

**SECOND AMENDED AND RESTATED
REFUSE COLLECTION CONTRACT**

between

CITY OF ROUND ROCK, TEXAS

and

CENTRAL TEXAS REFUSE, LLC.

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**SECOND AMENDED AND RESTATED
REFUSE COLLECTION CONTRACT**

between

CITY OF ROUND ROCK, TEXAS

and

CENTRAL TEXAS REFUSE, LLC.

This Refuse Collection Contract (“Contract”) is made on _____, 20213 between: **CITY OF ROUND ROCK**, a Texas municipal home rule corporation, hereinafter referred to as “City,” and **CENTRAL TEXAS REFUSE, LLC.**, a limited liability company, hereinafter referred to as “Contractor.”

RECITALS

WHEREAS, the City and Contractor entered into that one certain Refuse Collection Contract on November 22, 2016, whereby Contractor has collected garbage, rubbish and refuse for residential customers within the City; and

WHEREAS, the aforesaid Refuse Collection Contract hasd been amended several times since the execution of the original Agreement, including the addition of recycling services and the addition of a Downtown Commercial District; and

WHEREAS, on November 4, 2021, the parties ~~desire to~~ entered into a new contract setting forth terms and conditions for the collection, delivery and disposal of bulk waste and recyclable materials for residential customers, city facilities, the Downtown Commercial District, and all other commercial and industrial customers within the City (“Amended and Restated Refuse Collection Contract”); and

WHEREAS, the parties now desire to enter into a Second Amended and Restated Refuse Collection Contract modifying the calculation for the Residential Services Rate and making additional amendments to the Agreement as set forth herein;

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, City and Contractor agree as follows:

AGREEMENT

SECTION 1: RECITALS INCORPORATION

The foregoing recitals are true and correct and hereby incorporated herein by reference.

SECTION 2: DEFINITIONS

As used herein, the following defined terms, phrases, words, and their derivations shall have the meanings as set forth in this section. When not inconsistent with the context, words used in the present tense shall include the future, words importing persons shall include firms and corporations, words used in the plural shall include the singular, words used in the singular shall include the plural, words used in the masculine gender shall include the feminine gender, and word used in the feminine gender shall include the masculine gender.

Act of Default or Default — Act of Default or Default shall mean any failure to timely, fully and completely comply with one or more material requirements, obligations, performance criteria, duties, terms or conditions, as started in this Contract. City may, in its sole discretion, accept substantial compliance, which is an Act of Default, in lieu of full compliance by waiving such Act of Default solely by an instrument in writing.

Aluminum and Steel Recyclable Material — Aluminum and Steel Recyclable Material shall mean any beverage container, food can, bi-metal container, or lid with or without paper labels, rings, and lids composed primarily of whole iron, aluminum, steel, or other Recyclable Material of a similar nature.

Apartment Complex – Any multi-unit residential dwelling of three (3) units or more.

Bag — Bag shall mean a non-dissolvable plastic sack with a capacity of up to approximately forty (40) pounds designed or intended to store Municipal Solid Waste with sufficient wall strength to maintain physical integrity when lifted by the top.

Bulk Waste — Bulk Waste shall mean Municipal Solid Waste composed of materials not easily containerized in a Cart, including but not limited to, brush, furniture, and non-freon containing large appliances. Bulk Waste shall include Municipal Solid Waste enclosed in bags.

Bulk Waste Services — Bulk Waste Services shall mean the collection and disposal of Bulk Waste by the Contractor and the collection and recycling of Bulk Waste pursuant to this Contract.

Business Day — Business Day shall mean any day, Monday through Friday, except Holidays.

Cart — Cart shall mean a receptacle with wheels with a capacity of up to approximately ninety-six (96) gallons designed or intended to be mechanically dumped into a loader-packer type truck and approved for use by the Contract Administrator.

City — City shall mean the City of Round Rock, Texas; and shall include City's elected officials, officers, employees, agents, volunteers and representatives.

City Event — City Event shall mean an event sponsored or co-sponsored by the City and designated by the Contract Administrator to receive City Facility Services. The Contract Administrator has the sole authority to add or eliminate City Events to receive City Facility Services.

City Facility — City Facility shall mean any City owned or operated facility designated by the Contract Administrator as a City Facility to receive City Facility Services. The Contract Administrator has the sole authority to add or eliminate City Facilities to receive City Facility Services.

City Facility Services — City Facility Services shall mean Municipal Solid Waste Services, Bulk Waste Services, and Recycling Services for City Facilities and for City Events pursuant to this Contract. City Facility Services shall not include Municipal Solid Waste Services, Bulk Waste Services, and Recycling Services related to construction at a City Facility or a third-party hosted event held at a City Facility.

Collect or Collection — Collect or Collection shall mean the act of removing Municipal Solid Waste and Bulk Waste for transport to a Solid Waste Facility and the act of removing Recyclable Material for transport to a Recyclable Material Facility.

Commercial Services – The collection of garbage, rubbish, yard waste and solid (non-hazardous) waste, including recyclables, for all commercial and industrial businesses, institutional and governmental entities, and multi-unit residential complexes located within the City of Round Rock, Texas, including but not limited to, Solid Waste Services and Bulk Waste Services (all commercial lines of business, including without limitation, Front Load Bin, Side Load Bin, and Roll-Off Bins for Commercial Services and Compactors and Recycling Services). Commercial Services does not include Roll-Off Bins for Construction Activities.

Commercial Unit – Any retail, commercial, industrial, manufacturing, governmental or multi-family use or service. This definition and category include all units other than a “Residential Service Unit,” as defined in the Contract.

Compactor – Any container, regardless of its size, which has a compaction mechanism, whether stationary or mobile, and approved for use by the City.

Comply or Compliance — Comply or Compliance shall mean timely, fully and completely performing or meeting each and every term, requirement, obligation, performance criteria, duty or condition as stated in this Contract. Compliance shall not mean substantial compliance. Substantial compliance shall be an Act of Default unless waived by Contract Administrator solely by a written instrument.

Construction Activities – Construction or renovation projects requiring the issuance of a building permit from the City

Container – means Front Load Bin, Roll-Off Bin, Side Load Bin, Compactor, and Compactor Receiving Container.

Contract — Contract shall mean this document, including any amendment thereto agreed upon by the City and Contractor.

Contract Administrator — Contract Administrator shall mean the City Manager of the City, or his or her designee or designees, which shall represent the City in the administration and supervision of this Contract.

Contractor — Contractor shall mean Central Texas Refuse, LLC, a limited liability company authorized to do business in the City and the State, and Contractor's assignees and Contractor's subcontractors.

Cost of Fuel — Cost of Fuel shall mean the cost of diesel based on the Department of Energy Diesel Fuel price index, less 5% for volume purchases

Council — Council shall mean the City Council, which is the governing body of the City.

CPI-U – CPI-U shall mean the Consumer Price Index Rate for all Urban Customers, Garbage and Trash Collection.

Curbside — Curbside shall mean within five (5) feet of the street or alleyway that provides primary access to the Residential Service Unit as designated by the Contract Administrator.

Customer – An occupant of a residential or commercial unit or property within the City who generates Refuse and/or Recycling.

~~*Disposal Cost Component* — Disposal Cost Component shall mean a component of the Residential Services Rate based on the disposal cost per ton to dispose of Municipal Solid Waste at the Solid Waste Facility and to deliver Recyclable Material to the Recyclable Material Facility.~~

Disposal Facility — Disposal Facility shall mean a Solid Waste Facility authorized by the Texas Commission on Environmental Quality to manage such waste and shall meet all local, state, and federal requirements.

Downtown Commercial District – Downtown Commercial District shall mean all business located in Block 8, Block 9, Block 10, Block 21, and Block 22 of the original plat of Round Rock and any businesses in Blocks added to the Downtown Commercial District subsequent to the execution of this Agreement.

Downtown Commercial District Containers – Downtown Commercial District Containers shall mean the dumpsters for the disposal of Municipal Solid Waste and the dumpsters for the disposal of Recyclable Material located in the Downtown Commercial District. There shall be at least one dumpster for the disposal of Municipal Solid Waste and one dumpster for the disposal of Recyclable Materials located on each block of the Downtown Commercial District for use by the Downtown Commercial District Customers. The Downtown Commercial District Containers shall be located within a locked enclosure when possible.

Downtown Commercial District Services Rate – Downtown Commercial District Services Rate shall mean the sum of money per Downtown Commercial District Customer paid each month by the city to the Contractor for the provision of Downtown Commercial District Services as set forth herein.

Fiscal Year – The City’s Fiscal Year commencing October 1st of each year and ending September 30 of each year.

~~*Franchise Fee* – Fee to be paid to the City by the Contractor as described in Section 4.2.~~

Front Load Bin – A container available in 2, 3, 4, 6, 8 and 10-yard sizes.—

~~*Fuel Component* – Fuel Component shall mean a component of the Residential Services Rate based on the Cost of Fuel, as set forth in Section 20.2 below.~~

Garbage — Garbage shall mean Solid Waste 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.

Glass Recyclable Material —Glass Recyclable Material shall mean any glass food and beverage bottles, containers, or jars with or without paper labels, rings, and lids. Glass Recyclable Material shall not mean window glass, porcelain, or china.

Gross Revenue/Receipts –All receipts and revenues received or derived directly or indirectly by the Contractor, its affiliates, subsidiaries, parent company, and any other person or entity in which the Contractor has a financial interest, from and in connection with Commercial Services. Gross Revenues/Receipts include franchise-license fees passed through to the Contractor’s customers. Gross Revenues/Receipts do not include any surcharges imposed directly upon any Customer by the state, city or other governmental unit and collected by the Contractor on behalf of such governmental unit.

Hazardous Waste — Hazardous Waste shall mean any Solid Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §§6901 et seq., as amended.

Holidays — Holidays shall mean days that City offices are closed in order to observe New Year’s Day, Thanksgiving Day, and Christmas, and any other holiday designated by the City Council.

License Fee – Fee to be paid to the City by Contractor as described in Section 4.2.

Marketing — Marketing shall mean identification and developing of end markets for Recyclable Material and the selling of Recyclable Material to end markets.

Multi-Family – All apartment projects and residential dwellings containing three or more units designed and intended for occupancy by a single family.

Municipal Solid Waste — Municipal Solid Waste shall mean Solid Waste resulting from or incidental to activities of Residential Service Units, City Facilities, City Events, the Downtown Commercial District, and Commercial Units and Construction and Demolition

activities, including Garbage and Rubbish. Municipal Solid Waste shall not include Hazardous Waste and Special Waste.

