

FIRST AMENDMENT TO
EXCLUSIVE FRANCHISE AGREEMENT
FOR THE COLLECTION, HAULING, AND DISPOSAL OF
MUNICIPAL SOLID WASTE
IN THE CITY OF BURLESON, TEXAS
BETWEEN
THE CITY OF BURLESON AND WASTE CONNECTIONS LONE STAR, INC.

This First Amendment to Exclusive Franchise Agreement for the Collection, Hauling, and Disposal of Municipal Solid Waste in the City of Burleson, Texas (“Amendment”) is made and entered into by and between the City of Burleson, a Texas home rule municipal corporation in the Counties of Johnson and Tarrant (“City”) acting by and through its duly-authorized City Manager, and Waste Connections Lone Star, Inc., (“Service Provider”), a Texas corporation, acting by and through its duly-authorized corporate officer.

RECITALS:

WHEREAS, on or about May 20, 2019, the City and Service Provider entered into that Exclusive Franchise Agreement for the Collection, Hauling, and Disposal of Municipal Solid Waste in the City of Burleson, Texas (the “Agreement” as attached hereto as Exhibit A); and

WHEREAS, the parties desire to amend the Agreement by revising it to read as set forth below, with all other terms to remain unchanged;

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Section 11 titled “Term of the Agreement” is hereby amended and replaced to read as follows:

The term of this Agreement shall commence on June 1, 2019, and conclude on September 30, 2029 (the “Initial Term”). The City and Service Provider may, upon mutual consent, extend the Agreement for additional five (5) year terms (the “Renewal Terms”). To enter into a Renewal Term, the City and Service Provider shall agree in writing no later than 180 calendar days prior to the expiration of the current term of their mutual consent to enter into a Renewal Term. If the Agreement is not renewed, the Agreement is terminated at the end of the current term.

2. Section 9 titled “Rate Adjustment” is hereby amended by adding subsections (D) and (E) to the Section without replacing any of the Section in the Agreement:

D. Minimum Residential Base Rate Adjustment for Contract Year 10/1/23-9/30/24. For the contract year October 1, 2023, through September 30, 2024, the Service Provider may request a Base Rate adjustment pursuant to Section 9(A) for the Base Rate for Residential Unit Services Solid Waste collection using either (i) the method provided in Section 9(A) or (ii) SIXTEEN AND 30/100S DOLLARS (\$16.30) per month for each Residential Unit for

twice per week Solid Waste collection. Additionally, for the contract year October 1, 2023, through September 30, 2024, the Service Provider may request a Base Rate adjustment pursuant to Section 9(A) for the Base Rate for Residential Unit Services Recycling collection using either (i) the method provided in Section 9(A) or (ii) THREE AND 03/100S DOLLARS (\$3.03) per month for each Residential Unit for once per week Recycling collection. The Service Provider shall request the Base Rate adjustments pursuant the terms of Section 9(A).

E. Minimum Residential Base Rate Adjustment for Contract Year 10/1/24-9/30/25. For the contract year October 1, 2024, through September 30, 2025, the Service Provider may request a Base Rate adjustment pursuant to Section 9(A) for the Base Rate for Residential Unit Services Solid Waste collection using either (i) the method provided in Section 9(A) or (ii) SEVENTEEN AND 28/100S DOLLARS (\$17.28) per month for each Residential Unit for twice per week Solid Waste collection. Additionally, for the contract year October 1, 2024, through September 30, 2025, the Service Provider may request a Base Rate adjustment pursuant to Section 9(A) for the Base Rate for Residential Unit Services Recycling collection using either (i) the method provided in Section 9(A) or (ii) THREE DOLLARS AND 21/100S DOLLARS (\$3.21) per month for each Residential Unit for once per week Recycling collection. The Service Provider shall request the Base Rate adjustments pursuant the terms of Section 9(A).

3. **Section 27 titled "Indemnity" is hereby amended and replaced to read as follows:**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, SERVICE PROVIDER HEREBY AGREES AND CONSENTS FOR ITSELF, INDIVIDUALLY, AND ON BEHALF OF THE BUSINESS ENTITY REPRESENTED, TO FULLY AND UNCONDITIONALLY RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BURLESON, TEXAS, INCLUDING ITS OFFICERS, AGENTS AND EMPLOYEES, AND TO DEFEND AND HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, DEMANDS, LOSSES, OR LIABILITY FOR INJURIES TO REAL OR PERSONAL PROPERTY AND INJURIES TO PERSONS INCLUDING DEATH, INCLUDING SERVICE PROVIDER'S EMPLOYEES, AFFILIATES, REPRESENTATIVES, PARTNERS, AGENTS, OR THOSE WORKING ON SERVICE PROVIDER'S BEHALF, FROM ANY AND ALL OTHER COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, DEMANDS, LOSSES OR LIABILITIES OF ANY AND EVERY NATURE WHATSOEVER TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SERVICE PROVIDER, ITS OFFICERS, AGENTS OR EMPLOYEES, SAVE AND EXCEPT TO THE EXTENT SUCH ARE CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY. THIS PROVISION SHALL APPLY TO ALL IMPUTED OR ACTUAL JOINT ENTERPRISE AND JOINT VENTURE LIABILITY, IF ANY. The Service Provider agrees to protect the

City from claims involving infringements of patents and/or copyrights.

4. **Section 29 titled "Termination" is hereby amended and replaced to read as follows:**

In the event of a failure by either Party to perform any material provision of this Agreement, the complaining party shall give written notice of such breach to the breaching party along with at least thirty (30) days to correct such breach (the "Cure Period"). In the event the breaching party has not adequately corrected such breach in accordance with this Agreement, a hearing shall be held before the City Council. Upon completion of the Cure Period and the public hearing, the complaining party may terminate this Agreement and shall notify the breaching party in writing of such termination action. At such time, City shall pay Service Provider only all charges and fees for the services performed on or before such termination date. Following any such termination and the final payment from the City to Service Provider, neither party shall have any further obligation under this Agreement other than for claims for personal injuries or property damage as expressly provided in this Agreement and arising prior to such termination date.

