints within one business day: \$200 for each incident;
- (g) Failure to submit an accurate Monthly or Annual report in the specified format, as required by the Contract: \$250 per report per calendar day delinquent;
- (h) Failure to submit accurate accounting invoices and/or complaint reports in the specified format: Non-payment until an accurate accounting is submitted;
- (i) Failure to return carts to approximately the original collection location: \$50 each incident, for each affected address;
- (j) Contractor commingling Recyclable Materials with MSW: \$1,000 for each incident; and
- (k) Disposal of Recyclable Materials to a site other than a proper recycling facility: \$2,000 for each incident.

9.3 **Liquidated Damages and Not Penalty.** Because Contractor's failure to perform the specific tasks described in Section 9.2 and the damages that would be incurred by City being required to assist Customers in handling and resolving complaints (which Residential Customers are citizens and/or property owners located in City's corporate limits), cannot be reasonably estimated and calculated by the Parties, and because the precise nature and amount of damages that may be incurred cannot be reasonably foreseen by the Parties, City and Contractor agree that the amount assessed in accordance with Section 9.2 constitute Liquidated Damages and not a penalty.

X. CITY'S REPRESENTATIONS AND WARRANTIES

10.1 **Representations and Warranties.** City hereby makes the following representations and warranties to and for the benefit of, Contractor:

- (a) City is a home rule municipality duly organized and validly existing under the Constitution and laws of the State of Texas, with full legal right, power, and authority to enter into and perform its obligations under this Contract.
- (b) City has duly authorized the execution and delivery of this Contract, and this Contract constitutes a legal, valid, and binding obligation of City that is enforceable against City according to its terms.
- (c) To the best of City's knowledge, information, investigation, or belief, no action, suit, or proceeding, at law or in equity, before or by any court or governmental authority, commission, Council, agency, or instrumentality is pending against City wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or in connection with the obligations, undertakings, and transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Contract or any other contract or instrument entered into by City in connection with the obligations, undertakings, transactions contemplated hereby.
- (d) To the best of City's knowledge, information, investigation, or belief, as of the Commencement Date, City has the legal right and authority to grant this exclusive franchise and shall defend, and use reasonable efforts to uphold this Contract, and City's right to adopt and/or enforce this exclusive franchise if City's right to adopt and/or enforce this exclusive franchise or enter into this Contract is ever challenged, litigated or disputed during the term of the Contract. City acknowledges that this is an essential term of the Contract that Contractor is relying upon in entering into the Contract. Contractor may terminate this Contract if after the Effective Date that City's legal rights and authority as set forth in this paragraph (d) are not accurate as set forth in Section 15.05 below.

XI. CUSTOMER BILLING AND PAYMENTS TO CONTRACTOR

11.1 **Monthly Statement.** Monthly, the City agrees to bill and collect the rates and fees charged by, and owed to, Contractor, from all Residential Units possessing active water meters within the City's corporate limits, as well as from all other Residential Units requiring the collection, hauling, recycling and disposal of Municipal Solid Waste within the City's corporate limits, including the City's extra-territorial jurisdiction (ETJ) and/or expanded service areas or areas annexed by the City (the "Monthly Statement").

City shall provide the Contractor with revised Residential Unit counts by the tenth (10th) day of each month. The Contractor will submit the Monthly Statement to the City on or before the fifteenth day of each month for all solid waste and recycling services rendered for the immediately preceding month. Thereafter, the City will remit to the Contractor an amount equal to such Monthly Statement within thirty (30) days of receipt of the Monthly Statement. Along with each monthly remittance, the City shall provide the Contractor with a report indicating the number and rate of Residential



Units which have been billed for that month. Nothing herein shall prohibit the City from collecting sums in addition to those sums called for herein.

