

EXHIBIT B: DRAFT AGREEMENT

[**Note:** This Draft Agreement may be adjusted at the Town's sole discretion to reflect the specific services to be provided by the Contractor.]

**DRAFT SOLID WASTE AND RECYCLING SERVICES
AGREEMENT**

between

TOWN OF PROSPER, TEXAS

and

[SELECTED CONTRACTOR]

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TABLE OF CONTENTS

SECTION 1	RECITALS INCORPORATION	7
SECTION 2	DEFINITIONS.....	7
2.1	Definitions.....	7
SECTION 3	REPRESENTATIONS	17
3.1	Representations	17
3.1.1	Representations by the Town	17
3.1.2	Representations by the Contractor	17
SECTION 4	GENERAL CONDITIONS.....	18
4.1	Designated Representative	18
4.2	Compliance with Laws and Regulations	18
SECTION 5	SERVICE AREA.....	19
SECTION 6	RIGHT TO PROVISION OF SERVICES.....	19
6.1	Right to Operate Collection Vehicles	19
6.2	Exclusive Right to Provision of Collection Services	20
6.3	Franchise Fee.....	20
SECTION 7	EFFECTIVE DATE AND TERM OF AGREEMENT	20
7.1	Effective Date of Agreement.....	20
7.2	Initial Term.....	20
7.3	Optional Renewal Terms	20
SECTION 8	RESIDENTIAL COLLECTION SERVICES.....	21
8.1	Residential Collection Services Scope	21
8.1.1	Residential Trash Collection Services Scope	21
8.1.2	Residential Recycling Collection Services	21
8.1.3	Residential Yard Waste Collection Services	21
8.1.4	Residential Bulky Waste Collection Services.....	22
8.1.5	Additional Residential Bulky Waste Collection Services	22
8.1.6	Household Hazardous Waste Collection Services.....	22
8.2	Residential Collection Services Location	22
SECTION 9	COMMERCIAL COLLECTION SERVICES.....	22
9.1	Commercial Collection Services Scope	22
9.2	Commercial Collection Service Location	23
9.3	Unscheduled Extra Collections.....	23
9.4	Old Town	23
SECTION 10	TOWN SERVICES.....	24
10.1	Trash and Recycling Collection at Town Facilities	24

10.2	Town Events.....	24
10.2.1	Annual Spring Clean Up	24
10.2.2	Bulky Waste Drop Off Collection	24
10.2.3	Additional Town Projects	24
SECTION 11	COLLECTION DAYS AND HOLIDAYS	24
11.1	Residential Collection Days	24
11.2	Commercial Collection Days	25
11.3	Town Services Collection Days	25
11.4	Holidays.....	25
SECTION 12	HOURS OF OPERATION	25
12.1	Hours of Operation	25
SECTION 13	DISPOSAL SERVICES	25
SECTION 14	RECYCLABLE MATERIAL PROCESSING SERVICES.....	26
14.1	Recyclable Material Facility Requirements.....	26
14.2	Addition and Deletion of Program Recyclable Materials.....	26
SECTION 15	YARD WASTE PROCESSING SERVICES	26
SECTION 16	HOUSEHOLD HAZARDOUS WASTE PROCESSING SERVICES	26
SECTION 17	COMMINGLING OF MATERIALS AND DISPOSAL OF PROGRAM RECYCLABLE MATERIALS AND YARD WASTE PROHIBITED	27
17.1	Commingling of Materials	27
17.2	Disposal of Program Recyclable Materials Prohibited	27
17.3	Disposal of Yard Waste Prohibited	27
SECTION 18	STORM AND DISASTER DEBRIS MANAGEMENT	27
SECTION 19	COLLECTION VEHICLES	28
19.1	Inspection of Collection Vehicles	28
19.2	Appearance of Collection Vehicles	28
19.3	Age of Collection Vehicles	28
19.4	Purchase, Operation, Maintenance, Storage and Replacement of Collection Vehicles.....	28
19.5	Collection Vehicle Specifications	28
SECTION 20	CARTS	29
20.1	Ownership of Carts.....	29
20.2	Cart Operations	29
20.3	Cart Inventory Data	30
20.3.1	Cart Inventory Database.....	30
20.3.2	Requirements for Cart Inventory Report and Collection of Excess Carts	30
20.4	Cart Inventory Replacement.....	30
20.5	Cart Operations Facility and Location.....	31