5. **Section 37 titled "Miscellaneous Provisions" is hereby amended by adding subsections (H), (I), (J), (K), (L), and (M) to the Section without replacing any of the Section in the Agreement:**

- (H) Public Information. Service Provider acknowledges that City is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. The City's compliance with the Texas Public Information Act shall not violate the Agreement. Upon City's written request, Service Provider will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of City. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Service Provider agrees that the Agreement can be terminated if the Service Provider knowingly or intentionally fails to comply with a requirement of that subchapter.
- (I) Conflicts Of Interest. By executing this Agreement, Service Provider and each person signing on behalf of Service Provider certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of City Council, city manager, deputy city manager, city secretary, department heads, or deputy department heads of the City has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof, in violation of Section 132 of the Home Rule Charter of the City.
- (J) Anti-Boycotting Provisions. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
 - i. Pursuant to Section 2271.002 of the Texas Government Code, Service Provider certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel

during the term of the Agreement. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

ii. Pursuant to SB 13, 87th Texas Legislature, Service Provider certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

iii. Pursuant to SB 19, 87th Texas Legislature, Service Provider certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

(K) Service Provider Certification Regarding Business With Certain Countries And Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Service Provider certifies Service Provider (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

(L) Survival. Those obligations and representations under this Agreement which by their very nature should survive termination of this Agreement, shall survive termination of this Agreement.

(M) Counterparts; PDF Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.

6. **Effect of Amendment.** All other terms and conditions of the Agreement, with the exception of the terms modified by this Amendment, shall remain in full force and effect.

[Signature Pages to Follow.]

**THE CITY OF BURLESON,
a Texas municipal corporation**

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS
COUNTY OF JOHNSON

This instrument was acknowledged before me on _____, 2023 by
_____, known personally by me to be the _____ of the City of
Burleson, on behalf of said City.

[Notary Seal]

Notary Public, State of Texas

APPROVED AS TO FORM:

City Attorney or Deputy City Attorney

WASTE CONNECTIONS LONE STAR, INC.,
a Texas corporation

By: Robert G. Nielsen III

Name: ROBERT A. NIELSEN III

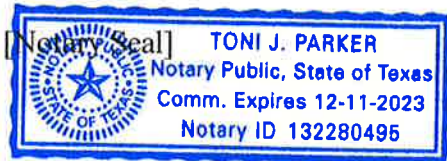
Title: REGIONAL VICE PRESIDENT

Date: APRIL 25, 2023

STATE OF TEXAS

COUNTY OF Montgomery

This instrument was acknowledged before me on Apr 25, 2023 by Robert A. Nielsen, known personally by me to be the Vice President of Waste Connections Lone Star, Inc., on behalf of said Waste Connections Lone Star, Inc.



[Signature]
Notary Public, State of Texas

Exhibit “A”

Agreement

CSO#1033-05-2019

**EXCLUSIVE FRANCHISE AGREEMENT
FOR THE COLLECTION, HAULING AND DISPOSAL OF
MUNICIPAL SOLID WASTE
IN THE CITY OF BURLESON, TEXAS**

June 1, 2019

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**EXCLUSIVE FRANCHISE AGREEMENT
FOR THE COLLECTION, HAULING AND DISPOSAL OF
MUNICIPAL SOLID WASTE AND RECYCLING
IN THE CITY OF BURLESON, TEXAS**

STATE OF TEXAS

COUNTIES OF JOHNSON AND TARRANT

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of JUNE, 2019, to be effective on June 1, 2019 (the "Effective Date"), by and between Waste Connections Lone Star, Inc., a Texas Corporation (the "Service Provider"), and the City of Burleson, Texas (the "City").

WHEREAS, the City, subject to the terms and conditions set forth herein and the ordinances and regulations of the City, desires to grant to the Service Provider the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste and Recycling (as such terms are defined herein) within the City's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Service Provider and the City hereby agree as follows:

SECTION 1. DEFINED TERMS.

The following terms, as used herein, will be defined as follows:

Bag - Plastic sacks, secured at the top, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a bag and its contents shall not exceed 35 lbs.

Bulky Item - Furniture, freezers, refrigerators, stoves, water heaters, air conditioning units, heating units and any other appliances or other items of like kind or size.

Bundles - Items not measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight and which are securely fastened together.

Business Day - Any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City.

Commercial Unit - Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste or Construction and Demolition Waste during, or as a result of, its business, including, but not limited to, restaurants, stores and warehouses.

Construction and Demolition Waste - Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste, Municipal Solid Waste or

Bulky Items.

Container -- Any Disposable Container, Reusable Container, or Recycling Container.

Disposable Container - Any box, carton or other container intended by the Residential and/or Non-Residential Unit for the disposal of Municipal Solid Waste. Total weight of a Disposable Container and its contents shall not exceed 35 lbs.

Handicapped Residential Unit - Any residential dwelling that is inhabited by persons, all of whom are physically handicapped to the extent that they are unable to place Municipal Solid Waste and/or Recycling at the curbside, and that generates and accumulates Municipal Solid Waste. The Service Provider shall provide front door service to Residential Units which qualify for medical/other necessity as determined by the City. Service Provider cannot enter or be responsible for entering garages or behind enclosed fences.

Hazardous Waste - Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

Holidays - The following days:

- (1) New Year's Day (January 1st)
- (2) Thanksgiving Day
- (3) Christmas Day (December 25th).

Landfill - Any facility or area of land receiving Municipal Solid Waste or Construction and Demolition Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

Municipal Solid Waste - Solid Waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Construction and Demolition Waste or Hazardous Waste.

Non-Residential Unit - Any manually collected location within the corporate limits of the City that is not a Residential Unit requiring either a minor (10 bags per collection) or major (20 bags per collection) collection by the Service Provider.

Recycling - Materials including paper, cardboard, plastics 1-5 & 7, glass, and aluminum, tin and steel food containers. See Solid Waste and Recycling brochure for more specifics. Service Provider reserves the right, from time to time, to add to or delete items from the above list with agreement by the City, for which no secondary market continues to exist or may be created after proper notice to the City. The Service Provider has no control on market values of items collected and represents no assurance of the future viability of secondary markets.

Recycling Container -- Container used for Residential Recycling collection. Container must be

64-gallon Toter brand cart or approved equivalent.