- 11.2 Taxes.** In addition to the amounts billed and collected by the City, the City shall also be responsible for paying all sales, use and service taxes assessed or payable in connection with the services.
- 11.3 Bad Debt; Unpaid Rates/Fees.** The City agrees that payments owing to the Contractor pursuant to this Contract shall be based solely on the services rendered by the Contractor. The Contractor shall not be held responsible for the collection of "bad debt" billed by and owed to City for the services, nor shall the Contractor be penalized for services rendered that remain unpaid by any Residential Unit.
- 11.4 Billings for Roll-Off Services.** Notwithstanding the above, the Contractor will bill and collect all residential fees for services performed with respect to Roll-Off Containers.

XII. TITLE TO WASTE MATERIAL

Title to MSW and Recyclable Materials shall pass to Contractor when placed in Contractor's collection vehicle. Title to and liability for any Unacceptable Waste shall remain with the Customer, Generator, or depositor of such waste and shall at no time pass to Contractor. City will provide all reasonable assistance to Contractor to investigate and determine the identity of the depositor or Generator of the Unacceptable Waste and to collect the costs incurred by Contractor in connection with such Unacceptable Waste. City is not responsible for costs associated with Unacceptable Waste, except to the extent that such Unacceptable Waste was placed for collection by City in violation of this Contract.

XIII. CONTRACTOR'S PROPERTY

All containers, trucks, and any other equipment that Contractor furnishes under this Contract shall remain Contractor's property.

XIV. RECORDKEEPING / RIGHT TO INSPECT

Contractor shall maintain all records generated in connection with the performance of its obligations and/or provision of services under this Contract for a period of at least four (4) years after submission of the last Monthly Report. City retains the right to examine, inspect, audit, and copy, regardless of location, all documents, records, files, data, and information generated or utilized by Contractor in the performance of its obligations and/or provision of services under this Contract. In addition to the Monthly Reports and Annual Reports, City may request periodic reports pursuant to services rendered regarding information not contained in the Monthly Reports or Annual Reports. Such reports must be provided in a reasonable and timely manner, but in no case later than fifteen (15) business days following receipt of the written request unless the request specifies a later deadline. City may withhold making payments due to Contractor pursuant to this Contract if any report required to be made pursuant to this Contract has not been delivered to City

on or before the fifth (5th) day following the date that such report is required to be delivered to City pursuant to this Contract and may continue to be withheld until the second business day after such report is delivered.

XV. TERMINATION OF CONTRACT

- 15.1 Termination by Default.** If City notifies Contractor of a failure of Contractor to perform a material provision of this Contract and Contractor has failed to cure such failure on or before the thirtieth (30th) day following such notice, or if such failure can be cured, but cannot be reasonably cured within said thirty (30) days, then by the date such failure should reasonably be cured, but in no case later than ninety (90) days after delivery of the notice from City, City may terminate this Contract by delivery of written notice to Contractor. Upon such termination under this section 15.1, in the event such termination occurs during the Initial Term, City may exercise its rights under Contractor's performance bond, if applicable, and procure the services of another waste collection services provider to complete the work covered under this Contract for the remainder of the time period covered by the Initial Term. Except for such right during the Initial Term, following any such termination, neither Party shall have any further obligation under this Contract, but the Parties expressly reserve all claims for damages resulting from said uncured default and claims for personal injuries or property damage and the right to be indemnified therefor as expressly provided in this Contract and arising prior to such termination date.
- 15.2 Termination for Insolvency, Bankruptcy, Assignment to Creditors.** City may, without further notice, terminate this Contract immediately if Contractor (i) petitions for reorganization under the Bankruptcy Code or is adjudged bankrupt; (ii) becomes insolvent or a receiver is appointed due to insolvency; (iii) makes a general assignment or sale of its assets or business for the benefit of creditors if Contractor ceases providing the collection of Waste Materials pursuant to this Contract and Contractor (if Contractor is a debtor-in-possession) or the trustee of the bankruptcy estate fails to ratify and continue performance of this Contract within the required period set forth in the Bankruptcy Code.
- 15.3 Termination by Mutual Agreement.** If City and Contractor mutually agree in writing, this Contract may be terminated on the terms and date stipulated in the writing.
- 15.4. Termination for Non-Appropriation of Funds.** Contractor acknowledges and understands that City is prohibited by law from entering into contractual obligations for the expenditure of funds beyond the current fiscal year. City may, upon written notice to Contractor, terminate this Contract on any September 30 occurring during the Term of this Contract if City fails to appropriate funds in City's Annual Budget for the immediately following fiscal year commencing October 1 for the purpose of providing residential solid waste collection services to Residential Customers. This Contract is not, and shall not be construed, as (a) an obligation payable in any fiscal year beyond the fiscal year for which funds are lawfully appropriate; or (b) an obligation creating a pledge of, or a lien on, City's tax or general revenues resulting in the creation of a debt.