20.6	Cart Purchase.....	31
20.7	Cart Maintenance, Repair, and Replacement.....	31
20.8	Cart Specifications.....	31
20.9	Cart Appearance.....	33
20.10	Cart Warranty	33
SECTION 21	OTHER COLLECTION EQUIPMENT	34
21.1	Appearance of Other Collection Equipment.....	34
21.2	Other Collection Equipment Specifications.....	35
21.3	Purchase, Operation, Storage and Replacement of Other Collection Equipment.....	35
21.4	Other Collection Equipment Inspection and Maintenance	35
21.5	Ownership of Collection Equipment other than Carts	35
SECTION 22	UNACCEPTED SET-OUTS.....	35
SECTION 23	MISSED COLLECTIONS	36
SECTION 24	PUBLIC EDUCATION NOTICES	36
SECTION 25	SPILLAGE, LEAKAGE AND NUISANCES.....	38
25.1	Spillage, Leakage, and Litter	38
SECTION 26	CUSTOMER LIST	38
SECTION 27	COST ADJUSTMENT	38
27.1	Annual Cost Adjustment Process	38
27.2	Annual Cost Adjustment Index	39
SECTION 28	PERSONNEL	39
28.1	Contractor's Representative	39
28.2	Personnel Standards	39
SECTION 29	CUSTOMER SERVICE	40
29.1	Customer Service Responsibilities	40
SECTION 30	PLANNING DOCUMENTS.....	41
30.1	Contingency Plan.....	41
30.2	Transition Plan.....	41
30.3	Hazardous Waste and Special Waste Contingency Plan	42
SECTION 31	DAMAGE TO PROPERTY	42
SECTION 32	NUISANCE CONTROL	42
SECTION 33	TOWN'S RIGHTS TO INSPECT FACILITIES AND EQUIPMENT	42
SECTION 34	OWNERSHIP AND RISK OF LOSS FOR TRASH, BULKY WASTE, YARD WASTE AND PROGRAM RECYCLABLE MATERIALS	43
SECTION 35	INSURANCE REQUIREMENTS.....	43
SECTION 36	LIQUIDATED DAMAGES	44

36.1	Liquidated Damages - General.....	44
36.2	Liquidated Damages -Collection Services	45
36.3	Liquidated Damages -Processing and Disposal Services	46
36.4	Performance Incentive.....	47
SECTION 37	PAYMENT WITHHELD	47
SECTION 38	PERFORMANCE SECURITY	47
SECTION 39	FORCE MAJEURE	48
SECTION 40	TERMINATION	48
40.1	Termination for Cause	48
SECTION 41	ACTS OF DEFAULT OR DEFAULT	49
SECTION 42	DISPUTE RESOLUTION	49
42.1	Interpretation of Agreement.....	49
42.2	Definition of Claim	49
42.3	Process for Dispute Resolution	50
42.4	Operations During Dispute	50
SECTION 43	RECORDKEEPING.....	51
SECTION 44	REPORTING	52
SECTION 45	INVOICING.....	53
SECTION 46	MISCELLANEOUS	53
46.1	Indemnification	53
46.2	Assignment and/or Subcontracting	53
46.3	Taxes	53
46.4	Succession of Agreement.....	54
46.5	Survival.....	54
46.6	Joint Preparation	54
46.7	No Penalties	54
46.8	Relationship.....	54
46.9	Further Assurance	54
46.10	Time of the Essence.....	54
46.11	Captions and Section Headings	54
46.12	No Waiver.....	54
46.13	Entire Agreement and Modification	55
46.14	Severability	55
46.15	Knowledge.....	55
46.16	Appendices.....	55
46.17	Governing Law	55
46.18	Attorney Fees	55
46.19	Anti-Boycott and Anti-Discrimination	55

46.20	Authorization.....	56
SECTION 47	SIGNATURES	58

APPENDICES

Appendix A	Holidays
Appendix B	Contingency plan
Appendix C	Transition Plan
Appendix D	Residential Collection Services Unit Prices
Appendix E	Commercial Collection Services Unit Prices

SOLID WASTE AND RECYCLING SERVICES AGREEMENT

between

TOWN OF PROSPER, TEXAS

and

[Contractor]

This Agreement is made on [Date], between the **TOWN OF PROSPER**, a Texas municipal home rule corporation, hereinafter referred to as "the Town," and [Contractor], a corporation, hereinafter referred to as "the Contractor."