Residential Unit - A dwelling within the corporate limits of the City occupied by a person or group of persons comprising not more than four (4) families. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of a single or multi-level construction, consisting of four (4) or fewer contiguous or separate single family dwelling units, shall be treated as a Residential Unit, except that each single family dwelling within any such Residential Unit shall be billed separately as a Residential Unit. Any triplex or quadplex residential units have the option of standard minor/major hand collection from the Service Provider or securing a container from an approved commercial provider, including the Service Provider, providing the triplex and above property has the space for such a container.

Reusable Container - Any trash can intended by the Residential Unit for reuse in disposal of Municipal Solid Waste. The container shall be no more than 96 gallons in size, and all waste placed therein must be in bags and tied off. Container must not be overfilled preventing the lid from closing fully.

Solid Waste - As defined by the EPA under 40 C.F.R. § 261.2(a)(1) or by the State of Texas under the Solid Waste Disposal Act § 361.003(38) of the Texas Health and Safety Code, whether such waste is mixed with or constitutes recyclable materials.

Yard Waste - Grass, grass clippings and leaves that have been collected in Bags and result from general yard cleanup.

SECTION 2. EXCLUSIVE FRANCHISE GRANT.

The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste, the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste from Non-Residential Units requiring manual collection and Residential Units over, upon, along and across the City's present and future streets, alleys, bridges and public properties, excluding third party recycling and solid waste collection in privately gated communities unless an agreement between the private community and the City is in effect, adding the community to the exclusive franchise. In order to maintain the exclusive franchise in favor of the Service Provider contained herein, the City shall take any and all appropriate legal action against any company, customer or third party infringing upon the exclusive rights of the Service Provider. In the event that the City fails to pursue appropriate legal action in order to remedy an infringement on the Service Provider's exclusive-franchise rights, the Service Provider may retain a subrogation right from the City against any and all violations of the exclusive-franchise grant described herein and shall be entitled to any and all actual and consequential damages.

SECTION 3. OPERATIONS.

A. **Municipal Solid Waste Scope of Operations.** It is expressly understood and agreed that the Service Provider will collect, haul and dispose of all Municipal Solid Waste in a Landfill paid for by Service Provider (all as provided herein) (i) generated and accumulated by Non-Residential

Units requiring manual collection and Residential Units, and (ii) placed within Bags and/or Disposable or Reusable Containers by those Residential Units and Non-Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Residential and Non-Residential Units), all within the City's corporate limits, including any territories annexed by the City during the term of this Agreement (the "MSW Services") in accordance with Texas State Law.

B. Municipal Recycling Scope of Operations. It is expressly understood and agreed that the Service Provider will collect, haul and dispose of all Municipal Recycling in a Material Recycling Facility paid for by Service Provider (all as provided herein) (i) generated and accumulated by Residential Units, and (ii) placed within Reusable Containers provided and delivered by Service Provider for initial distribution and replacement by those Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Residential Units), all within the City's corporate limits, including any territories annexed by the City during the term of this Agreement (the "Recycling Services") in accordance with Texas State Law. The MSW Services and Recycling Services may be collectively referred to herein as the "Services".

Nature of Operations. The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste and Recycling, the title to all Municipal Solid Waste and Recycling collected, hauled and disposed of by the Service Provider over, upon, along and across the City's present and future streets, alleys, bridges and public properties. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

SECTION 4. COLLECTIONS.

A. Non-Residential and Residential Units.

A.1 The Service Provider will collect Municipal Solid Waste from Residential and Non-Residential Units twice per week; provided, that (i) such Municipal Solid Waste is placed in Disposable or Reusable Containers, and (ii) such Disposable or Reusable Containers are placed within five (5) feet of the curbside or right of way adjacent to the Non-Residential and Residential Unit no later than 7:00 a.m. on the scheduled collection day. All Solid Waste must be contained in Disposable containers even when Reusable Containers are used.

A.2 The Service Provider will collect Recycling from Residential Units once per week; provided that (i) such Recycling is placed in the provided Recycling Container, and (ii) such Recycling Container is placed within five (5) feet of the curbside or right of way adjacent to the Residential Unit no later than 7:00 a.m. on the scheduled collection day. Service Provider reserves the right to inspect Recycling put out for collection and to reject Recycling observed to be contaminated with Municipal Solid Waste any other materials excluded from this Agreement. The City acknowledges that: (i) Service Provider has the right, with agreement by City, to determine that there exists no viable secondary market for Recycling or any of its constituent categories of waste; and (ii) if no viable secondary market exists for Recycling or any of its constituent categories of waste, Service Provider may dispose of any such Recycling in any method permitted by law, including but not limited to disposing of such Recycling as Municipal Solid Waste pursuant to the terms hereof.

B. Excess or Misplaced Municipal Solid Waste. The Service Provider shall only be responsible for collecting, hauling and disposing of Municipal Solid Waste placed inside the Bags or Containers or Recycling placed in Recycling Containers. Municipal Solid Waste or Recycling in excess of the Bag's or Container's limit, or placed outside or adjacent to the Bags or Containers, will not be collected by the Service Provider. However, such excess or misplaced Municipal Solid Waste and Recycling may be collected on occasion and within reason due to Holidays or other extraordinary circumstances as determined by the Service Provider and the City.

C. Handicapped Residential Units. Notwithstanding anything to the contrary contained herein, the Service Provider agrees to assist Handicapped Residential Units with house-side collection of their Bags and/or Containers; provided, that the Service Provider receives prior written notice from the City of such special need.

SECTION 5. SPECIAL COLLECTIONS AND SERVICES.

A. Community Events. In addition, the Service Provider will provide, at no cost to the City, one hundred (100) services using six-yard containers to collect Municipal Solid Waste at certain community events in the City; provided, that the City gives the Service Provider reasonable prior written notice of the date of such special event as well as the number of containers that will be required.

B. Right of Way Brush Collection/Debris Processing. The Service Provider shall accept and process trees and brush associated with drainage and rights-of-way maintenance at the Waste Connections Fort Worth C&D Landfill.

C. Landfill Vouchers. During the term of this Agreement, Service Provider will allow each Residential Unit to dispose of not more than one (1) ton of Solid Waste free of charge, two (2) times per calendar year at the Landfill commonly referred to as Turkey Creek Landfill, or such other Landfill as Service Provider may designate in its reasonable discretion.

SECTION 6. BULKY ITEMS, BUNDLES, AND YARD WASTE.