Municipal Solid Waste Services — Municipal Solid Waste Services shall mean collection and disposal of Municipal Solid Waste by the Contractor pursuant to this Contract.

~~*Operations, Overhead and Profit Component* — Operations, Overhead and Profit Component shall mean a component of the Residential Services Rate intended to cover Contractor's profit, as well as all direct and indirect costs to Contractor of providing Residential Services other than the Fuel Component and the Disposal Cost Component, as set forth in Section 20.4 below.~~

Out-of-City Residential Service Unit – Out-of-City Residential Service Unit shall mean a single-family dwelling unit outside of the City's boundaries, occupied by a person or group of persons, that has solid waste collected by Contractor that is commingled with solid waste collected from Residential Service Units.

Paper Recyclable Material — Paper Recyclable Material shall mean any:

- (A) Kraft paper,
- (B) Corrugated containers that have liners of Kraft, jute, or test liner including dry food boxes, beer and soda carriers, shoe boxes,
- (C) Old newspaper including slick paper inserts,
- (D) Chipboard, and
- (E) Other mixed paper including but not limited to junk mail, junk mail inserts, residential mixed paper, bagged shredded paper, high-grade paper, white and colored ledger, copier paper, office paper, laser printer paper, computer paper including continuous-formed perforated white bond or green bar paper, book paper, cotton fiber content paper, duplicator paper, form bond, manifold business forms, mimeo paper, note pad paper (no backing), loose leaf fillers, stationery, writing paper, paper envelopes without plastic windows, carbonless (NCR) paper, tabulating cards, facsimile paper, manila folders, magazines, paperback books, small catalogs, telephone books and Yellow Pages.

Person — Person shall mean an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

Plastic Recyclable Material — Plastic Recyclable Material shall mean any #1 through #7 rigid plastic bottle, container, jug, or jar.

Recyclable Material or Recyclables — Recyclable Material or Recyclables means materials that have been designated by the City to be recovered or diverted from the nonhazardous waste stream for the purposes of reuse, recycling or reclamation. Chapter 32, Section 32-34(c), Code of Ordinances (2018 Edition) of the City of Round Rock, Texas, limits Recyclable Materials to the following designated materials: office paper, newsprint, magazines,

catalogs, aluminum, steel and tin containers, glass bottles and containers, HDPE and PET plastic bottles #1, #2, #3, #4, #5, #6, #7, and household paper products, including junk mail, envelopes, cereal boxes, boxboard and telephone books.

Recyclable Material Facility — ~~Recyclable Material Facility shall mean a City approved facility for recyclable materials, which is currently Balcones Recycling, through a long-term operating agreement between Contractor and Balcones Recycling by which Balcones Recycling guarantees Contractor and all affiliates processing and marketing of 100% of Recyclables collected and deposited at any and all Balcones Recycling Facilities as current contract stipulates.~~

Recycling — Recycling shall mean a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products.

Recycling Services — Recycling Services shall mean the separate collection of recyclable materials and the delivery to Recyclable Material Facility.

Refuse – All commercial or residential municipal solid waste generated by a Customer.

Residential Service Unit — Residential Service Unit shall mean a dwelling in a single-family zoning district or a two-family zoning district within the City, occupied by a person or group of persons. A Residential Service Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. For the purposes of this Contract, a commercial customer within the City utilizing a Cart as its Container and any City Facility utilizing a Cart as its Container shall also be classified as a Residential Service Unit.

Residential Services — Residential Services shall mean Municipal Solid Waste Services, Bulk Waste Services and Recycling Services for Residential Service Units.

Residential Services Rate — Residential Services Rate shall mean the sum of money per Residential Customer paid each month by the City to the Contractor for the provision of Residential Services. ~~The Residential Services Rate is composed of the Fuel Component, the Disposal Cost Component, and the Operations, Overhead and Profit Component.~~

Roll-Off Bin – Any container, excluding compactors, with a capacity of 20 cubic yards or greater, which is normally loaded onto a motor vehicle and transported to a waste or recycling facility.

Rubbish — Rubbish shall mean 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, brush, or similar materials; noncombustible Rubbish includes glass, crockery, tin cans, aluminum cans, and similar

materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

Set-Out — Set-Out shall mean the Municipal Solid Waste, Bulk Waste, and/or Recyclable Material placed at Curbside or other appropriate location for collection.

Side Load Bin — A container available in 3 or 4 yard sizes.

Solid Waste — Solid Waste shall mean Garbage, Rubbish, resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities, but does not include:

- (A) Solid or dissolved material in domestic sewage or irrigation return flows or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;
- (B) 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 surface improvement construction.

Solid Waste Facility — Solid Waste Facility shall mean all contiguous land, structures, other appurtenances, and improvements on the land used for disposing of Solid Waste.

Special Waste — Special Waste shall mean any Solid Waste or combination of Solid Wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special Wastes shall include:

- (A) Hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of this title (relating to Household Materials Which Could Be Classified as Hazardous Wastes);
- (B) Class 1 industrial nonhazardous waste;
- (C) Untreated medical waste;
- (D) Municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;
- (E) Septic tank pumpings;
- (F) Grease and grit trap wastes;
- (G) Wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);
- (H) Slaughterhouse wastes;
- (I) Dead animals;
- (J) Drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;

- (K) Pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;
- (L) Discarded materials containing asbestos;
- (M) Incinerator ash;
- (N) Soil contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.521(a)(1) of this title (relating to Appendices);
- (O) Used oil;
- (P) Waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized under this chapter;
- (Q) Waste generated outside the boundaries of Texas that contains:
 - (i) any industrial waste;
 - (ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or
 - (iii) any item listed as a special waste in this paragraph;
- (R) Lead acid storage batteries; and
- (S) Used-oil filters from internal combustion engines.

State — State shall mean the State of Texas.

Street – For the purposes of this Agreement, a publicly dedicated or maintained right-of-way, a portion of which is open to use by the public for vehicular travel. The term “street” shall also include alleyways.

Substantial Compliance — Substantial Compliance shall pertain solely to acts of Contractor being less than full and complete compliance and being ninety percent (90%) or more of full compliance. Substantial compliance shall mean an Act of Default.

Unacceptable Set-Out — An Unacceptable Set-Out is a Set-Out that the Contractor reasonably determines to exceed the limits as established in this Contract, presents a substantial endangerment, such as disease or death, to the public or employee health or safety; or contains Hazardous Waste that cannot be easily separated.

SECTION 3: REPRESENTATIONS

3.1 Representations by City

The City represents to the Contractor that the City is duly organized and existing in good standing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Contract.

3.2 Representations by Contractor

The Contractor represents to the City that:

- (i) The Contractor is duly qualified and in good standing to do business in the State and is duly qualified and in good standing to do business wherever necessary to carry on the business and operations contemplated by this Contract.

- (ii) The Contractor has obtained the necessary disposal capacity for Municipal Solid Waste and Bulk Waste with a Solid Waste Facility and Recyclable Materials with a Recyclable Material Facility for the initial term of this Contract as set forth in Section 5.2.1.
- (iii) The Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are necessary for collection and disposal of Bulk Waste and collection of Recyclable Material.
- (iv) The Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are necessary for collection, processing and marketing of Bulk Waste and Recyclable Materials.
- (v) The Contractor has obtained all required insurance specified in this Contract.
- (vi) The Contractor has obtained the required performance bond specified in this Contract.
- (vii) To the best of the Contractor's knowledge, there is no action, suit or proceeding, at law or equity, before or by any court or government authority, pending or threatened against the Contractor, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Contractor of its obligation hereunder or the other 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 the Contractor in connection with the transactions contemplated hereby.

SECTION 4: GRANT OF FRANCHISE-LICENSE AND FEE

4.1 City hereby grants Contractor for the term of this Contract, including any automatic renewals, as defined in Section 5 unless sooner terminated, the right, privilege, and franchise license to have, use and operate Residential Services, Downtown Commercial District Services, Commercial Services, and City Facility Services; and to have, use and operate its vehicles on, over, and along, and across the present and future streets and alleys. The City grants the Contractor the right, privilege, and franchise license to have, use and operate:

- (i) Municipal Solid Waste Services, Bulk Waste Services, and Recycling Services for Residential Service Units and Commercial Units,
- (ii) Municipal Solid Waste Services and Bulk Waste Services for City Facilities,
- (iii) Municipal Solid Waste Services and Recycling Services for City Events, and
- (iv) Municipal Solid Waste Services and Recycling Services for the Downtown Commercial District.

4.2 In exchange for the City's grant to Contractor of the right to have, use, and operate Commercial Services, Contractor shall pay quarterly to the City a Franchise-License Fee of ten (10%) of the Gross Receipts derived during the preceding quarter by the Contractor from the operation of its Commercial Services within the City. The parties acknowledge and agree the Franchise-License Fee will be recouped by the Contractor and will be reflected accordingly in the exhibit establishing Contracted Rates. The City reserves the right to review and modify the fee percentage on an annual basis. The Contractor shall be given thirty (30) days' written notice prior

to any increase in the ~~franchise-License f~~Fee. Any change in the ~~franchiseLicense f~~Fee must be approved by the governing body of the City.

4.3 The ~~Franchise-License~~ Fee shall be paid quarterly to the City on or before the last day of the month following the end of the quarterly period for which said payment is due. The ~~FranchiseLicense-~~Fee payment shall be delivered to the City’s Director of Finance, along with the City-approved form entitled “Commercial Garbage Collection ~~FranchiseLicense~~ Fee Quarterly Statement” showing the calculations of said quarterly payment.

4.4 Under no circumstances whatsoever shall the grant herein of a license be construed as the grant of a franchise.

SECTION 5: EFFECTIVE DATE AND TERM OF CONTRACT

5.1 Effective Date

Except as otherwise provided for herein, the obligations of the parties shall take effect upon execution of this Contract by both parties.

5.2 Term of Contract

5.2.1 Initial Term

Unless sooner terminated in accordance with Section 33.10 of this Contract, the initial term of this Contract shall be from the effective date of the Contract through September 30, 2026 at 12:00 midnight.

5.2.2 Automatic Renewal

At the end of the third fiscal year of the initial term, and at the end of each fiscal year thereafter, unless either party shall have given written notice of termination to the other party prior to the end of the then fiscal year as set forth in 5.2.3, the term shall automatically renew such that the balance of the term remains three (3) years.

5.2.3 Termination Notice

At any time after the end of the initial term, either party shall have the option to terminate this Contract for any or no reason by giving the other party two (2) years written notice of its exercise of its option to terminate. Receipt by either party of the aforesaid written notice shall serve to terminate the automatic renewal provision.