RECITALS

WHEREAS, The Town issued a Request for Proposals for Solid Waste and Recycling Processing Services (hereinafter "the RFP"); and,

WHEREAS, The Contractor submitted a proposal in response to the RFP on or before [Date]; and,

WHEREAS, The Town received and evaluated proposals from proposers in response to the RFP; and,

WHEREAS, The Town and The Contractor have engaged in negotiations regarding the RFP; and,

WHEREAS, The Town desires to hire the Contractor to provide those services as specified hereinafter; and,

WHEREAS, the Contractor desires to provide those services specified hereinafter;

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, the Town and the 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

2.1 Definitions

As used herein, the following defined terms, phrases, words, and their derivations shall have the meanings as set forth in this Section. Throughout the Agreement, capitalization is used to indicate use of these defined terms. 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.

5G — 5G shall mean fifth-generation broadband cellular software that provides device connectivity and greater bandwidth, faster download speeds, and more robust machine-to-machine communication.

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 stated in this Agreement.

Additional Bulky Waste Services — Additional Residential Bulky Waste Services shall mean Residential Bulky Waste Services that exceed the collection quantity or collection frequency limits specified in Section 8.1.4.

Agreement — Agreement shall mean this document, including any written amendment thereto as agreed upon by the Town and the Contractor.

Agreement Term— Agreement Term shall mean the full term of the Agreement, including the Initial Term and any Optional Renewal Term unless sooner terminated.

Alley Service Unit— Alley Service Unit shall mean a Residential Service Unit designated by the Town to receive Residential Collection Services in an alley.

Application Programming Interface (API) — API shall mean an interface that supports interactions between multiple software applications or mixed hardware-software applications, intended to provide rapid and reliable electronic communication through the Town's data management and/or billing software.

Bag — Bag shall mean a non-dissolvable plastic sack with a capacity of up to approximately thirty-five (35) gallons designed or intended to store Trash with sufficient wall strength to maintain

physical integrity when lifted by the top. Total weight of a Bag and its contents that is set-out for collection with Bulky Waste Services shall not exceed forty (40) pounds.

Beyond Contractor's Control — Beyond Contractor's Control shall mean events that materially and adversely affect Contractor's ability to perform the obligations under the Agreement and are not due to Contractor's fault or negligence and could not be avoided by Contractor's exercise of commercially reasonable efforts. Includes temporary landfill closure or extreme hazardous weather conditions but does not include economic hardship, manpower shortages, or equipment failure.

Brush — Brush shall mean cuttings or trimmings from trees, shrubs, or lawns and similar materials.

Bulky Waste — Bulky Waste shall mean large items such as furniture, appliances, mattresses, carpet, and other items too large to place in 96-gallon Carts. Prohibited items include Construction or Demolition waste, treated wood, fence panels, dead animals, Hazardous Waste, Special Waste, automotive parts, and extra trash bags regardless of the quantity or contents.

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

Business Day — Business Day shall mean any day, Monday through Friday, from 8:00 AM, CDT until 5:00 PM, CDT.

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 Town.

Council — Council shall mean the Town Council, the governing body of the Town.

Collect or Collection — Collect or Collection shall mean the act of removing Trash and Bulky Waste and transporting it to a Disposal Site, the act of removing Recyclable Material and transporting it to a Recyclable Material Facility, or the act of removing Yard Waste and transporting it to a Processing Facility.

Collection Day — Collection Day shall have the meaning set out in Section 11.

Collection Services — Collection Services shall mean all duties and responsibilities of the Contractor related to Collection pursuant to this Agreement.

Commercial — Commercial shall mean originating from any structure or activity other than single-family and duplex residential development including but not limited to hotels, motels, residential structures containing three or more dwellings, residential care

facilities, businesses, industrial, and institutional facilities, construction projects, or an individual renting one (1) or more Roll-offs located at their residence.