A. Large Volume Bulky Items & Bundles. The Service Provider will collect Bulky Items and Bundles from Residential Units once per month on each Residential Unit's scheduled zone collection week; provided, that the Bulky Items or Bundles (A) are placed at the curbside no later than 7:00 a.m. on the Monday of the scheduled collection week, and (B) are reasonably contained. The Service Provider shall only be responsible for collecting, hauling and disposing Bulky Items and Bundles from those Residential Units that have complied with this Section. Additionally, the Service Provider will submit a working list of locations for each collection zone to the City of Burleson Public Works Department via email by 9:00 a.m. Thursday morning and have all items collected by 12:00 p.m. on Friday of the scheduled collection week. In the event a location is not collected by the aforementioned collection deadline, City shall notify the Service Provider of the location of such missed pickup by Friday at 2:00 p.m. If the Service Provider has failed to remedy such missed pickup by 5:00 p.m. on Friday following such notice from the City, City has the option to collect the Bulky Items & Bundles. Recognizing neither Service Provider nor City can quantify the volume to be collected, during the first contract year City will not charge Service Provider a fee for missed collection. Beyond the first contract year, Service Provider and City will agree that

the fee per missed collection shall be: (a) \$1,000 per missed collection location or (b) such other amount mutually agreed upon in writing by the Parties prior to the expiration of the first contract year with said agreement being incorporated into this contract as an amendment. Refrigerators, freezers, dehumidifiers, air-conditioning units, and other appliances containing CFCs (chlorofluorocarbons)/HCFCs (hydrochlorofluorocarbons) will not be collected by the Service Provider unless these items have been certified in writing by a professional technician to have had all such refrigerants removed.

B. Small Volume Bulky Items, Bundles, Limbs, Brush and Yard Waste. The Service Provider shall collect up to 3 cubic yards of Bulky Items, Limbs, Brush, and Yard Waste weekly on the second scheduled collection day of each week for all Residential Units provided, that (i) these items are placed at the curbside no later than 7:00 a.m. on the scheduled collection day and (ii) are reasonably contained.

SECTION 7. TITLE TO EQUIPMENT.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment including, but not limited to, containers provided by the Service Provider in connection with the Services shall at all times remain the property of the Service Provider.

SECTION 8. RATES AND FEES.

Subject to adjustment, as provided in Section 9 hereof, the rates and fees to be charged and received by the Service Provider are as follows:

A. Residential Unit Services. For the Services provided to Residential Units under Sections 4.A. and 6 hereof, the Service Provider shall charge (i) \$13.44 per month for each Residential Unit for twice per week Solid Waste collection, plus (ii) \$2.50 per month for each Residential Unit for once per week Recycling collection. These rates apply to all Residential Units that are located within the City's corporate limits and billed by the City or other water and sewer provider for water and sewer services. These rates are inclusive of all Bulky Items, Bundles, Limbs, Brush, and Yard Waste collections.

B. Non-Residential Unit Services. Non-Residential Units requiring manual collection shall be charged either \$21.17 per month for the collection of a maximum of ten (10) Bags or one (1) 96 gallon cart per collection or \$32.14 per month for the collection of a maximum of twenty (20) Bags or two (2) 96 gallon carts per collection. This will be a twice per week collection service.

SECTION 9. RATE ADJUSTMENT.

A. CPI and Fuel Adjustment. Base Rate adjustments for changes in the (i) CPI (as defined below) and (ii) Fuel Index (as defined below) will be considered by the City no more than once per year during the month of September of each Contract Year beginning at the end of the first year comparing June 2020 with June 2019 for proposed base rate adjustment October 2020 and each year thereafter. Service Provider must receive approval from the City for such Base Rate increases, which approval shall not be unreasonably withheld. Service Provider's request for an

adjustment in the Base Rates for increases in the CPI and the Fuel Index shall be calculated as follows:

Service Provider shall first calculate the percentage of change in the Consumer Price Index for All Urban Consumers (published by the United States Bureau of Labor Statistics (the "Bureau"), Consumer Price Index, U.S. City Average, All Urban Consumers, Garbage and Trash Collection, Not Seasonally Adjusted, Based Period December 1983 = 100) for the nearest available metropolitan area (the "CPI") between the published final June CPI index of the then current year and the published final June CPI index of the immediately preceding year multiplied by 91.00% (the "CPI Component"). In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the CPI, the parties will agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision.

$$\frac{\text{Current CPI Index} - \text{Prior Year CPI Index}}{\text{Prior Year CPI Index}} \times 91.00\% = \text{CPI Component}$$

Service Provider shall also calculate the percentage of change in the cost of fuel during the prior 12 month period, using the weekly average price of diesel fuel, as determined by reference to the Energy Information Administration of the US Department of Energy ("EIA/DOE")'s Weekly Retail On Highway Diesel Prices for the Gulf Coast, published on the last Monday of each May of the Contract Year ("Fuel Index"). The EIA/DOE currently publishes these prices on their website at the following location:

<https://www.eia.gov/opendata/qb.php?sdid=PET.EMD.EPD2D.PTE.R30.DPG.W> Service Provider shall calculate the fuel cost adjustment by multiplying 9.00% by the percentage of change in the price of diesel fuel between (i) the average price of diesel fuel from the aforesaid website published for the last Monday of May of the then immediately prior year (the "Initial Fuel Base") and (ii) the average price of diesel fuel from the aforesaid website for the 52 weeks period immediately prior to the last Monday of May of the related contract year (the average being calculated by adding together the weekly fuel price for each of the 52 prior weeks, divided by 52) (the "Current Fuel Base").

$$\frac{\text{Current Fuel Base} - \text{Prior Fuel Base}}{\text{Prior Fuel Base}} \times 9.00\% = \text{Fuel Adjustment Component}$$

The CPI Component and the Fuel Adjustment Component shall be (i) added together, and (ii) then multiplied by the then current Base Rate to determine the adjustment in the Base Rate commencing October 1 of the 2020 Contract Year and each year thereafter.

$$(\text{CPI Component} + \text{Fuel Adjustment Component}) \times \frac{\text{Current Base Rate}}{\text{Base Rate}} = \text{Base Rate Adjustment}$$

The City shall, within thirty (30) days after Service Provider's request for a Base Rate adjustment, advise Service Provider of its approval of an increase in the Base Rates effective as of October 1 of the then current year, or disapproval of Service Provider's request. If the City fails to render its decision within such thirty (30) day period, the request shall be deemed approved. The City's approval of Service Provider's request for an increase in the Base Rates, as calculated above, shall not be unreasonably withheld. The CPI adjustment shall not occur until the 2nd year of the Agreement.