15.5 Right of Contractor to Terminate. If City is temporarily or permanently enjoined by a court of competent jurisdiction from entering this Contract or otherwise granting to Contractor an exclusive contract and franchise for the Residential Waste collection services to be provided herein, or an amendment to State law makes this Contract unlawful to the extent that the Contract grants an exclusive contractual right to Contractor to perform Residential Waste Collection services, Contractor may, upon not less than ten (10) days written notice to City:

- (a) to terminate this Contract, in which case Contractor shall refund to City any installment of the fees paid by City in advance of the provision of services, if any, prorated for the remaining portion of the month after the date of termination; or
- (b) to continue to perform the services pursuant to this Contract, in which case the Parties will negotiate in good faith an equitable adjustment in the Annual Contract Fee; or
- (c) The City's uncured breach of the terms of this Contract.

If such injunction is applicable to any services provided under this Contract other than Residential Waste collection services, Contractor shall have the right to terminate the provision of such other services pursuant to this Contract but shall not be authorized to terminate the provision of Residential Waste collection services, or continue providing such services on a non-exclusive basis. Following any termination pursuant to this Section 15.05, neither Party shall have any further obligation under this Contract other than for claims for personal injuries or property damage and the right to be indemnified therefor as expressly provided in this Contract and arising prior to such termination date.

XVI. DEFENSE OF SUITS

If any action in court is brought by a third party against City, or any officer or agent of City, for the failure, omission, or neglect of Contractor to perform any of the covenants, acts, matters, or things under this Contract; or for injury or damage caused by the alleged negligence of Contractor or his/her subcontractors or his/her or their agents, or in connection with any claim based on lawful demands of subcontractors, workmen, material men, or suppliers Contractor shall defend, indemnify, release and save harmless City and its officers, employees and agents, from all losses, damages, costs, expenses, judgments, or decrees arising out of such action.

XVII. OSHA, HEALTH, AND ENVIRONMENTAL LAWS

Contractor shall comply with the federal Occupation Safety and Health Act of 1970, as amended ("OSHA") and the regulations promulgated under the Act and with standards and regulations issued to implement these statutes from time to time. Contractor is also responsible for meeting all pertinent local, state, and federal health and environmental laws, regulations, and standards.

XVIII. INSURANCE

18.1 Insurance Types and Limits. During the Term of this Contract, Contractor shall maintain in full force and effect insurance coverage with the minimum limits as follows:

- (a) Commercial General Liability insurance for bodily injury, death, and property damage insuring against all claims, demands or actions relating to Contractor's performance of services pursuant to this Contract, with a minimum combined single limit of not less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate, for injury to persons (including death), and for property damage via blanket form endorsement; and
- (b) Automobile liability insurance with not less than \$1,000,000 combined single limit, covering any vehicles owned and/or operated by Contractor, its officers, agents, and employees, and used in the performance of this Contract via blanket form endorsement; and
- (c) Statutory Worker's Compensation Insurance or equivalent or other State-approved program covering all of Contractor's employees involved in the provision of services under this Contract.

All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service, or approved by the City Manager.

Provided Contractor maintains at least the types of coverage and minimum coverage limits described above, Contractor shall secure and maintain throughout the Term of this Contract insurance of such types and in such amounts as may be necessary to protect itself and the covered interests of City against all hazards or risks of loss as hereinafter specified. It shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve Contractor of any contractual responsibility or obligation.