SECTION 6: MUNICIPAL SOLID WASTE SERVICES, BULK WASTE SERVICES AND RECYCLING SERVICES

6.1 Municipal Solid Waste Services, Bulk Waste Services and Recycling Services for Residential Service Units

6.1.1 Municipal Solid Waste Services for Residential Service Units

Once per week on a scheduled day, Contractor shall collect Municipal Solid Waste from each Residential Service Unit in the City.

6.1.2 Bulk Waste Services for Residential Service Units

Once per week on the same scheduled day as Contractor collects Municipal Solid Waste from the Residential Service Unit, Contractor shall collect up to seven (7) Bulk Waste items from each Residential Service Unit in the City. A Residential Customer may request the Contractor to collect additional Bulk Waste item(s) from the Residential Service Unit. Upon the receipt of a request for additional Bulk Waste items, Contractor shall collect, on a scheduled day, additional Bulk Waste items. If the request requires a special trip by Contractor, Contract is authorized to charge a reasonable fee to the Residential Customer for such special trip.

Each additional bulk waste item must be no more than 4'x4'x4' in dimension and weigh no more than 40 pounds.

Bulk brush pickups must be no more that 4ft in length, bundled and tied with rope or twine and not exceed more than 40 pounds per bundle.

6.1.3 Recycling Services for Residential Service Units

Once every two weeks on the same scheduled day as Contractor collects Municipal Solid Waste, Contractor shall collect from the Residential Service Units all Recyclable Material contained in a Cart from each Residential Service Unit in the City. Such source separated Recyclable Materials shall not be comingled with Municipal Solid Waste by Contractor.

6.2 Municipal Solid Waste Services, Bulk Waste Services and Recycling Services for City Facilities and Municipal Solid Waste Services for City Events

Contractor shall provide City Facility Services to City Facilities and City Events. Contractor and City shall mutually decide on the number and size of Carts and containers. In addition, Contractor and City shall mutually decide on the frequency and scheduled days. If a dispute arises concerning City Facility Services for a City Facility and/or City Event, Contract Administrator shall at its sole discretion determine resolution of the disputed issue.

6.3 Municipal Solid Waste Services, Bulk Waste Services and Recycling Services for the Downtown Commercial District

Contractor shall provide the Downtown Commercial District Services. Contractor and City shall mutually decide on the number and size of Downtown Commercial District Containers. In addition, Contractor and City shall mutually decide on the frequency and scheduled days. If a dispute arises concerning Downtown Commercial District Services, Contract Administrator shall at its sole discretion determine a resolution of the disputed issue.

6.4 Municipal Solid Waste Services, Bulk Waste Services and Recycling Services for Commercial Units

Commencing no later than September 30, 2022, or on a sooner date as mutually agreed upon by the City and Contractor, Municipal Solid Contractor shall provide for the collection of refuse and recycling, to each Commercial Unit at a specifically agreed upon type, size and frequency of service, at individually contracted rates, as set forth in **Exhibit**

“1” titled “**Contracted Rates for Commercial Customers**” attached hereto and incorporated herein by reference for all purposes.

SECTION 7: COLLECTION, DISPOSAL, AND PROCESSING LOCATION

7.1 Collection Location

7.1.1 Residential Services

Except as provided below, the Contractor shall collect Municipal Solid Waste, Bulk Waste, and Recyclable Material at the curbside. If the Contract Administrator determines that all occupants of a Residential Service Unit are handicapped or due to age or verified physical limitations cannot safely move a Cart to the curbside, the Contractor shall collect Municipal Solid Waste and Recyclable Material at a location at the front, side or rear of a Residential Service Unit acceptable to both the Residential Customer and Contractor. The Contract Administrator reserves the right to designate the location for Municipal Solid Waste Services and Recycling Services if (i) the Residential Customer and the Contractor cannot agree on an acceptable location or (ii) the location agreed upon by the Residential Customer and the Contractor presents or may present health and safety hazards.

7.1.2 City Facility Services

The Contract Administrator and the Contractor may mutually decide on a location for collection of Municipal Solid Waste and Bulk Waste from City Facilities and the location for collection of Municipal Solid Waste and Recyclable Material from City Events. The Contract Administrator reserves the right to designate the location for collection of Municipal Solid Waste and Bulk Waste generated by City Facilities and the location for collection for City Events, if the Contract Administrator and the Contractor cannot agree on an acceptable location.

7.1.3 Downtown Commercial District Services

The Contract Administrator and the Contractor shall designate the locations of collection of Municipal Solid Waste and Recyclable Material in the Downtown Commercial District.

7.1.4 Commercial Services

The Contractor and each Commercial Unit shall mutually decide upon the type of container required, level of service required, and on-site location for the collection of Solid Waste and Recyclable Material that is reasonably accessible by a refuse collection vehicle.

7.2 Municipal Solid Waste Disposal Location

Contractor shall dispose of all Municipal Solid Waste and Bulk Waste collected at a Solid Waste Facility.

7.3 Recyclable Material Tipping Fee and Revenue Share Payment

7.3.1 Tipping Fee

During the term of this Agreement and any renewals, Contractor agrees that the tipping fee for Recyclable Materials it delivers to the Recyclable Material Facility shall not exceed the

tipping fee charged at any Landfill utilized by Contractor to dispose of Municipal Solid Waste and/or Bulk Waste.

7.3.2 Revenue Share Payment

In the event Contractor recovers an average net amount in excess of Ninety-Five Dollars (\$95.00) per ton in a calendar month from the sale of City’s Recyclable Material, Contractor shall pay City fifty percent (50%) of the revenues recovered in excess of Ninety-Five Dollars (\$95.00). Contractor shall have the absolute obligation to pay City each month for any and all processed Recyclable Material, in accordance with this Section 7.3.2. All payments by Contractor to City shall be made payable to the City of Round Rock, Texas, shall be tendered to City’s designated representative, and shall accompany corresponding statements from City and/or City’s representative.

7.4 Bulk Waste Processing Location

Contractor shall dispose of all unrecycled Bulk Waste collected at a Disposal Facility.

SECTION 8: COMMINGLING OF RESIDENTIAL SERVICES MATERIALS AND DISPOSAL OF RECYCLABLE MATERIALS PROHIBITED

8.1 Commingling of Residential Services Materials

The Contractor may only commingle Municipal Solid Waste, Bulk Waste, and/or Recyclable Materials from Residential Service Units, City events and City Facilities with materials from Out-of-City Residential Service Units. The Contractor shall not commingle materials from Commercial Units with any Municipal Solid Waste, Bulk Waste, and/or Recyclable Materials from Residential Service Units, City events and City Facilities.

8.2 Disposal of Recyclable Materials Prohibited

The Contractor shall deliver any Recyclable Material to any recycle facility it deems necessary, provided the Facility meets contracted processing and marketing criteria.

SECTION 9: INSPECTION OF SET-OUTS AND UNACCEPTABLE SET-OUTS

9.1 Contractor’s Right to Inspect Set-Outs

The Contractor may inspect each Set-Out prior to collection for consistency with the requirements of this Contract.

9.2 Unacceptable Set-outs

9.2.1 Reasons for Unacceptable Set-outs

Prior to collection of the Set-Out, Contractor may determine that a Set-Out is an Unacceptable Set-Out as defined herein.

9.2.2 Procedure for Unacceptable Set-outs

If the Contractor determines that a Set-Out or a portion of a Set-Out is an Unacceptable Set-Out, Contractor shall:

- (i) Take a photograph of the entire Set-Out;
- (ii) Collect the portion of the Set-Out that is acceptable; and
- (iii) Immediately provide an Unacceptable Set-Out Notice to the Residential Customer stating the reason the Set-Out or portion of the Set-Out was determined to be unacceptable;

For Bulk Waste Set-Outs that are unacceptable due to exceeding the Set-Out limits, Contractor shall collect the seven (7) largest Bulk Waste items that are in compliance with contract size and weight restrictions.

For all Unacceptable Set-Outs, Contractor shall provide a list of the Unacceptable Set-Outs including the address, reason Set-Out was deemed unacceptable as mutually agreed upon by Contractor and City Representative.

SECTION 10: COLLECTION AND PROCESSING EQUIPMENT

10.1 Collection Equipment

10.1.1 Collection Vehicles

10.1.1.1 Appearance of Collection Vehicles

Contractor shall paint all collection vehicles uniformly as approved by the Contract Administrator and with the name of Contractor, customer service office telephone number and the unique identification number of the vehicle in letters not less than six (6) inches high on each side and the rear of the vehicle. All collection vehicles shall be uniquely numbered and a record kept of the vehicle to which each number is assigned. No third-party advertising shall be permitted on collection vehicles. Contractor shall maintain all collection vehicles in a clean manner.

10.1.1.2 Age of Collection Vehicles

Contractor shall provide collection vehicles that are no more than ten (10) years of age.

10.1.1.3 Purchase, Operation, Maintenance, Storage and Replacement of Collection Vehicles

Contractor, at its sole cost, shall purchase, operate, maintain, store and replace all collection vehicles as required for the provision of Residential Services, City Facility Services, Downtown Commercial District Services, and Commercial Services. Contractor shall maintain collection vehicles according to industry standards including, but not limited to compaction, prevention of leakage, and other industry standard performance requirements.

10.1.2 Carts or Containers

10.1.2.1 Purchase, Delivery, and Initial Distribution of Carts or Containers

Contractor, at its sole cost, shall purchase all Carts or Containers as required for the provision of Residential Services, City Facility Services, Downtown Commercial District Services, and Commercial Services in connection with this Contract. Contractor, at its sole cost, shall be responsible for the cost to the Cart or Container manufacturer for the delivery of all Carts and Containers to a secured area within the City for staging. In addition, the Contractor, at its sole cost, shall be responsible for the cost to the Cart and Container manufacturer for initial distribution of Carts and Containers to Residential Service Units, City Facilities, Downtown Commercial District Units, and Commercial Units. Contractor, at its sole cost, shall oversee the delivery and initial distribution of Carts and Containers. Contractor shall deliver two Carts to each Residential Service Unit. One Cart shall be clearly designated for Solid Waste collection and the other Cart shall be clearly designated for Recyclable Materials collection.

For Commercial Services, Contractor shall use reasonable and necessary efforts to ensure Container sizes and collection frequency are appropriate for the amount of waste and recyclable material deposited in Containers by a Commercial Unit. Each Commercial Unit shall receive its own Container unless a Commercial Unit agrees with adjacent Commercial Units to share a Container and the costs of the shared Container. Commercial Units may buy or lease their own Compactors, however, all collection and disposal services shall be performed by the Contractor. All Containers for Commercial Services shall be properly painted, in a condition acceptable to the City, and maintained to City standards. Contractors shall make reasonable efforts to place Containers in aesthetically pleasing locations to maintain uniformity throughout the City. Staging for Initial Distribution, Distribution Excluding Initial Distribution, Maintenance and Storage of Carts and Containers.