C. Operating Cost Adjustment. If any new state, federal, or City mandated fees and/or taxes are imposed upon the services provided hereunder, the Service Provider shall notify the City. If the Service Provider desires to pass such fees or taxes through as part of its Base Rates, the Service Provider shall petition the City. The petition shall include documentation of the basis and method of assessment of such fees or taxes and such petition shall be considered by the City and shall not be unreasonably denied.

SECTION 10. EXCLUSIONS.

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, Construction and Demolition Waste, manure from cow lots, horse stables, pigeon lofts and other related barn or farm type use, animal or human, dead animals, auto parts, used tires, batteries, concrete, dirt, gravel, rock or sand from any Non-Residential or Residential Unit

SECTION 11. TERM OF AGREEMENT.

The term of this Agreement shall be for a period of five (5) years, commencing on June 1, 2019 and concluding on May 30, 2024. At the expiration of each five (5) year term of this Agreement, The City and contractor may, upon mutual consent, extend the contract for an additional five (5) year term. Renewal shall be submitted to Service Provider no later than 180 calendar days prior to the expiration of the contract. If the agreement is not renewed, the contract is terminated at the end of the current contract period.

SECTION 12. ASSIGNMENT.

This Agreement shall not be assigned or sublet by the Service Provider without the prior written consent of the City; provided, however, that the Service Provider may assign this Agreement to an affiliated entity of the Service Provider or to any person or entity succeeding to all or substantially all of the Service Provider's assets (whether by operation of law, merger, consolidation or otherwise) without the City's consent. For purposes hereof, an "affiliated entity" means any entity that directly or indirectly owns more than 50% of the Service Provider, a subsidiary of the Service Provider's parent entity (provided the parent entity owns more than 50% of the voting shares of the subsidiary), a partnership or joint venture in which the Service Provider owns a controlling interest of more than 50%, or a subsidiary entity of the Service Provider in which the Service Provider owns a controlling interest of more than 50%. Service Provider shall provide written notice to the City of any assignment to an affiliated entity when the assignment is made. Any assignment, whether to an affiliated entity or otherwise, shall require the assignee to perform all of the terms and conditions of this Agreement.

SECTION 13. ENFORCEMENT.

During the term of this Agreement and any extension thereof, the City agrees to adopt and maintain ordinances and revise existing ordinances so as to enable the Service Provider to provide the Services set forth herein. The City shall take any action reasonably necessary to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted herein. To the maximum extent allowed by applicable law, the City also hereby grants to the Service Provider the right of ingress and egress from and upon the property of Non-Residential and Residential Units for the purposes of rendering the Services contemplated hereby.

SECTION 14. PROCESSING, BILLING AND FEES.

A. Monthly Statement. On a monthly basis, the City agrees to bill and collect the rates and fees charged under Section 8 hereto from all Non-Residential, and Residential Units possessing active water meters within the City's corporate limits, as well as from all other Non-Residential and Residential Units requiring the collection, hauling and disposal of Municipal Solid Waste and Recycling (Residential Units only) within the City's corporate limits (the "Monthly Statement"). Thereafter, the City will remit to the Service Provider an amount equal to such Monthly Statement. Such remittance shall be made by the City on or before the 15th day of each month (for the immediately preceding month's service) commencing on June 15, 2019. Along with each monthly remittance, the City shall provide the Service Provider with a report indicating the number and rate of Residential and Non- Residential Units which have been billed for that month. Nothing herein shall prohibit the City from collecting sums in addition to those sums called for herein.

B. Taxes. In addition to the amounts billed and collected by the City under Section 14.A., the City shall also be responsible for paying any and all sales, use and service taxes assessed or payable in connection with the Services.

C. Unpaid Rates/Fees; Stop Service. The City shall notify the Service Provider of any Residential or Non-Residential Unit that has not paid for the Services. Upon notification from the City, the Service Provider shall quit providing the Services to any Residential or Non- Residential that has not paid the City.

SECTION 15. SPILLAGE.

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste or Recycling not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste or Recycling placed outside of the Bags or Containers by any Non-Residential or Residential Unit. The Service Provider shall report the location of such conditions to the City so that the City can issue proper notice to the owner or occupant of the Non-Residential or Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste.

SECTION 16. NON-COLLECTION NOTICE AND FOLLOW-UP.

A. Notice from the Service Provider. It is specifically understood and agreed that where the owner or occupant of a Non-Residential or Residential Unit fails to timely place Bags or Disposable Containers as directed in Section 4 hereof, or is otherwise in violation of the City's ordinances and

regulations, the Service Provider's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume or weight of Municipal Solid Waste to be removed, the Service Provider may refrain from collecting all or a portion of such Municipal Solid Waste and will notify the City within eight (8) hours thereafter of the reason for such non-collection. The Service Provider will also provide written notice to the Non-Residential or Residential Unit of the reason for such non-collection, unless such non-collection is the result of the Non-Residential or Residential Unit's failure to timely place the Bags, Disposable/Reusable Containers, Yard Waste, Bulky Items or Bundles out for collection. Such written notice shall be attached to the uncollected Municipal Solid Waste, shall indicate the nature of the violation and shall indicate the correction required in order that such Municipal Solid Waste may be collected.

B. Notice from a Non-Residential or Residential Unit. Any missed collection, regardless of the reason must be picked up on the same day. Any missed collection called into the City after 5:00 p.m. on collection day must be collected prior to 10:00 a.m. the following business day. If the Service Provider fails to make the collection by 10:00 a.m. the next business day, then the City will make the collection and charge the Service Provider \$50 for each missed location.

SECTION 17. CONTRACT ADMINISTRATOR.

The Contract Administrator (as defined herein) will serve as sole liaison between the City Council & affected City Departments and the Service Provider. The Contract Administrator will be designated the responsibility to ensure compliance with contract requirements, such as but not limited to, acceptance, inspection and delivery. The Contract Administrator for this Agreement is the Director of Public Works or his/her designee.