18.2 Required Endorsements. All insurance and certificate(s) of insurance shall be endorsed to contain the following:

- (a) Name City, its officers, agents, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance;
- (b) Provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance; and
- (c) No insurance policy shall be canceled, non-renewed, or coverage thereunder reduced unless City has received notice of cancellation, non-renewal, or reduction in coverage, in each such case (except for notice of cancellation due to non-payment of premiums) such notice to be sent to City not later than thirty (30) calendar days (or the maximum period of calendar days permitted under applicable law, if less than thirty (30) calendar days) prior

to the effective date of such cancellation, non-renewal, or reduction in coverage, as applicable. If any insurance policy required to be carried by or on behalf of Contractor pursuant to this Contract is to be canceled due to non-payment of premiums, the requirements of the preceding sentence shall apply except that the notice shall be sent to City on the earliest possible date but in no event less than ten (10) calendar days prior to the effective date of such cancellation.

A certificate of insurance evidencing the required insurance shall be submitted to City prior to the Commencement Date and not later than thirty (30) days prior to the commencement of each Extension Term.

XIX. PERFORMANCE BOND

Contractor shall deliver to City a performance bond in the amount equal to \$3,000,000.00 (Three Million Dollars) executed by a good and sufficient corporate surety eligible to conduct business in Texas, and conditioned that Contractor shall well, truly, and faithfully perform its obligations under this Contract and shall satisfy all claims and demands of any kind incurred under the Contract, including, but not limited to, the payment of all amounts owed by Contractor to City or landfills, and **Contractor shall fully indemnify and save harmless City from all costs and damage which City may suffer by Contractor's failure to pay such amounts owed and shall reimburse and repay City all outlay and expense which City may incur in making good any such payment default.** Said performance bond will be renewed annually for the term of the Contract. The performance bond shall be in a form reasonably acceptable to City. Contractor shall pay any and all premiums for the bond. A certificate from the surety showing that the bond premiums are paid in full shall be submitted to City on an annual basis for the Term of the Contract.

XX. INDEMNITY

THE CONTRACTOR SHALL DEFEND, INDEMNIFY, RELEASE AND HOLD CITY (AND ALL OF CITY'S REPRESENTATIVES, OFFICERS AND EMPLOYEES), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, LIABILITIES, DEMANDS, LOSSES, DAMAGES, COSTS OR EXPENSES OF ALL TYPES TO ANY PERSON OR ENTITY (INCLUDING BUT NOT LIMITED TO ALL CLAIMS FOR MONETARY DAMAGES, CLAIMS AT LAW, CLAIMS IN EQUITY, AND REASONABLE ATTORNEYS' FEES) TO THE EXTENT ARISING OUT OF, RESULTING FROM, OR OCCURRING IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES UNDER THIS CONTRACT WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OR THE WILLFUL MISCONDUCT OF CONTRACTOR, ANY SUBCONTRACTOR OR SUPPLIER, THEIR RESPECTIVE AGENTS OR EMPLOYEES OR ANY OTHER PARTY FOR WHOM ANY OF THEM MAY BE LIABLE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CONTRACT, AND EXCEPT TO THE EXTENT A CLAIM

ARISES FROM THE CITY'S NEGLIGENCE OR WILLFUL MISCONDUCT, TO THE EXTENT THAT ANY EMPLOYEE OF CONTRACTOR OR ITS SUBCONTRACTOR ASSERTS A CLAIM AGAINST THE CITY THAT WOULD HAVE BEEN BARRED UNDER WORKERS' COMPENSATION INSURANCE, CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY, RELEASE AND HOLD CITY (AND ALL OF CITY'S REPRESENTATIVES, OFFICERS AND EMPLOYEES), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, LOSSES, DAMAGES, COSTS OR EXPENSE FOR ANY SUCH CLAIMS NOTWITHSTANDING THE FACT THAT CONTRACTOR IS A NON-SUBSCRIBER TO WORKERS' COMPENSATION INSURANCE IN THE STATE OF TEXAS. THE DEFENSE, INDEMNITY AND RELEASE OF LIABILITY SHALL ALSO APPLY SPECIFICALLY TO CLAIMS ARISING FROM ACCIDENTS TO CONTRACTOR, ITS AGENTS, OR EMPLOYEES, WHETHER OCCASIONED BY CONTRACTOR OR ITS EMPLOYEES, UNLESS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY. IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH CONTRACTOR AND THE CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CONTRACTOR OR THE CITY UNDER TEXAS LAW. THE CITY SHALL BE RESPONSIBLE FOR ITS NEGLIGENCE AND CONTRACTOR SHALL HAVE NO INDEMNIFICATION OBLIGATIONS UNDER THIS CONTRACT TO THE EXTENT OF THE CITY'S NEGLIGENCE. THE INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER THE WORKERS' OR WORKMEN'S COMPENSATION ACTS, DISABILITY ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