Contractor, at its sole cost, shall provide a secured area within the City for staging of Carts and Containers, unless otherwise provided by City, prior to the initial distribution. After the initial distribution of Carts and Containers, Contractor, at its sole cost, shall deliver Carts and Containers to Residential Service Units, City Facilities, Downtown Commercial District Units and Commercial Units within two (2) business days of the request of the Contract Administrator (or unless otherwise allowed). Contractor shall attach a Program Introduction Notice to each Cart delivered.

Contractor's employees shall take care to prevent damage to Carts and Containers by unnecessary rough treatment. Contractor shall be solely responsible for the maintenance, including warranty issues, of Carts and Containers.

Contractor shall store all replacement Carts and Containers at Contractor's local customer service office to ensure that extra or replacement Carts and Containers can be provided upon the request of the City.

10.1.2.2 Staging for Initial Distribution, Distribution Excluding Initial Distribution, Maintenance and Storage of Carts and Bins

Contractor, at its sole cost, shall provide a secured area within the City for staging of Carts and Containers, unless otherwise provided by City, prior to the initial distribution. After the initial distribution of Carts and Containers, Contractor, at its sole cost, shall deliver Carts and Containers to Residential Service Units, City Facilities, Downtown Commercial District Units and Commercial Units within two (2) business days of the request of the Contract Administrator (or unless otherwise allowed). Contractor shall attach a Program Introduction Notice to each Cart delivered.

Contractor’s employees shall take care to prevent damage to Carts and Containers by unnecessary rough treatment. Contractor shall be solely responsible for the maintenance, including warranty issues, of Carts and Containers.

Contractor shall store all replacement Carts and Containers at Contractor’s local customer service office to ensure that extra or replacement Carts and Containers can be provided upon the request of the City.

10.1.2.3 Replacement of Carts and Containers

Upon notification to Contractor by the Contract Administrator Customer that a Cart or Container has been lost, destroyed, stolen or that it has been damaged beyond repair, Contractor shall deliver a replacement Cart or Container to such Customer within two (2) business days (or as agreed upon by the Customer). The Contractor shall bear the cost of replacing Carts or Containers that must be replaced due to normal wear and tear. The Customer shall bear the cost of replacing Carts or Containers that are lost, destroyed, stolen or damaged for reasons other than normal wear and tear.

10.1.3 Other Collection Equipment

10.1.3.1 Appearance of Other Collection Equipment

For Residential Service Units, Contractor shall provide brown Carts for Municipal Solid Waste Services and green Carts for Recycling Services. All Carts shall also show the name of Contractor and customer service office telephone number as approved by the Contract Administrator. No third-party advertising shall be permitted on other collection equipment. No advertising shall be permitted on vehicles for third parties. Contractor shall be responsible to ensure that collection vehicles and other collection equipment are maintained in a clean manner.

10.1.3.2 Purchase, Operation, and Maintenance of Other Collection Equipment

The Contractor shall, at its sole cost, purchase, install and maintain the Containers for the Downtown Commercial District Units and Commercial Units. All Containers shall show the name of Contractor and customer service office telephone number as approved by the Contract Administrator. No third-party advertising shall be permitted on the Containers.

Unless otherwise stated in this Contract, Contractor, at its sole cost, shall purchase, operate, and maintain collection equipment.

The Contract Administrator, at his/her sole discretion, shall determine whether the Contractor is or is not properly maintaining the collection equipment. If the Contract Administrator determines the Contractor is not properly maintaining the collection equipment, Contractor shall replace such equipment in accordance with this Contract and City may assess administrative charges in accordance with this Contract.

10.1.3.3 Replacement of Collection Equipment

Unless otherwise stated in this Contract, Contractor, at its sole cost, shall replace any and all collection equipment if such equipment is lost, stolen or damaged beyond normal wear and tear. If Contractor or City determines that collection equipment requires replacement, Contractor shall replace such equipment within fourteen (14) calendar days with comparable equipment. Contractor shall be responsible for making the appearance of the replacement equipment comply with the requirements of this Contract.

10.1.4 Ownership of Collection Equipment

10.1.4.1 Ownership Collection Equipment other than Carts and Containers

Ownership of collection equipment other than Carts and Containers shall rest with Contractor.

10.1.4.2 Ownership of Carts and Containers

Ownership of Carts and Containers shall rest with Contractor during and after the term of the Contract. Ownership of Carts and Containers in the possession of Residential Service Units, City Facilities, Downtown Commercial Units, Commercial Units, City, Contractor, or any other person at the end of the Contract shall rest with the Contractor.

10.2 Disposal Facility and Recyclable Material Facility Equipment

10.2.1 Scales

The Contractor shall be solely responsible for ensuring the Disposal Facility and the Recyclable Material Facility are equipped with adequately sized truck scales and computerized record-keeping systems for weighing and recording all incoming vehicles transporting Solid Waste Materials and Recyclable Materials. Contractor shall weigh, record, and tabulate all volumes collected within the City. Contractor and City shall agree on volumes of each as a percentage of overall collections.

Contractor shall document that each scale at the Disposal Facility and the Recyclable Material Facility has been annually certified with the State and no later than September 30 of each Contract Year shall provide proof of certification to the City.

10.2.2 Capacity and Other Facility Equipment

The Contractor shall be solely responsible for ensuring that the Disposal Facility and the Recyclable Material Facility have the capacity and equipment to dispose of and/or thoroughly process the quantity and type of materials collected by the Contractor in connection with this Contract in accordance with industry standards for managing such materials.

SECTION 11: PERSONNEL

Contractor shall assign a qualified person or persons to be in charge of its operations within City, and shall provide the name, office telephone number, mobile phone number, email address, and fax number of Contractor's representatives and key personnel to the Contract Administrator. Such records shall be updated as personnel or contact information changes. In addition, Contractor shall adhere to the following requirements:

- (i) Contractor shall hire and maintain qualified personnel to provide service under this Contract. Contractor shall ensure that personnel operating commercial vehicles have a valid commercial driver's license while operating commercial vehicles in the City.
- (ii) Contractor shall furnish each employee with a uniform and safety vest, shirt or jacket which clearly displays the name of Contractor. Such uniforms and safety equipment shall make the employee readily visible to other motorists. Contractor's employees shall wear complete uniforms and safety vest, shirt or jacket at all times.
- (iii) Contractor shall provide regularly scheduled, on-going operating and safety training for all employees. In addition, Contractor's employees shall be trained to perform their duties to maximize the City's recycling rate, minimize contamination, and promote recycling at all times. All temporary and newly hired permanent collection personnel shall receive comprehensive safety and operational training prior to working on the collection vehicles. Training manuals and schedules shall be maintained at the local office of Contractor and available for review at any time by Contract Administrator.
- (iv) All employees involved in the performance of this Contract including office and all collection personnel, shall be provided adequate training before and during their employment with the Contractor. This training shall familiarize employees with the required duties and standards of performance, specific requirement on routes to which they will be assigned, teach the route layouts previously established and approved, and provide necessary knowledge to eliminate delays and missed collections. All supervisory and collection employees shall be provided comprehensive safety training, equipment, and supplies prior to and during the performance of their duties. All collection, administrative, supervisory and customer service personnel shall receive customer service training prior to and during the time they are employed by the Contractor.
- (v) Contractor's employees shall treat all Residents customers, co-workers, City employees and any person with whom they come in contact in the performance of their duties in a polite and courteous manner. Rudeness, belligerence, and the use

of profanity are strictly prohibited. The City reserves the right to direct Contractor to remove any employee who violates this policy from providing services to the City.

- (vi) In performance of collection, disposal, processing, and marketing services, Contractor's employees shall comply with all City, state and federal laws.

SECTION 12: HOURS OF OPERATION

12.1 Collection Hours of Operation

Except for specified holidays, Contractor's hours of operation within the City are set forth below.

12.1.1 Residential Services

Contractor's regular collection hours shall be from 7:00 a.m. until 6:00 p.m., Monday through Friday, unless the Contract Administrator gives permission for extended hours. Contractor is prohibited from operating its residential collection vehicles on City streets prior to 7:00 a.m. or after 8:00 p.m.

12.1.2 City Facility Services

Contractor's regular collection hours for City Facility Services within 300 feet of a residential area shall be from 6:30 a.m. until 6:30 p.m.

12.1.3 Downtown Commercial District

Contractor's regular collection hours for Downtown Commercial District Services shall be as agreed upon by the Contract Administrator and the Contractor.

12.1.4 Commercial Services

Collections for Commercial Services shall be made during hours set forth in an agreed upon schedule between the Contractor and Customer. All collections shall be made at the noise level required by the City's Noise Control Ordinance and during the City's approved hours of collection.

SECTION 13: HOLIDAYS

For purposes of this Contract, holidays shall include only the following:

- (i) New Year's Day;
- (ii) Thanksgiving Day; and
- (iii) Christmas Day.

The Contract Administrator, at his/her sole discretion, may add or delete holidays. If the Contract Administrator elects to add or delete holidays, the City will provide the Contractor notice in accordance with the provisions of this Contract. If a holiday occurs on a scheduled collection day for Residential Services, Contractor shall perform the scheduled collection for the holiday and the remainder of the week ending on Friday on the next calendar day after the scheduled collection day. If a holiday occurs on a scheduled collection day for City Facility Services, Downtown Commercial District Services or Commercial Services, the Contractor shall perform the scheduled

collection for such City Facility, Downtown Commercial District Services or Commercial Services on the next calendar work day after the holiday or as mutually agreed upon.

SECTION 14: CUSTOMER SERVICE OFFICE AND COMPLAINTS

Contractor shall maintain a customer service office, staffed with personnel Monday through Friday, 8:00 AM to 5:00 PM. If the City receives a customer service complaint, the City shall contact the Contractor Representative via non-toll phone call or email and provide the following information:

- (i) Customer name, address, and phone number, and
- (ii) Type of complaint.

All complaints, whether received by the City or the Contractor, shall be resolved as follows:

- (i) If the complaint is a verified and confirmed missed collection, Contractor shall pick up the missed collection on that same day if the confirmed and verified complaint is delivered to the Contractor prior to 1:00 PM.
- (ii) If the complaint is a verified and confirmed missed collection, Contractor shall pick up the missed collection before 5:00 PM on the next calendar day if the complaint is delivered to the Contractor on or after 1:00 PM.
- (iii) If the complaint is other than a missed collection, Contractor shall attempt to resolve the complaint within twenty-four (24) hours of notice of such complaint to Contractor.