SECTION 18. QUALITY OF PERFORMANCE AND LIQUIDATED DAMAGES.

All complaints received by the Director of Public Works or his/her designee, and reported to the Service Provider shall be promptly resolved pursuant to Section 16 of this Agreement. Service Provider's failure to remedy any verified complaint as a result of Service Provider's failure to perform its obligations hereunder shall be considered a breach of this Agreement, subject to all applicable notice and cure permit. In lieu of termination, the City may, but is not required to, assess Service Provider the following amounts as liquidated damages, which assessments, if any, shall be separately invoiced to Service Provider for payment:

- a) Failure to clean up Municipal Solid Waste spilled by Service Provider within two (2) business days after written notice to Service Provider - each verified incident: \$50.00.
- b) Failure or neglect to collect Municipal Solid Waste from any Non-Residential or Residential Units at those times as required by this Agreement within one (1) business day of written notice thereof - each failure or repeated instance at same location: \$50.00.

- c) Failure or neglect to correct chronic, recurring and repeated problems in either category a. or b. above (chronic, recurring and repeated shall mean three or more similar incidents at the same location within a three (3) month period) - each instance: \$200.00.

The parties agree that liquidated damages are not penalties, but represent a fair measure of damages which will be incurred by the City in the event of any of the above described specific defaults by the Service Provider. The claim for and the collection of such liquidated damages shall not affect the right of the City to claim and collect damages in excess of said liquidated damages if greater damages than those set forth above are actually incurred, nor shall the right of the City to claim and collect damages for non-performance on the part of the Service Provider relating to matters not specifically set forth in this section be waived.

For the purpose of this Section, the Contract Administrator may deduct any charges from payments due or to become due to the Service Provider. The Contract Administrator may assess charges pursuant to this Section on a monthly basis in connection with this proposal and shall at the end of each month during the term of this proposal notify the Service Provider in writing of the administrative charges assessed and the basis for each assessment. In the event the Service Provider wishes to contest such assessment he shall, within five (5) days after receiving such monthly notice, request in writing an opportunity to be heard by the Director of Public Works and present its defense to such assessment.

The Director of Public Works shall notify the Service Provider in writing of any action taken with respect to Service Provider's claims. The decision of the Director of Public Works or his/her designee shall be final.

SECTION 19. HOURS OF SERVICE.

For all the Services provided hereunder, the Service Provider's hours of service shall be between 7:00 a.m. to 6:00 p.m., Monday through Friday. The Service Provider will contact the Contract Administrator if there will be a delay in collections of any Solid Waste, Recycling or Bulky Items and Brush due to weather or equipment failures. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement; provided, however, that the Service Provider shall provide such services on the next scheduled collection day.

SECTION 20. CUSTOMER SERVICE & PUBLIC INFORMATION PROGRAMS.

The City agrees to field all inquiries and complaints from Residential Units relating to the collection, hauling and disposal of Municipal Solid Waste. The Service Provider and the City agree to cooperate with each other in the response to any such inquiries and the resolution of any such complaints. Service Provider will provide City with live, view only access to Provider's GPS truck tracking map including approved collection routes. Reports of missed collections will be reported to the Service Provider within one hour of receiving a complaint via email and/or phone call. Service Provider will acknowledge City communication, providing planned resolution to the issue within one (1) hour of City's original communication. The Service Provider will provide contact information to City as requested.

While the City is primarily responsible for distributing information on the program, Service Provider must assist the City in explaining the changes anticipated in the collection program. The public information program should emphasize means to reduce waste generation, how to safely and properly set-out waste for collection and what types of waste are acceptable and unacceptable for disposal. The use of existing information is encouraged as a means of reducing overall program costs.

SECTION 21. COMPLIANCE WITH APPLICABLE LAWS.

The Service Provider shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of Municipal Solid Waste, Construction and Demolition Waste, and Recycling including existing and future laws that may be enacted, as well as any regulations reasonably passed by the City that are not in derogation of this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the City's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The City shall have the right to make reasonable inspections of the Service Provider in order to insure compliance with this Section 21.

SECTION 22. VEHICLES AND EQUIPMENT.

Vehicles used by the Service Provider for the collection, hauling and disposal of Municipal Solid Waste and Construction, Demolition Waste, and Recycling shall be protected at all times while in transit to prevent the blowing or scattering of Municipal Solid Waste onto the City's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked with the Service Provider's name, telephone number and unit number in letters and numbers not less than two (2) inches in height. All collection vehicles used by the Service Provider shall be washed and deodorized once per week. The Service Provider will provide Municipal Solid Waste collection for all customers using properly operating, well maintained, leak proof equipment. All liquid spills shall be contained and cleaned up in accordance with the City of Burleson Stormwater Management Program. All collection vehicles used by the Service Provider under this Agreement shall not exceed thirty (30) cubic yards in capacity.

The City may inspect the Service Provider's vehicles at any time to ensure compliance of equipment with this Agreement and if found non-compliant may require that the equipment be removed from City service and replaced prior to the next scheduled service with a different vehicle or the deficiencies corrected to the reasonable satisfaction of the City.

SECTION 23. DUE CARE.

The Service Provider shall exercise due care and caution in providing the Services so that the City's public and private property, including streets and parking areas, will be protected and preserved. Due to the street size variations in the City, the Service Provider shall provide equipment that will accommodate such public streets and alleys. Special collections shall be made using appropriate equipment. Damage caused by a negligent or willful act or omission of the Service Provider shall promptly be repaired or replaced at the Service Provider's expense. Service Provider shall not weave from curb to curb, drive in the middle of the road, or apply severe braking during routes through residential streets to prevent damage to infrastructure and for safety reasons. Service Provider will train drivers to protect City streets and not make sudden braking stops that will

damage street surfaces.

The parties acknowledge and agree that the Service Provider shall not be responsible for damage to any private pavement or accompanying sub-surface of any route reasonably necessary to perform the Services herein contracted and that the Non-Residential or Residential Unit assumes all liabilities for damage to pavement or road surface.

SECTION 24. PERSONNEL AND PERFORMANCE STANDARDS.