XXI. MISCELLANEOUS

- 21.1 **Entire Agreement; Priority of Documents.** This Contract constitutes the sole and only agreement between the Parties and supersedes any prior understandings and/or written or oral agreements between the Parties with respect to the subject matter of this Contract. Any irreconcilable conflict between or among any of the Contract Documents shall be resolved in the following order of priority from first to last, unless the provision in the lower priority Contract Document indicates otherwise by use of the phrase "notwithstanding anything in the Contract Documents to the contrary" or similar phrase: (i) this Contract, including any subsequent amendments to this Contract.
- 21.2 **Assignment.** Contractor may not assign this Contract without City's prior written consent. In the event of an assignment by Contractor to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants and obligations contained in this Contract. Notwithstanding the foregoing, Contractor may assign this Contract upon written notice, but without the City's consent, to a parent company or any of Contractor's

subsidiaries or to any person or entity who purchases any operations from Contractor, but only so long as such person or entity agrees to assume all of Contractor's obligations and liabilities regarding the performance of this Contract. In addition, Contractor may make a collateral assignment of this Contract to any lender as security for a loan made by a lender to Contractor without the consent of the City.

- 21.3 Successors and Assigns.** Subject to the provisions regarding assignment, this Contract shall be binding on and inure to the benefit of the Parties to it and their respective successors and assigns.
- 21.4 Governing Law.** The laws of the State of Texas shall govern this Contract, and the venue for any action concerning this Contract shall be in the state district courts of Travis County, Texas. The Parties agree to submit to the personal jurisdiction of said Court.
- 21.5 Amendments.** This Contract may be amended only by the written agreement of the Parties.
- 21.6 Severability.** If any one or more of the provisions contained in this Contract, inclusive of the Contract Documents, shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.
- 21.7 Independent Contractor.** All services to be performed by Contractor pursuant to this Contract shall be in the capacity of an independent contractor, and not as an agent or employee of City. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Contract.
- 21.8 Notice.** Any notice required or permitted to be delivered hereunder may be sent by first-class mail or overnight courier to the address specified below, or to such other address as either Party may designate in writing, and shall be deemed received three (3) days after being placed in the U.S. or certified mail with return receipt, first-class postage prepaid or on the date of confirmed delivery by overnight courier as evidenced on the receipt therefor:

If intended for City:
City of Pflugerville
ATTN: City Manager
PO Box 589
Pflugerville, TX 78691

If intended for Contractor:
Waste Connections Lone Star, Inc.
9904 FM 812
Austin, TX 78719
ATTN: General Manager

With Copy to:
Waste Connections
3 Waterway Square Place, Suite 110
The Woodlands, TX 77380
ATTN: Legal Department