For each customer complaint, Contractor shall record the following information regarding the complaint:

- (i) Date and time complaint was delivered to the Contractor;
- (ii) Identification of the person whom delivered the complaint to the Contractor;
- (iii) Contractor's determination as to whether the complaint is legitimate or non-legitimate;
- (iv) Date, time and action taken to resolve complaint; and
- (v) Name of responsible contact at Contractor's location regarding the complaint.

On or before the tenth day of each month, the Contractor shall deliver to the Contractor Administrator a summary report of all customer complaints for the previous month.

Contractor and City acknowledge that customer service is of high importance to the City. Contractor and its employees will work diligently to provide high customer services to the City and all customers.

SECTION 15: TRANSITION SUPPORT

Contractor understands, acknowledges, and agrees that a smooth transition from Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service from a provider(s) to another is essential for the health and safety of the City and its residents. Contractor understands,

acknowledges, and agrees that with the failure of Contractor to timely and promptly transition could create serious health and safety issues for the City and its residents. Contractor understands, acknowledges, and agrees that the City does not possess the necessary manpower or equipment to provide Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service.

Contractor shall cooperate fully and timely with the City and subsequent provider(s) in any transition of Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service. Contractor shall cooperate fully with the City in:

- (i) The transition of Commercial Units from their current provider of Solid Waste Service, Bulk Waste Service, and Recycling Services to the Contractor.
- (ii) The transition from the Contractor to subsequent person(s) or the City providing Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service upon expiration of the initial term or optional renewal term of this Contract; and,
- (iii) The transition from the Contractor to subsequent person(s) or the City providing Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service upon termination of the Contract.

SECTION 16: DAMAGE TO PROPERTY

The Contractor shall take all necessary precautions to protect public and private property during the performance of this Contract. The Contractor shall repair or replace any private or public property which is verified and confirmed damaged by the Contractor. Such property damages shall be addressed for repair or replacement, at no charge to the property owner, within forty-eight (48) hours, or as promptly as reasonably possible, with property of the same or equivalent value at the time of the damage (or as otherwise agreed upon).

If the Contractor fails to address the repair or replacement of damaged property within forty-eight (48) hours, or as promptly as reasonably possible, the City may, but shall not be obligated to, repair or replace such damaged property, and the cost of doing so shall be deducted from payment to be made to the Contractor.

SECTION 17: SPILLAGE AND LEAKAGE, LITTER, AND ODOR

17.1 Spillage and Leakage

Contractor shall clean up any materials including leakage of fluids spilled from Contractor's vehicles. During transport, all materials shall be contained, covered and enclosed so that leaking, spilling, and blowing of materials does not occur. Contractor shall be responsible for the cleanup of any spillage or leakage from Contractor's vehicles. Contractor shall perform all clean-ups within two (2) hours of the spillage or leakage, or as promptly as reasonably possible.

17.2 Litter

The Contractor shall be required to pick up any and all litter (including any glass spillage) caused by the provision of services in connection with this Contract.

17.3 Odor

The Contractor shall maintain collection equipment to minimize unpleasant odors.

SECTION 18: RECORDKEEPING, REPORTING, AUDITED FINANCIAL STATEMENTS, AND REPORTING FORMAT

18.1 Recordkeeping

The Contractor shall create, maintain, and make available records that are reasonably necessary to:

- (i) Document Recyclable Material and Residential Solid Waste deliveries by time delivered to facility, the Municipal Solid Waste disposal fee per ton, the Recyclable Material Facility processing fee cost per ton, and other information as requested by Contract Administrator.
- (ii) Document any Hazardous Waste including the source, tonnage, date received, Disposal Facility, and other information as requested by the Contract Administrator. A monthly and annual summary shall also be submitted to the City.
- ~~(iii) A yearly report of the Out-of-City Residential Service Units.~~
- ~~(iv)~~(iii) Such other documents and reports as the City may reasonably require to verify compliance with the Contract or to meet the City's reporting requirements with the State of Texas.

All of Contractor's records shall be available to City and its representatives at reasonable times and places throughout the term of this Contract.

18.2 Reporting

~~18.2.1 Initial Reports~~

~~18.2.1.1 Transition Plan~~

~~Upon execution of this Contract, Contractor shall submit to the Contract Administrator for approval a transition plan for the commencement of Commercial Services. In the transition plan, Contractor shall detail:~~

~~The timeline for the transition of all Commercial Units from their current provider of Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service to the Contractor.~~

~~The staging and provision of initial Containers to Commercial Customers.~~

~~No later than one year prior to the expiration or termination date of this Contract, the Contractor shall submit to the Contract Administrator for approval a transition plan, consistent with the transition support requirements as set forth in this Contract. In the transition plan, Contractor shall detail:~~

~~The transition from the Contractor to subsequent person(s) or the City providing Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service upon expiration of the initial term or optional renewal term; and,~~

~~The transition from the Contractor to subsequent person(s) or the City providing Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service upon termination of the Contract.~~

~~18.2.1 Hazardous Waste and Special Waste Contingency Plan~~

~~The Contractor shall submit to the Contract Administrator for approval a Hazardous Waste and Special Waste contingency plan. The plan shall detail what actions shall be taken by the Contractor upon discovery of Hazardous waste and/or Special Waste to a facility. Contractor shall include in the plan a copy of signed contract(s) with a permitted Hazardous Waste and Special Waste Transporter(s) to handle any Hazardous Waste and Special Waste discovered at the facility. The plan shall comply with all State and Federal Regulations regarding the handling of Hazardous Waste and Special Waste.~~

~~18.2.2~~ 18.2.1 **Monthly Reports**

Contractor shall submit all monthly reports, including bills, to the Contract Administrator within seven (7) calendar days following the end of each calendar month. Monthly reports are those described in this Section 18.

~~18.2.3~~ 18.2.2 **Annual Reports**

Contractor shall submit all annual reports to the Contract Administrator on or before February 1 of each contract year. Annual reports are those listed in this Section. In addition, Contractor shall provide the Contract Administrator with a copy of any annual financial audit performed for Contractor.

~~18.2.4~~ 18.2.3 **Report Format**

Within thirty (30) calendar days of the execution of this Contract, the Contractor shall submit to the Contract Administrator for its approval the format and sample contents of the records to be maintained and the reports to be generated in fulfillment of the requirements of the Contract. Contractor shall submit all reports in electronic and hard copy format approved by the Contract Administrator.

SECTION 19: CITY INSPECTION RIGHTS

19.1 City's Right to Inspect Records, Books, Data and Documents

Upon twenty-four (24) hours notification to Contractor, the City or any of its duly authorized representatives shall have access to all books, records, data and documents of the Contractor for inspection, and audit, at City's expense.

19.2 City's Rights to Inspect Facilities and Equipment

The City or any of its duly authorized representatives shall have access to inspect Contractor's facilities and facilities which receive the City's Municipal Solid Waste, including the Disposal Facility, the Recyclable Materials Facility, and equipment and perform such inspections, as City deems reasonably necessary, to determine whether the services required to be provided by Contractor under this Contract conform to the terms hereof. City shall conduct the inspection of facilities and equipment during regular hours of operation. Contractor shall make available to City all reasonable facilities and assistance to facilitate the performance of inspections by City's representatives.

SECTION 20: SERVICES RATES

20.1 Residential Services Rate

The Residential Services Rate is the sum of money per Residential Customer paid each month by the City to the Contractor for the provision of Residential Services. The Residential Services Rate ~~is composed of three separate components, to wit: the Fuel Component, the Disposal Cost Component, and the Operations, Overhead and Profit Component~~ shall be evaluated yearly and adjusted in accordance with the CPI-U. The CPI-U as published in July of 2023 by the U.S. Bureau of Labor Statistics shall be the base CPI-U utilized for calculating an initial proposed rate adjustment as set forth in Section 21.1 below. The Residential Services Rate shall be fixed at \$167.375 until September 30, 2023. After September 30, 2023, the Contractor may request a change in the Residential Services Rate in accordance with the terms set forth ~~therein and the formulas set forth below in Section 21.1 below.~~

~~20.2 Fuel Component of the Residential Services Rate~~

~~The Cost of Fuel is based on the Department of Energy (“DOE”) Diesel Fuel price index, less a 5% discount for volume purchases. The Fuel Component of the Residential Services Rate is calculated by multiplying the total monthly average fuel consumption for the previous twelve (12) month period times the Cost of Fuel per gallon, divided by the total number of Residential Service Units combined with the number of Out of City Residential Service Units (collectively the “units”). The following is an example calculation of the Fuel Component of the Residential Services Rate:~~

- ~~(i) — The previous twelve (12) month average fuel consumption equals 15,101 gallons;~~
- ~~(ii) — The Cost of Fuel [DEO Diesel Price Index (\$3.00) less a 5% (\$0.15) discount for volume purchases] per gallon equals \$2.85; and~~
- ~~(iii) — The number of units is the number of Residential Service Units (_____) plus the number of Out of City Residential Service Units (_____), for a total of 30,383 units.~~

~~Formula: (15,101 gallons) X (\$2.85 per gallon) / (30,383 units) equals \$1.40.~~

~~Therefore, the Fuel Component of the Residential Services Rate in the example calculation above is \$1.40. The numbers in the example above are based upon the historical data.~~

~~20.3 Disposal Cost Component of the Residential Services Rate~~

~~The Disposal Cost Component will be based upon the actual disposal cost per ton to dispose of Municipal Solid Waste at the Solid Waste Facility and dispose/deliver Recyclable Material at the Recyclable Material Facility. The Disposal Cost Component of the Residential Services Rate is calculated by multiplying the monthly average of the number of tons of Municipal Solid Waste delivered to the Solid Waste Facility in the previous twelve (12) months, times the actual disposal cost per ton, plus the monthly average of the number of tons of Recyclable Material delivered to the Recyclable Material Facility in the previous twelve (12) months, multiplied by the actual disposal/deliver cost per ton, divided by the total number of Residential Service Units. The following is an example calculation of the Disposal Component of the Residential Service Rate:~~

- (i) ~~The monthly average of the number of tons of Municipal Solid Waste delivered to the Solid Waste Facility in the previous twelve (12) months equal 3,547;~~
- (ii) ~~The actual disposal cost per ton of Municipal Solid Waste equals \$32.80/ton;~~
- (iii) ~~The monthly average of the number of tons of Recyclable Material delivered to the Recyclable Material Facility over the previous twelve (12) months equals 556;~~
- (iv) ~~The actual disposal/delivery cost per ton of Recyclable Materials equals \$32.80/ton;~~
- (v) ~~The number of units is the number of Residential Service Units () plus the number of Out of City Residential Service Units () for a total of 30,838 units.~~