The Service Provider shall not deny employment to any person on the basis of race, creed or religion, and will insure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Service Provider, its agents, servants and employees shall perform the Services in a courteous, competent and professional manner. During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

Service Provider shall provide the City a telephone number by which the Service Provider can be contacted for after-hours emergencies.

Service Provider shall consistently and continually establish and maintain an authorized Managing Agent and shall designate, in writing, to the City Manager the name, telephone number, and address of such agent upon whom all notices shall be served by the City and to whom complaints may be directed.

Service Provider shall assign one supervisory level employee to oversee Service Provider's operations in the City. Service Provider agrees that if the supervisory level employee normally assigned to the City is scheduled off work then Service Provider will assign a substitute supervisory employee who will have the same responsibilities as the regularly assigned supervisory employee. The City Manager, or his designee, will be given the name and contact information of the supervisor so assigned and will have the right to contact the supervisor directly should the need arise. The supervisor assigned to the City will be available to respond within two hours to issues that may arise.

Service Provider shall employ sufficient numbers of employees to meet its obligations under this Contract and employ only superintendents, supervisors, and workers who are careful, competent and fully qualified to perform the duties or tasks assigned to them and shall secure the summary dismissal of any person or persons employed by Service Provider in or about or on the work who shall misconduct themselves or be incompetent, disrespectful, intemperate, dishonest, or otherwise objectionable or neglectful in the proper performance of their duties or who shall neglect or refuse to comply with or carry out the directions of Service Provider. All workers shall have sufficient skill, ability, and experience to properly perform the work assigned to them and operate any equipment necessary to properly carry out the performance of their assigned duties. Service Provider shall perform driving record checks of all of Service Provider's drivers working within the City with said checks to be updated every twelve (12) months or as frequently as required by State or Federal Department of Transportation Regulations.

All field employees shall pass a drug test and criminal background check, as administered by the Service Provider, prior to working in the City. Service Provider shall not assign an employee to work within the City who has been either charged or convicted of a sexual act against a child. Service Provider shall remove any field employee not meeting this standard from working within the City and promptly advise the City of such occurrence.

Service Provider shall make collections with a minimum of noise and disturbance to the householder. This work shall be done in a sanitary manner. Any refuse or trash spilled by Service Provider shall be picked up immediately by the Service Provider's employees.

SECTION 25. INSURANCE COVERAGE.

Pursuant to this Agreement, the Service Provider shall carry the following types of insurance in an amount equal to or exceeding the limits specified below:

<u>Type</u>	<u>Amount</u>
1. <u>Worker's Compensation -</u> and <u>Employer's Liability</u>	<u>Statutory Limits</u> \$300,000 per occurrence
2. <u>Commercial (Public Liability),</u> <u>including but not limited to:</u>	<u>Bodily Injury:</u> \$1,000,000 per person \$2,000,000 per occurrence
A. Premises/Operations	
B. Independent Service Providers	
C. Personal Injury	<u>Property Damage:</u>
D. Products/Complete Operations	\$1,000,000 per occurrence
E. Contractual Liability (insuring above indemnity provisions) with <u>general aggregate</u> of	\$2,000,000
3. <u>Business (Commercial)</u> <u>Automobile Policy:</u>	Combined Single Limit/ \$1,000,000.00

To the extent permitted by law, any or all of the insurance coverage required by this Section 26 may be provided under a plan(s) of self-insurance, including coverage provided by the Service Provider's parent corporation. The Service Provider shall furnish the City with a certificate of insurance verifying the insurance coverage required by this Section 26.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility, with a Best rating of no less than A-:VII, and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's office for their adequacy as to form, content, form of protection, and providing company. Insurance required by this Agreement for the City as additional insured shall be primary insurance and not contributing with any other insurance available to City, under any third party liability policy to the extent of Service Provider's liabilities assumed hereunder.

The Service Provider further agrees that with respect to the above required insurances, the City shall:

- Be named as additional insured/or an insured, on all required insurance except workers' compensation.
- Be provided with a waiver of subrogation, in favor of the City on all required insurance.
- Be provided with an unconditional 30 days advance written notice of cancellation or material change.

New certificates or copies of the policies shall be furnished prior to the expiration date of any prior certificate.

Additional Worker's Compensation Insurance Requirements:

Definitions:

Certificate of coverage ("certificate") A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, TWCC-84), showing statutory Worker's Compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project. Duration of the project - includes the time from the beginning of the work on the project until the Service Providers'/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project (subcontractor in 406.096) - includes all persons or entities performing all or part of the services the Service Provider has undertaken to perform on the project, regardless of whether that person contracted directly with the Service Provider and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, and employees of any such entity or employees of any entity, which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage contractors, office supply deliveries, and delivery of portable toilets.

The Service Provider shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Service Provider providing services on the project, for the duration of the project.

SECTION 26. PERFORMANCE BOND.

The Service Provider is required to furnish a performance bond for \$250,000, and conditioned upon the faithful performance of the Agreement. The bond will have to be renewed annually for the duration of the Agreement and will vary depending on the total contract price each year.

SECTION 27. INDEMNITY.

The Service Provider agrees to indemnify and hold harmless the City and its agents, directors,

employees, officers and servants from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses or expenses (including, but not limited to, reasonable attorneys' fees) caused by a willful or negligent act or omission of the Service Provider, its officers and employees. However, the Service Provider shall not be liable for any legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees caused by a willful or negligent act or omission of the City, its agents, directors, employees, officers and servants. The Service Provider agrees to protect the City from claims involving infringements of patents and/or copyrights.

SECTION 28. SAVINGS PROVISION.

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 29. TERMINATION.

Any failure by either party or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than ten (10) days after the receipt of due written notice from the other party, constitute grounds for forfeiture and immediate termination of all the defaulting party's rights under this Agreement, and all such rights shall become null and void.

SECTION 30. FORCE MAJEURE.

The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations. A strike by the Service Provider's (or subcontractor's) labor force or labor dispute between the Service Provider and its labor force or subcontractors shall not be considered a Force Majeure act. The lack of funds shall not be considered a Force Majeure.

SECTION 31. NATURAL DISASTERS.