Commercial Recyclable Material — Commercial Recyclable Material shall mean Recyclable Material Collected from Commercial buildings, establishments, or activities including multifamily dwellings, other than single-family and duplex residential development.

Commercial Recycling Collection Services — Commercial Recycling Collection Services shall mean Collection and delivery of Commercial Recyclable Materials to a Delivery facility pursuant to this Agreement.

Commercial Trash — Commercial Trash shall mean all normal waste products of Commercial buildings, establishments, or activities, excluding sewage and body waste, manure, dead animals over ten pounds in weight, Special Waste, Hazardous Waste, large tree trimmings, or any other waste material that cannot be broken down to fit into Commercial Trash Containers specified in this Agreement.

Commercial Trash Collection Services — Commercial Trash Collection Services shall mean Collection and delivery of Commercial Trash to a Delivery Facility pursuant to this Agreement.

Compactor — Compactor shall mean any container, regardless of its size, which has a compaction mechanism, whether stationary or mobile, and approved for use by the Town.

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 Agreement. Compliance shall not mean substantial compliance. Substantial compliance shall be an Act of Default unless waived by the Town solely by a written instrument.

Construction or Demolition Waste — Construction or Demolition Waste shall mean Municipal Solid Waste resulting from construction or demolition projects including all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, plastics, concrete, asphalt, and cardboard.

Container — Container shall mean Compactor, Dumpster, or Roll-off.

Contamination — Contamination shall mean the existence of any other material or substance on or contained in Program Recyclable Materials other than Program Recyclable Materials or the existence of any material or substance on or contained in Yard Waste other than Yard Waste

Contract Rates — Contract Rates shall mean the unit prices for Residential Collection Services, and Commercial Collection Services, Disposal Services, Recyclable Material

Processing Services, or Yard Waste Processing Services found in Appendix D and Appendix E respectively.

Contractor — Contractor shall mean the corporation(s) responsible for performing Services pursuant to the Agreement and includes the Contractor's assignees and subcontractors.

Cubic Yard (CY) — Cubic Yard shall mean a unit of volume equal to the volume of a cube with sides of one (1) yard in length.

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 Town.

Customer — Customer shall mean the owner of a Commercial property or manager of a construction site located within the Service Area or their representative.

CY — See Cubic Yard.

Delivery Facility — Delivery Facility shall mean any suitably licensed transfer station, Disposal site, or Processing Facility designated by the Town where the Contractor delivers Trash, Bulky Waste, Yard Waste or Recyclable Materials pursuant to this Agreement.

Discharge — Discharge shall mean the deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or omissions.

Disposal — Disposal shall mean the authorized deposit of Solid Waste at a Disposal Site in accordance with the terms of this Agreement.

Disposal Site — Disposal Site shall mean a Solid Waste management facility authorized by the Texas Commission on Environmental Quality to receive such waste for final disposal in accordance with local, state, and federal requirements.

Dumpster — Dumpster shall mean any front-load Container, with a capacity of two (2) cubic yards to ten (10) cubic yards, and approved for use by the Town.

Excluded Waste — Excluded Waste shall mean Hazardous Waste, Special Waste, and Construction and Demolition Waste.

Fiscal Year — Fiscal Year shall mean the period beginning October 1st of each year and ending on September 30th of the subsequent year for the term of the Agreement.

Force Majeure — Force Majeure shall mean events beyond the Town's or the Contractor's control that delay the Town or Contractor from performing any of its obligations under this Agreement other than its payment obligations as further described in Section 39.

Generator — Generator shall mean any person, site or location that produces Solid Waste, or Recyclable Materials.

Gross Revenues — Gross Revenues shall mean all revenues received, directly or indirectly, by the Contractor, its affiliates, subsidiaries, parent, and any person in which the Contractor has a financial interest, from or in connection with this Agreement.

GVW — GVW shall mean Gross Vehicle Weight.

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.

Herein, Hereunder, Hereby, Hereto, Hereof, and any similar terms — shall mean this Agreement.

Initial Term — Initial Term shall mean the initial period that the Contractor shall perform the Services pursuant to the Agreement as further described in Section 7.2.