~~Formula: (3,547 tons) X (\$32.80/ton) + (556 tons) X (\$32.80/ton) / (30,838 units) equals \$4.36.~~

~~Therefore, the Disposal Cost Component of the Residential Services Rate in the example calculation above is \$4.36. The numbers in the example above are based upon historical data.~~

20.4 Operations, Overhead and Profit Component

~~The Operations, Overhead and Profit Component is intended to cover all other direct and indirect costs to Contractor of providing Residential Services, as well as a reasonable profit. For the purposes of establishing the Residential Services Rate, the Contractor and City hereby agree that the Operations, Overhead and Profit Component shall be \$10.61. The Operations, Overhead and Profit Component may be modified from time to time by mutual agreement of the parties as set forth in a Residential Services Rate after September 30, 2022~~

20.5 Residential Services Rate

~~The Residential Services Rate is the sum of the Fuel Component, the Disposal Component, and the Operations, Overhead and Profit Component. The following is an example calculation of the Residential Service Rate using the rates from the example calculations in Sections 20.2, 20.3, and the actual amount of the Operations, Overhead and Profit Component set forth in Section 20.4:~~

- (i) ~~Fuel Component~~ ~~_____~~ ~~\$1.40~~
- (ii) ~~Disposal Cost Component~~ ~~_____~~ ~~\$4.36~~
- (iii) ~~Operations, Overhead and Profit Component~~ ~~_____~~ ~~\$10.61~~

~~**EXAMPLE TOTAL RESIDENTIAL SERVICES RATE** ~~_____~~ ~~\$16.37~~~~

~~The numbers in the example above are used for illustrative purposes only.~~

20.2 Accurate Records and Audits

The Contractor and City each agree to maintain accurate records with respect to the three components of the Residential Service Rate. Specifically, Contractor agrees to maintain accurate records of its monthly fuel consumption, and the number of tons of Municipal

Solid Waste and Recyclable Material delivered to the appropriate facility each month. Likewise, the City agrees to maintain accurate records of the total number of Residential Service Units. Each party grants to the other party reasonable rights to inspect and audit the aforesaid records.

20.73 Downtown Commercial Services Rate

The Downtown Commercial District Services Rate is the sum money per Downtown Commercial District Customer paid each month by the City to the Contractor for the provision of Downtown Commercial District Services. The Downtown Commercial District Services Rate determined based upon the business classification of the Customer and the square footage of the business, or as determined by the Director of Utilities and Environmental Services, and is calculated as follows:

<u>Business Classification</u>	<u>Sq. ft. Classification</u>	<u>Service Rate per month</u>
Small Office	6500 or less	\$32.00 <u>17.35</u>
Large Office	6501 or more	\$66.00 <u>34.70</u>
Small Retail and Services	3000 or less	\$107.00 <u>34.70</u>
Large Retail and Services	3001 or more	\$184.00
<u>Small Specialty</u>	<u>1600 or less</u>	<u>\$113.64</u>
<u>Medium Specialty</u>	<u>1601-3000</u>	<u>\$158.85</u>
<u>Large Specialty</u>	<u>3001 or more</u>	<u>\$248.68</u>
Small Restaurant	1600 or less	\$184.00
Medium Restaurant	1601-3000	\$253.00 <u>248.68</u>
Large Restaurant	3001 or more	\$323.00 <u>317.29</u>
Small Bar	2500 or less	\$163.00
Large Bar	2501 or more	\$253.00 <u>248.60</u>

After September 30, 202~~2~~³, the Contractor may petition for reasonable adjustments to the Downtown Commercial District Services Rate as set forth in Section 21.1 below.

20.84 Commercial Services Rates

The Contractor shall provide collection service to all Commercial Customers within the City, as set forth in the attached **Exhibit “1” “Contracted Rates for Commercial Customers.”** The rates set forth in **Exhibit “1”** are monthly, unless otherwise specified, and are subject to change, but only by contract terms and conditions and approval of the City Council as set forth in Section 21. After September 30, 2023, the Contractor may petition for reasonable adjustments to the Commercial Services Rate as set forth in Section 21.2 below.

SECTION 21: ADJUSTMENT OF THE SERVICES RATES

21.1 Residential Services and Downtown Commercial District Services Rate Adjustments

Contractor may petition the City for reasonable adjustments to the Residential Services Rate and the Downtown Commercial District Services Rate based on ~~increases in the Fuel Component, the Disposal Cost Component, and/or the Operations, Overhead and Profit Component caused by increases in inflation and/or also by other factors other than the three listed components such as increases in cost caused by revised laws, ordinances, regulations, and for other similar reasons~~inflation as demonstrated by an increase in the published July CPI-U from the previous year's published July CPI-U. The Contractor's petition shall specifically ~~identify the reasons for the requested adjustment, and its impact upon the Contractor's cost of operations, in unit terms, with an explanation of the methodology used to calculate such impact~~ demonstrate the increase in the CPI-U from the previously published July CPI-U. The City may decrease the Residential Services Rate and/or the Downtown Commercial District Services Rate on or after September 30th based on a decrease in inflation as demonstrated by the July CPI-U. In the event the published July CPI-U rate in any year reflects a rate increase of more than five percent (5%) or a rate decrease of more than two percent (2%), the annual rate increase shall be capped at five percent (5%) and the rate decrease shall be capped at two percent (2%). The City may request additional information it considers necessary to evaluate the requested adjustment. The City shall not unreasonably refuse to grant Contractor's petition for ~~reasonable CPI-U~~ adjustments to the Residential Services Rate and the Downtown Commercial District Services Rate made in accordance with this Section. In no event shall adjustments be cumulative, and if Contractor fails to petition for an increase in any twelve (12) month period, Contractor waives its right to an increase for that year.

21.2 Commercial Services Rate Adjustments

Contractor may petition the City for reasonable adjustments to the Commercial Services Rate based on inflation as demonstrated by an increase in the published July CPI-U ~~(Consumer Price Index Rate for all Urban Customers, Garbage and Trash Collection) from the previous year's published July CPI-U.~~ The Contractor's petition shall specifically ~~identify the reasons for the requested~~ demonstrate the increase in the CPI-U ~~adjustment with an explanation of the CPI-U calculation used to justify the requested increase from the previously published July CPI-U.~~ The City may decrease the Commercial Services Rate on or after September 30th based on a decrease in inflation. In the event the published July CPI-U rate in any year reflects a rate increase of more than five percent (5%) or a rate decrease of more than two percent (2%), the annual rate increase should be capped at five percent (5%) and the rate decrease shall be capped at two percent (2%). The City may request additional information it considers necessary to evaluate the requested adjustment. The City shall not unreasonably refuse to grant Contractor's petition for ~~reasonable a~~ CPI-U adjustments to the Commercial Services Rate made in accordance with this Section. The Contractor shall not request a Commercial Services rate adjustment more than once within a twelve (12) month period. ~~In the event the City does not grant Contractor's petition for a rate adjustment, Contractor shall have the right to terminate this Contract as it pertains to the provision of Commercial Services only, with twelve (12) months written notice to the City.~~

21.3 Other Adjustment

In the event of a significant or unusual increase in costs beyond the control of Contractor, Contractor may petition the City for an adjustment to the Residential Services and Commercial Rates based upon significant increases in costs to Contractor. Contractor's petition must specify in detail the reasons for the requested adjustment and a detailed analysis on the impact to Contractor's cost of operations, with an explanation of the methodology used to calculate such impact. The City may request additional information it considers necessary to evaluate the

requested adjustment. The City shall not unreasonably refuse to grant Contractor's petition for reasonable adjustments to the Residential and Commercial Services Rates.

SECTION 22: CUSTOMER LIST, BILLING PAYMENT

22.1 Customer List

~~Monthly~~Annually, ~~the~~ City shall provide Contractor with a Customer List for Residential Services, City Facility Services and Downtown Commercial District Services and Commercial Services. The City shall provide Contractor with a Customer list for Commercial Services upon execution of this Agreement, including all information necessary for Contractor to identify all service locations.

Contractor will report in writing to the Contract Administrator any Cart(s) or Bulk Waste placed at the curbside of a Residential Waste Service Unit, City Facility, business located in the Downtown Commercial District, or a Commercial Unit that is not on the then current Customer List, and Contract Administrator will thereafter update the Customer List as applicable. Regardless of the Customer List, Contractor shall provide services to all Residential Services Units, City Facilities, the Downtown Commercial District, and Commercial Units.

22.2 Billing

22.2.1 Residential Services

The City shall bill Residential Service Units as identified on the Customer List for Residential Services in accordance with the rate structure established from time to time by the City Council. For additional Bulk Waste Services, the Contractor shall bill Residential Service Units for additional Bulk Waste Services in accordance with the mutually agreed upon rate established by the Contractor and the Residential Service Unit.

22.2.2 City Facility Services

The Contractor shall at its sole expense provide City Facility Services. The Contractor shall not bill the City, ~~co-sponsors,~~ or any other person for City Facility Services.

22.2.3 Downtown Commercial District

The City shall bill businesses located in the Downtown Commercial District as identified on the Customer List for the Downtown Commercial District in accordance with the rate structure established herein.

22.2.4 Commercial Services

The Contractor shall bill all Commercial Customers directly on a monthly basis for services to be provided the following month in accordance with the rate structure established herein. No billing services for Commercial Customers shall be performed by the City. Contractor shall have the right to suspend services for any Customer for non-payment. Contractor has the right to include a line item in its billing to Commercial Customers for ~~Franchise-License~~ Fees, however, all amounts collected by Contractor from Commercial Customers for ~~Franchise-License~~ Fees shall be included in the Contractor's Gross Receipts

22.3 Payment

22.3.1 Payment to Contractor

On or prior to the 15th of each calendar month, the City shall pay to Contractor the Residential Services Rate for each Residential Unit and the Downtown Commercial District Services Rate for each business located within the Downtown Commercial District that has paid the City's fee for collection of refuse and recycling services during the previous month. Any charges for additional work outside the scope of this Agreement shall be submitted to the City for approval prior to the commencement of the work.

SECTION 23: COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor understands, acknowledges, and agrees the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

Pursuant to the provisions of A.R.S. §41-4401, the Contractor warrants to the City that the Contractor and all its subcontractors are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Contractor or any of its subcontractors will be deemed a material breach of this Contract and may subject the Contractor or subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of the Contractor or any subcontractor who works on this Contract to ensure that the Contractor or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Contractor and any of its subcontractors to ensure compliance with this warranty.