Storms and Other Disasters - The work under the Agreement does not include the collection and disposal of any increased volume resulting from a flood, hurricane or other act of God over which the Service Provider has no control. In the event of such a flood, hurricane or other act of God, the Service Provider and the City may negotiate an agreement for payment to be made to the Service Provider subject to FEMA rates. Further, the City shall grant the Service Provider variances in routes and schedules as deemed necessary by the Service Provider and City as part of any said agreement.

In the event of any agreement and in the case of any natural disaster, fire, or emergency incident declared by the Mayor as a city-wide emergency, the Service Provider will respond immediately by directly assisting the City in the planning and execution of the clean up and/or mitigation phase for the recovery. The Service Provider will assure that all work performed by their employees, Service Provider's employees and necessary clean up equipment is charged at or below the allowable rates specified by the Federal Emergency Management Agency (FEMA). The Service Provider further agrees to provide documentation of the costs involved in the disaster mitigation in a form acceptable to FEMA for reimbursement.

SECTION 32. GOVERNING LAW.

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws rules thereof. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Texas and the Federal courts of the United States located in the State of Texas, solely in respect of the interpretation and enforcement of the provisions of this Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may be enforced in or by said courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Texas State or Federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such dispute and agree that mailing of process or other papers in connection with any such action or proceeding to the addresses of the parties listed below, or in such other manner as may be permitted by law, permitted by law, shall be valid and sufficient service thereof.

SECTION 33. ATTORNEYS' FEES.

The prevailing party in any dispute between the parties arising out of the interpretation, application or enforcement of any provision hereof shall be entitled to recover all of its reasonable attorneys' fees and costs whether suit be filed or not, including without limitation costs and attorneys' fees related to or arising out of any trial or appellate proceedings.

SECTION 34. REMEDIES.

Pursuit of the remedies available to the parties under the Uniform Commercial Code shall not preclude pursuit of any other remedies provided in this Agreement or any other remedies provided by law, nor shall pursuit of any remedy provided in this Agreement constitute a waiver of any amount or performance due from the Service Provider under this Agreement or of any damages accruing by reason of the violation of its term, provisions and covenants. No waiver of any violations shall be deemed or construed to constitute a waiver of any other violation or other breach of any the terms, provisions and covenants contained in this Agreement, and forbearance to enforce one or more of the remedies as provided on an event of default shall not be deemed or construed to constitute a waiver of such default or of any other remedy provided for in this Agreement.

SECTION 35. CONTRACT SERVICES

Service Provider hereby covenants and agrees to diligently and faithfully perform the public service and work of collecting and disposing of all refuse of Residential and Non-Residential Units to which it provides service, as provided herein, with the City. These services shall include the furnishing of all labor, tools, vehicles, equipment, materials, landfills, insurance, performance bonds, supervision and all other items necessary to the performance of such work and shall be carried out in the manner, at the times, and in the locations and at the prices specified in the this Agreement, and shall be subject to inspection and approval of the City Manager, or his designee.

Service Provider shall provide evidence indicating that it has the right to use a landfill site for the purpose of this Agreement for the entire period of this Agreement and any agreed extensions thereto.

SECTION 36. REVIEW OF PERFORMANCE

The City may conduct an annual performance review, on or about the anniversary date of this Agreement, to review the previous twelve months performance. City staff shall present a summary regarding the handling and status of complaints received during the previous twelve months. The Service Provider shall be provided an opportunity to present information as well concerning the handling status of complaints or other service issues.

SECTION 37. MISCELLANEOUS PROVISIONS

A. Relationship of Parties. Service Provider shall operate hereunder as an independent contractor and shall be solely responsible for the acts and omissions of its officers, agents, and employees. The doctrine of respondeat superior shall not apply as between the City and the Service Provider. Nothing herein shall be construed as creating a partnership or joint venture between the City and the Service Provider, its officers, agents, and employees.

B. Entirety of Agreement. This Agreement and all attachments incorporated herein by reference constitute the entire agreement between the parties concerning the subject matter hereof, and any prior or contemporaneous oral or written agreements which purport to vary from the terms hereof shall be void.

C. Amendment of Agreement. This Agreement may not be altered, waived, or otherwise modified, except where done in writing, and signed by both parties.

D. Notices: All notices required herein shall be sent to the respective parties by certified mail, return receipt requested, at the following addresses:

To Service Provider: Waste Connections Lone Star, Inc.
4001 Old Denton Rd.
Haltom City, TX 76117

With a copy to: Waste Connections US, Inc.
3 Waterway Square Place
The Woodlands, Texas 77380
Attn: Legal Department

To the City:

City of Burleson
Attn: City Manager
141 West Renfro
Burleson, Texas 76028-4261

City of Burleson
Attn: Public Works Director
141 West Renfro
Burleson, Texas 76028-4261

E. No Surrender of Governmental Powers. Nothing in this Agreement shall be construed to surrender any of the government powers of the City of Burleson.

F. No Waiver of Governmental Immunity. Notwithstanding anything in this Agreement or any exhibit to the contrary, nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein. In the event of a conflict between this provision and any other provision in this Agreement or any exhibit, the terms of this provision shall govern.

G. Termination Due to Lack of Appropriations. Notwithstanding anything in this Agreement or any exhibit to the contrary, if City should not appropriate or otherwise receive funds sufficient to purchase, lease, operate, or maintain the services set forth in this Agreement, City may unilaterally terminate this Agreement effective on the final day of the fiscal year through which City has funding. City shall not activate this clause for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations. City will make every effort to give Provider at least thirty (30) days written notice prior to a termination for lack of appropriations. In the event of termination due to a lack of appropriations, City will pay Provider for all fees and expenses related to the services City has received, or Service Provider has incurred or delivered, prior to the effective date of termination. In the event of a conflict between this provision and any other provision in this Agreement or any exhibit, the terms of this provision shall govern.

[Signature Page to Follow]

SECTION 39. ACCEPTANCE.

PASSED AND APPROVED BY THE CITY OF BURLESON CITY COUNCIL AT THE COUNCIL MEETING AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS 20 DAY OF May, 2019.

WASTE CONNECTIONS LONE STAR, INC.

CITY OF BURLESON, TEXAS

By: [Signature]
Name: Robert A. Nierse III
Its: Region Vice President

By: [Signature]
Name: Bryan Langley
Its: City Manager

ATTEST:

By: [Signature]
Name: Jesse Estrada
Its: Deputy City Secretary