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

May — May shall mean something that is not mandatory but permissible.

Missed Collection — Missed Collection shall mean the Contractor's failure to perform any Collection required by this Agreement within the timeframe specified in the Agreement provided that the material intended for Collection was set out at the time and in the manner specified in the Agreement.

Modified Collection Location — Modified Collection Location shall mean a location other than the Curbside acceptable to both the Resident and the Contractor for providing Residential Trash Collection Services or Residential Recycling Collection Services. The Town reserves the right to designate the Modified Collection Location if the Resident and the Contractor cannot agree on an acceptable location or the location agreed upon by the Resident and the Contractor presents or may present health and safety hazards.

Multi-family Complex — Multi-family Complex shall mean a continuous dwelling, including all Multi-family Units therein, under a common roof of three (three) or more units, whether contiguous or multi-level construction, and shall include, but not be limited to, dwellings considered to be apartment houses, grouped housing, or condominiums.

Multi-family Unit — Multi-family Unit shall mean each dwelling unit in a Multi-Family Complex under a common roof of three (3) or more units. Multi-Family Units shall include, but not be limited to, dwelling units in apartment houses, grouped housing, or condominiums.

Old Town — Old Town shall mean the area within the Town bounded by First Street, Craig Road, 8th Street, and the railroad.

Optional Renewal Term — Optional Renewal Term means an optional addition to the term of the Agreement that the Town can exercise at its sole discretion as further described in Section 7.3.

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

Process, Processed or Processing — Process, Processed, or Processing shall mean Recovery of Recyclable Materials, Treatment into Recovered Materials, and marketing of Recovered Materials to end markets; Recovery of Yard Waste, treatment into mulch or compost, and marketing of mulch or compost to end markets.

Processing Facility — Processing Facility shall mean a facility permitted under all applicable local, state, and federal laws and regulations for Processing Yard Waste or Recyclable Material.

Program Aluminum and Steel Recyclable Material — Program 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.

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

Program Paper Recyclable Material — Program Paper Recyclable Material shall mean any:

- (i) Kraft paper;
- (ii) Corrugated containers that have liners of Kraft, jute, or test liner including dry food boxes, beer and soda carriers, shoe boxes;
- (iii) Old newspaper including slick paper inserts;
- (iv) Chipboard; and
- (v) 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.

Program Plastic Recyclable Material — Program Plastic Recyclable Material shall mean any rigid plastic bottle, container, jug, or jar made from #1 through #5 or #7 plastic.

Program Recyclable Material — Program Recyclable Material shall mean Program Paper Recyclable Material, Program Plastic Recyclable Material, Program Glass Recyclable Materials, and Program Aluminum and Steel Recyclable Material.

Recovered Material — Recovered Material shall mean Program Recyclable Materials that have been processed at the Recyclable Material Facility to market specifications.

Recyclable Material — Recyclable Material shall mean material that has been recovered or diverted from the nonhazardous Solid Waste stream for purposes of reuse, recycling, or reclamation, and is any material or product designated in writing by the Town as being suitable for reuse, recycling, or reclamation.

Recyclable Material Facility — Recyclable Material Facility shall mean the facility where the Contractor receives and processes Recyclable Materials, including all contiguous land, structures, other appurtenances, and improvements on the land. A facility may be publicly or privately owned and may consist of several processing or storage units.

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.

Request for Proposals (RFP) — Request for Proposals shall mean Town of Proposer Request for Proposals Number 2023-16-A through which the Town solicited proposals to provide the Services contemplated in this Agreement.

Resident — Resident shall mean a person who resides at a Residential Service Unit.

Residential Trash — Residential Trash means all normal waste products of single-family and duplex residential development, other than sewage and body waste, manure, dead animals over ten pounds in weight, Special Waste, Hazardous Waste, large tree trimmings, Construction or Demolition Waste, or any other waste material that cannot be broken down to fit into residential Trash receptacles specified in this Agreement.

Residential Service Unit — Residential Service Unit shall mean a residential building with two (2) or fewer dwelling units located within the Town 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.

Residential Services — Residential Services shall mean Trash Services, Bulky Waste Services, Recycling Services, and Yard Waste Collection Services for Residential Service Units.