The City will not consider the Contractor or any of its subcontractors in material breach of this Contract if the Contractor and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Section shall be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Texas by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

In addition, Contractor shall comply with the following laws:

- (i) Occupational Safety and Administration

Contractor will warrant that any work performed on City property or in a location partially or entirely under (Contractor's) control will be performed in accordance with OSHA requirements and all applicable labor laws, regulations, and standards.

(ii) Equal Employment Opportunity

Contractor will comply with applicable laws, statutes, codes, rules and regulations related to or prohibiting discrimination in employment in the performance of its work under this Contract.

(iii) Fair Labor Standards Act

Contractor is required and hereby agrees by execution of this Contract to pay all employees not less than the Federal minimum wage and to abide by other requirements as established by the Congress of the United States in the Fair Labor Standards Act, as amended from time to time.

In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of Contractor verifies that Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

SECTION 24: PUBLIC EDUCATION NOTICES

Contractor shall provide the following services associated with public education notices at no cost to the City or the customer. Contractor shall submit all public education notices to the Contract Administrator for approval. Contractor will at no time place public education notices inside customers' mailboxes. Contractor shall not distribute any public education notices within the City without written approval from Contract Administrator.

(i) Distribution of Program Introduction Notice:

Contractor shall develop, print, and distribute, at Contractor's own expense, a Program Introduction Notice for each Residential Service Unit and Commercial Service Unit for which Contractor delivers a Bin, Cart, and/or Container.

(ii) Development, Printing and Distribution of Unacceptable Set-Out Notice:

Contractor shall develop, print, and distribute, at Contractor's own expense, an Unacceptable Set-Out Notice. The Unacceptable Set-Out Notice ~~shall be approved by the Contract Administrator and~~ shall include one (1) original with two (2) copies. The Unacceptable Set-Out shall include (a) the date (b) reason for non-collection, and (c) Contractor's customer service telephone number, and (d) any other information the City requests. Contractor shall attach the original Unacceptable Set-Out Notice via a non-adhesive means to the Bin, Cart, or Container. Contractor shall take a digital photo of the Set-Out that receives an Unacceptable Set-Out Notice. Contractor shall maintain copies of Unacceptable Set-Out Notices and digital photos in a format Contractor can immediately retrieve of a requested notice or photo by address. Contractor shall provide a monthly report of Unacceptable Set-Out Notices as set forth in this Contract.

SECTION 25: OWNERSHIP OF SOLID WASTE, BULK WASTE, RECYCLABLE MATERIALS AND CONSTRUCTION AND DEMOLITION WASTE

Title to Solid Waste, Bulk Waste, and Construction and Demolition Waste shall pass to the Contractor once the Contractor takes possession of the materials. Title to Recyclable Material shall remain with the City until the Recyclable Materials are delivered to the Recyclable Material Facility at which time title passes to the Recyclable Materials Facility operator. The risk of loss to the Recyclable Materials shall pass to Contractor at the time they are picked up by the Contractor. After the risk of loss passes to Contractor, if any Recyclable Materials are lost, damaged, or scavenged, Contractor shall be liable to the City for that sum of funds that would have been paid to the City in accordance with the provisions of this Contract.

SECTION 26: INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall and does hereby fully and completely indemnify and hold harmless the City and its Officers, Directors, Agents and Employees from and against any and all claims, costs, demands, suits, judgments, damages, losses and expenses, including, but not limited to, reasonable attorney's fees, and interest, arising directly or indirectly out of or resulting from the willful or negligent acts or omissions of the Contractor in the performance or failure to perform the work required under this Contract for any and all injuries, including death, to persons and any and all damage to personal or real property. This obligation shall not be construed to negate or reduce any other right or obligation of indemnity that would otherwise exist. This indemnification and hold harmless requirement shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the contractor or any subcontractor under any workers compensation acts, disability benefit acts or other employee benefit acts.

SECTION 27: INSURANCE REQUIREMENTS

27.1 Specific Insurance Requirements

The Contractor shall procure and maintain, during the life of this Contract insurance coverage listed below. If Federal, State or local law requires a higher insurance limit, Contractor shall procure and maintain the policy limit as specified by the applicable law.

- (i) Worker's Compensation Insurance - on behalf of itself, its partners, and all employees employed directly or indirectly by the Contractor who are to provide a service under this Contract of limits no less than as required law.
- (ii) Comprehensive/Commercial General Liability: (no pollution exclusion endorsement is permitted)
 - 1. Bodily Injury Liability (except automobile): \$1,000,000.00 per occurrence
 - 2. Property Damage Liability (except automobile) \$1,000,000.00 per occurrence
 - 3. Total Aggregate: \$2,000,000.00
- (iii) Automobile Liability:
 - 1. Bodily Injury \$1,000,000.00 each person
\$2,000,000.00 per occurrence

2. Property Damage

\$2,000,000.00 per occurrence

The policies of insurance shall be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the State of Texas and meet a minimum financial A.M. Best & Company rating of no less than "Excellent": VII.

Contractor shall file certificates of insurance meeting the requirements as set forth herein with the City prior to execution of this Contract. In addition, Contractor shall be solely responsible to maintain that all certificates of insurance are up to date as filed at the City. Failure of the Contractor to fully comply with the requirements set forth herein regarding insurance may be considered a material breach of this Contract and may be cause for termination of this Contract.

No changes are to be made to these specifications without prior written approval by the City.

Approval of the insurance by the City shall not relieve or decrease the liability of the Contractor for any damages arising from Contractor's performance of services provided herein.

27.2 General Requirements

All policies required herein, unless approval is given by the City, are to be written on an occurrence basis, shall name the City as additional insured as their interest may appear under this Contract, and the insurer shall agree to waive all right of subrogation against the City.

Insurance requirements itemized in this Section required by Contractor shall be provided by or in behalf of all subcontractors to cover their operations performed. The Contractor shall be held responsible for any modification, deviation, or omissions in these insurance requirements as they apply to all subcontractors.

Each insurance policy required by this Contract shall:

- (i) Apply separately to each insured against whom claim is made and suit is brought, except with respect to the limits of the insurer's liability.
- (ii) Be endorsed to state that coverage shall not be suspended, voided or canceled by either party, reduced in coverage or in limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to Contract Administrator.
- (iii) The City shall retain the right at any time to review coverage, form and amount of insurance.
- (iv) The procuring of such required policy or policies of insurance shall not be construed to limit the Contractor's liability to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, Contractor shall be obligated for the full and total amount of any damages, injury or loss caused by negligence or neglect connected with this Contract.
- (v) The Contractor shall be solely responsible for payment of all premiums for insurance contributing to the performance of this Contract and shall be solely

responsible for the payment of all deductibles to which such policies are subject, whether or not the City is an insured under the policy.

- (vi) Claims made policies will be accepted for professional and hazardous materials liability coverage and such other risks as are authorized by the City. All such policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two years. If provided an option, the Contractor agrees to purchase the extended reporting period coverage on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.
- (vii) Certificates of Insurance evidencing claims made or occurrence form coverage and conditions to this Contract, as well as the City's Contract number and description of work, are to be received and approved by the Contract Administrator and the City Risk Manager prior to Commencement Date and no more than thirty (30) calendar days prior to expiration of the insurance when applicable. All insurance certificates shall be received and approved by Contract Administrator before the Contractor will be allowed to commence or continue work.
- (viii) Notice of Accident (occurrence) and notice of claim shall be given to the insurance company, the City Risk Management Division, and the Contract Administrator as soon as practicable after notice to the insured of any incident (occurrence) or claim.

SECTION 28: PERFORMANCE BOND

Contractor agrees that within ten (10) days after the execution of this Contract, Contractor shall make, execute, and deliver to the City a good and sufficient Performance Bond in a form approved by the Contract Administrator, to secure the full, complete and faithful performance of the terms and conditions herein. Such Performance Bond shall be in the amount of one hundred and fifty thousand dollars (\$150,000), and shall be renewed each year thereafter throughout the term of this Contract. The Performance Bond shall be signed by the President or General Officer of the Contractor, together with the signature of the corporate secretary and the corporate seal. The surety shall be a surety company duly authorized to do business in the State of Texas; having an "A" or better rating by A. M. Best or Standard and Poors; included on the list of surety companies approved by the Treasurer of the United States of America; and acceptable to Contract Administrator and the City.

SECTION 29: ASSIGNMENT AND/OR SUBCONTRACTING

This Contract and any permits required for performance of the Contract may not be assigned, subcontracted, conveyed, or otherwise disposed of without the written permission of the City, which will not be unreasonably withheld. No such assignment or subcontracting shall relieve Contractor of its liability under this Contract. In the event Contractor elects to use any subcontractors, this does not relieve Contractor from any prime responsibility of full and complete satisfactory and acceptable performance under any awarded Contract.

SECTION 30: TAXES

Contractor shall be responsible for and shall pay all sales, consumer, use, and other taxes. When equipment, materials or supplies generally taxable to the Contractor are eligible for a tax

exemption due to the nature of the item and services performed as part of this Contract, Contractor shall assist City in applying for and obtaining such tax credits and exemptions which shall be paid or credited to City.

SECTION 31: FORCE MAJEURE

Except for any payment obligation by either party, if the City or Contractor is unable to perform, or is delayed in its performance of any of its obligations under this Contract by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the City or Contractor to correct the adverse effect of such event of force majeure.

An event of “Force Majeure” shall mean the following events or circumstances to the extent that they delay the City or Contractor from performing any of its obligations (other than payment obligations) under this Contract:

- (i) Acts of God, tornadoes, hurricanes, floods, sinkholes, fires, and explosions (except those caused by negligence of Contractor, its agents, and assigns), landslides, earthquakes, epidemics, quarantine, pestilence, and extremely abnormal and excessively inclement weather; and
- (ii) Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities.

In order to be entitled to the benefit of this Section, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure the event of Force Majeure. The parties agree that, as to this Section, time is of the essence.

SECTION 32: DEFAULT

32.1 Events of Default

The occurrence of any of the following shall constitute an “Event of Default” by Contractor hereunder:

- (a) The failure of Contractor to pay when due any sum of money provided herein, provided such failure continues for more than five business days after Contractor receives written notice from City that such installment is due.
- (b) The breach by Contractor of any other covenant, condition, or agreement required to be performed or observed hereunder, if such breach has not been cured within thirty (30) days of delivery of notice of such breach to Contractor by City, unless such breach, by its nature, cannot be cured within such thirty (30) day period, in which case so long as Contractor is diligently proceeding to cure such breach and is making reasonable progress in effectuating a cure, it shall not be deemed to be an Event of Default.
- (c) The occurrence of an Act of Bankruptcy, provided that with respect to the filing of an involuntary petition in bankruptcy or other commencement of a bankruptcy or similar proceeding against Contractor, such petition or proceeding shall remain undismissed for ninety (90) days.