- 21.9 **Counterparts.** This Contract may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all but together signed by all of the Parties.
- 21.10 **Compliance with Federal, State & Local Laws.** The Parties shall comply in the performance of services under the terms of this Contract with all applicable laws, ordinances and regulations, judicial decrees or administrative orders, and codes of federal, state, and local governments, including all applicable federal clauses.
- 21.11 **Force Majeure.** No Party will be liable for any default or delay in the performance of its obligations under this Contract, including any obligation of Contractor to pay liquidated damages pursuant to Sections 9.1 and 9.2, if and to the extent such default or delay is caused, directly or indirectly, by a Disaster Event, riots, civil disorders, acts of terrorism, compliance with laws or governmental orders, inability to access a container, fires, inclement weather, acts of God, epidemic or pandemic, or any similar cause beyond the reasonable control of such Party, provided the non-performing Party is without fault in causing such default or delay. The non-performing Party agrees to provide written notice of the Force Majeure delay to the other Party as soon as possible, but in no event later than twenty-four (24) hours after the earlier of the Party's first knowledge of or the first occurrence of the Force Majeure, and further agrees to use commercially reasonable efforts to recommence performance as soon as possible.
- 21.12 **Confidentiality Regarding Waste Material.** Contractor has no confidentiality obligation with respect to any waste materials or recyclable materials collected pursuant to this Contract.
- 21.13 **No Waiver for Delay.** The failure or delay on the part of either Party to exercise any right, power, privilege, or remedy under this Contract shall not constitute a waiver thereof. No modification or waiver by either Party of any provision shall be deemed to have been made unless made in writing. Any waiver by a Party for one or more similar events shall not be construed to apply to any other events, whether similar or not.
- 21.14 **Effective Date.** The effective date of this Contract is the date upon which it is signed by the authorized representatives of both Parties (the "**Effective Date**").
- 21.15 **Non-discrimination.** In the provision of services hereunder or the performance of this Contract, Contractor shall not discriminate against any person because of race, sex, age, creed, color, religion, or national origin.
- 21.16 **Compliance with Federal Immigration Laws.** Contractor agrees at all times to comply with Federal Immigration laws with respect to employment and to make available during Contractor's regular business hours on request of City, employee documentation verifying an employee's status to be employed by an employer in the United States. Contractor agrees to verify current and future

employees' status by utilizing the E-Verify internet-based system as operated by the United States Department of Homeland Security, or I-9 verification.

21.17 Statutory Verifications. Contractor verifies that:

- (a) To the extent this Contract constitutes a contract for goods or services within the meaning of Section 2271.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, the Consultant represents that neither the Consultant nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant (i) boycotts Israel or (ii) will boycott Israel through the term of this Contract. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.
- (b) To the extent the Contract constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Governmental Code, as amended, solely for the purposes of compliance with Chapter 2252 of the Texas Governmental Code, and except to the extent otherwise required by applicable federal law, Contractor represents that the Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor is a company listed by the Texas Comptroller Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.
- (c) The Contractor hereby verifies that it and its parent company, wholly or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of the Contract. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil-based energy and does not commit or pledge to meet environmental standards beyond federal and state law; or (B) does business with a company described as by the preceding statement in (A).
- (d) The Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Contract. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the

foregoing verification, “discriminate against a firearm entity or firearm trade association” means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

- 21.18 Form 1295.** In compliance with the State of Texas Government Code, Section 2252.908, if applicable, the City requires that Contractor must complete the online Form 1295 – “Certificate of Interested Parties” – and must provide a signed and notarized printed copy of the form and a separate certification of filing. The inclusions of this provision shall constitute a request on the part of the City for a copy of the form. Therefore, the Parties acknowledge, that if Section 2252.908 applies, Contractor shall be in non-compliance if the form is not provided within 10 days of the execution of this Contract. The form can be found at www.ethics.state.tx.us. Form 1295 is also required for any and all contract amendments, extensions, or renewals. Prior to execution of this Contract and any payment to Contractor hereunder, Contractor shall provide proof of submission to the City Secretary that the appropriate Form 1295 documentation has been submitted.

Signatures on Following Page



SIGNED AND AGREED on _____, 2026.

CITY OF PFLUGERVILLE, TEXAS

By: _____

Name: _____

Title: _____

ATTEST:

_____, City Secretary

APPROVED AS TO FORM AND LEGALITY:

SIGNED AND AGREED on March 10th, 2026.

WASTE CONNECTIONS LONE STAR, INC.

By: [Signature]

Name: Samer Bredreg

Title: District Manager