32.2 Remedies of the City on Default

- (a) If any Event of Default shall have occurred and be continuing, City may, in its own name and for its own account, without impairing the ability of City to pursue any other remedy provided for in this Contract now or hereafter existing at law or in equity or by statute, institute such action against Contractor as may appear necessary or desirable to collect such amounts then due under this Contract, or to enforce performance and observance of such covenant, condition or obligation of Contractor hereunder, or to recover damages for Contractor's non-payment, non-performance or non-observance of the same.
- (b) Upon the occurrence of any Event of Default and during the continuance thereof, City may (i) by giving Contractor written notice upon the occurrence of any Event of Default described herein declare this Contract to be terminated, (ii) exclude Contractor from continuing to collect Municipal Solid Waste, Bulk Waste and Recyclable Materials; and (iii) take whatever action at law or in equity as may appear necessary or desirable to collect any amounts then due, to enforce performance and observance of any covenant, condition or obligation of Contractor hereunder, or to recover damages for Contractor's nonpayment, non-performance or non-observance of the same.
- (c) Contractor shall pay all of City's reasonable fees and expenses, including reasonable attorneys' fees, in enforcing any covenant to be observed by Contractor or pursuing any remedy upon an Event of Default.

SECTION 33: DISPUTE RESOLUTION

33.1 Agreement Regarding Remedies

The failure by either party to perform its obligations under this Contract would be difficult, if not impossible, of being appropriately remedied by award of damages because of the nature of the obligations to each other hereunder. Therefore, the parties agree that in addition to any other remedy that they have in law or equity that they shall be entitled to the remedies of specific performance, mandamus, and injunction in the event of any breach of any obligation by any party under this Contract. The parties hereby waive any requirement that they be required to provide any bond or other surety in order to obtain any of the agreed upon remedies.

33.2 Agreement to Negotiate First to Resolve Issues

The parties agree to attempt first to resolve disputes concerning this Contract amicably by promptly entering into negotiations in good faith. The parties agree that they will not refer any dispute to another dispute resolution procedure including mediation or litigation until they have first made reasonable and good faith efforts to settle their differences by joint negotiations conducted in a timely manner.

33.3 Agreement to Mediate

If any dispute cannot be resolved through good faith negotiation, then the parties shall endeavor to resolve the dispute by mediation as provided herein.

33.4 Presentation of Written Claim Regarding Disputes Not Resolved by Negotiation

In the event that a dispute is not resolved as a result of such negotiations, either party may at any time give formal written notice to the other party of a “claim.” A “claim” as used herein means a demand or assertion by one of the parties (the “claimant”) seeking, as a matter of right, adjustment or interpretation of contract terms, the payment of money, an extension of time for performance or other relief with respect to the terms of this Contract or any other dispute or matter in question between the parties arising out of or related to this Contract. Such notice shall be in writing. After such notice is given, the dispute resolution procedure provided for below shall immediately enter into effect.

33.5 Performance During Mediation

The claimant shall continue with performance under this Contract pending mediation of the dispute.

33.6 Appointment of Mediator

Promptly following the making of a written claim by either party, the parties will consult with one another to agree on the appointment of a mediator acceptable to parties. The mediator shall have experience in matters of the kind giving rise to the claim. If within five (5) business days the parties are unable to agree on the appointment of a mediator, then either party may request the appointment of a mediator by the Center for Public Policy Dispute Resolution at the University of Texas at Austin School of Law. The parties shall endeavor to secure such appointment from the Center for Public Policy Dispute Resolution within ten (10) business days after the request for same is made. The parties agree to utilize the mediator appointed by the Center unless they ultimately reach agreement on an alternative selection and give notice to the Center that another selection has been made by agreement.

33.7 Rules for Mediation

The parties agree to the following stipulations concerning the conduct of the mediation:

- (a) The mediator shall be impartial and shall have no conflict of interest.
- (b) The mediator shall not have any past, present or anticipated financial interest in this Contract except for the payment for services as mediator nor shall the mediator have been previously employed or acted as a consultant, attorney, employee, engineer, architect, contractor or subcontractor of either party nor have any present or anticipated future engagement of the kind described. Before the engagement of the mediator is finalized, the mediator shall provide to the parties a disclosure statement containing a resume of experience, and a description of past, present or anticipated future relationships to the parties, their engineers, contractors, subcontractors, attorneys, architects, or consultants.
- (c) The mediation shall be held at a time and location mutually agreeable to the parties and the mediator provided, however, that the mediation shall commence no later than fifteen (15) business days following the confirmation of appointment.
- (d) At least ten (10) business days prior to the mediation, the claimant shall submit to the other party and the mediator a statement of the claimant's position, the issues

that need to be resolved, and a summary of the arguments supporting the claimant's position. At least two (2) business days prior to the mediation, the other party shall submit its written response to the claimant's statement and provide a summary of its arguments in response.

- (e) If the parties agree that independent expert or technical advice would be helpful in facilitating a negotiated resolution of the dispute, the mediator may make arrangements to obtain such advice, and may, with the agreement of the parties, make arrangements for an independent expert to render a non-binding advisory opinion with respect to any technical matters in dispute after hearing the contentions of the parties with respect thereto. The expenses of obtaining such independent advice or advisory opinion shall be borne equally by the parties.
- (f) No party shall engage in any private interview, discussion or argument with the mediator concerning the subject matter of the mediation.
- (g) The fees of the mediator and any other costs of administering the mediation shall be borne equally by the parties unless otherwise agreed among them in writing.
- (h) The mediator may promote settlement in any manner the mediator believes appropriate at one or several mediation sessions as agreed to by the parties. The mediation shall continue only so long as desired by the parties and with the consent of all of them.
- (i) Mediation sessions shall be private unless otherwise required by law. Persons other than the representatives of the parties may attend mediation sessions only with the permission of both parties and the consent of the mediator.
- (j) All communications made in the course of the mediation process including any advice or advisory opinions rendered shall be confidential in accordance with V.T.C.A. Civil Practice and Remedies Code, Section 154.073.

33.8 Litigation

If a dispute arising pursuant to this Contract is not resolved through mediation as described in this Section, either party may pursue their legal and/or equitable remedies in court.

33.9 Operations during Dispute

In the event that any dispute arises between City and Contractor relating to this Contract, Contractor shall continue to render service and receive compensation in full compliance with all terms and conditions of this Contract as interpreted, in good faith, by the City, regardless of such dispute.

33.10 Right of Termination

Notwithstanding the other provisions in this Section 35, City reserves the right to terminate this Contract at any time whenever the service provided by Contractor fails to meet reasonable standards of the trade, after City provides written notice to Contractor pursuant to Section 33 of this Contract. Upon termination, City may call the performance bond and apply the cash and surety bond for the cost of service in excess of that charged to City by the firm engaged for the balance of the Contract period.

SECTION 34: DESIGNATED REPRESENTATIVE

Any notices or communication required or permitted to be made to either the City or the Contractor under this Contract shall be made to the Designated Representative in writing:

If to the Contractor: Designated Manager
Central Texas Refuse, LLC.
P.O. Box 18685
Austin, TX 78760-8685

If to the City: City Manager
221 E, Main St.
Round Rock, Texas 78664

Notice shall be deemed to be given: (a) if personally delivered, when delivered; (b) if mailed, five (5) business days after receipted delivery to the U.S. Mail; (c) if delivered to Federal Express, or any other nationally recognized overnight carrier, one (1) business day after delivery to such overnight carrier. Each party, by similar written notice given five (5) business days in advance to the other Parties in the aforesaid manner, may change the address to which notice may be sent.

SECTION 35: MISCELLANEOUS

35.1 Succession of Agreement

This Contract and the rights and obligation contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

35.2 Survival

Any rights either party may have in the event it terminates this Contract pursuant to the terms hereof shall survive such termination.

35.3 Joint Preparation

The preparation of this Contract has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

35.4 No Penalties

No provision of this Contract is to be interpreted as a penalty upon any party to this Contract. The parties hereby agree that the rights of the City in the event Contractor takes or fails to take certain actions pursuant to this Contract, are reasonable, and that the parties desire such certainty with regard to such matters.

35.5 Relationship

Nothing contained in this Contract shall constitute or be construed to be or create a partnership, joint venture or any other relationship between Contractor and City.

35.6 Further Assurance

Contractor and City agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further documents and perform such acts as shall reasonably be requested of it in order to carry out this Contract and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Contract, the parties declare their intention to cooperate with each other in effecting the terms of this Contract.

35.7 Time of the Essence

For purposes herein, the parties agree that time shall be of the essence of this Contract and the representations and warranties made are all material and of the essence of this Contract.

35.8 Captions and Section Headings

Captions and Sections headings contained in this Contract are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Contract, nor the intent of any provision hereof.

35.9 No Waiver

No waiver of any provision in this Contract shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

35.10 Entire Agreement and Modification

This Contract constitutes the entire understanding and agreement between the parties and may not be changed, altered or modified except by an instrument in writing signed by all parties against whom enforcement of such change would be sought.

35.11 Severability

In the event that any provision of this Contract shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Contract or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Contract shall, as so amended, modified, or supplemented, or otherwise affected by such action remain in full force and effect.

35.12 Knowledge

Contractor agrees that it has investigated and examined all streets, alleys, overhead trees, wires and such other conditions and requirements of the City that may affect its full and complete performance of this Contract and enters into this Contract giving completed such investigations and examinations to its full satisfaction and solely relying on such investigations and examinations.

35.13 Appendices

All Appendices attached hereto contain additional terms of this Contract and are incorporated into this Contract by reference. Typewritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

35.14 Governing Law

This Contract shall be construed and interpreted according to the laws of the State of Texas and venue with respect to any litigation shall be Williamson County, Texas.

35.15 Attorney Fees

The prevailing party in any litigation related to this Contract shall be entitled to recover from the non-prevailing party the reasonable attorneys' fees and costs incurred by such prevailing party in connection with such litigation.

35.16 Authorization

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges and agrees that it has read this Contract, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have made and executed this Contract on the respective dates under each signature:

CONTRACTOR:

Central Texas Refuse, LLC.

By: _____
Manager

Date: _____

CITY:

City of Round Rock, Texas

By: _____
Craig Morgan, Mayor

Date: _____

Attest:

By: _____
~~Sara L. White~~ Meagan Spinks, City Clerk

Approved as to Form:

By: _____
~~Stephan L. Sheets~~ Stephanie L. Sandre, City
Attorney