Residue — Residue shall mean material that is Processed at the Recyclable Material Facility but is not recovered and is disposed of as Solid Waste, including both Contamination and unrecovered Recyclable Material.

RFP — see “Request for Proposals.”

Roll-off — Roll-off shall mean any container, excluding compactors, with a capacity of ten (10) cubic yards or more which is normally loaded onto a motor vehicle and transported to a Solid Waste Facility or Recyclable Material Facility and approved for use by the Town.

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).

Scavenging — Scavenging shall mean the unauthorized removal of Recyclable Material after the generators thereof divest control physically or as a matter of appropriate law, rule or regulation.

Service Area — Service Area shall mean the area contained within the limits of the Town of Prosper, Texas, as may be amended from time to time.

Services — Services shall mean all duties and responsibilities of the Contractor pursuant to this Agreement.

Service Commencement Date — Service Commencement Date shall mean February 1, 2024, or an alternative date mutually agreed upon by the Town and the Contractor in writing.

Service Unit — Service Unit shall mean a property qualifying for Service under the Agreement.

Shall — Shall will always mean mandatory and not merely directory.

Single Stream — Single Stream shall mean Program Recyclable Materials that are commingled and that do not require the generator to subdivide the Program Recyclable Materials prior to collection.

Solid Waste — Solid Waste shall mean Trash, rubbish, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities, but does not include:

- (i) 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;
- (ii) 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:

- (i) Hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of Texas Administrative Code, Title 30
- (ii) Class 1 industrial nonhazardous waste
- (iii) Untreated medical waste
- (iv) Septic tank pumpings
- (v) Grease and grit trap waste
- (vi) 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)
- (vii) Slaughterhouse wastes
- (viii) Dead animals
- (ix) Drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste
- (x) Pesticide (insecticide, herbicide, fungicide, or rodenticide) container
- (xi) Discarded materials containing asbestos
- (xii) Incinerator ash
- (xiii) 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 Texas Administrative Code, Title 30
- (xiv) Used oil
- (xv) 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
- (xvi) Waste generated outside the boundaries of Texas that contains:
 - (a) any industrial waste
 - (b) any waste associated with oil, gas, and geothermal exploration, production, or development activities
 - (c) any item listed as a special waste in this paragraph
- (xvii) Lead acid storage batteries
- (xviii) Used-oil filters from internal combustion engines.

State — State shall mean the State of Texas.

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.

Ton — Ton shall mean a unit of weight equal to 2,000 pounds.

Town — Town shall mean the Town of Prosper, Texas, and shall include the Town's elected officials, officers, employees, agents, volunteers and representatives.

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

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

Town's Representative — Town's Representative shall mean the person designated to receive written notices and communication on behalf of the Town as identified in Section 4.1.

Town Services — Town Services shall mean Trash, Bulky Waste, and Recycling Collection, Processing, and Disposal Services for Town Facilities, and Town Events as further described in Section 10.

Transition Plan — Transition Plan shall mean procedures established to ensure timely, smooth, and uninterrupted transitions between service providers at the beginning and end of the Agreement as further described in Appendix C.

Trash — Trash shall mean Residential Trash and Commercial Trash.

Trash Collection Services — Trash Collection Services shall mean Residential Trash Collection Services and Commercial Trash Collection Services.

Unaccepted Set-out — Unaccepted set-out shall mean a set-out for collection that does not comply with the requirements of the Agreement.

Will — Will shall mean mandatory and not merely directory.

Yard Waste — Yard Waste shall mean cuttings or trimmings from trees, shrubs, or lawns, and similar materials such as grass, leaves, flowers, stalks, tree trimmings, Brush, and branches that are set out to be collected as a part of the Yard Waste Collection Service. Any such material set out to be collected with Trash or Bulky Waste Services shall be considered Trash or Bulky Waste.

Yard Waste Bag — Yard Waste Bag shall mean Kraft bag or other sack authorized by the Town, designed to store Yard Waste with sufficient wall strength to maintain physical integrity when lifted. Total weight of a Yard Waste Bag and its contents shall not exceed forty (40) pounds.

Yard Waste Bundle — Yard Waste Bundle shall mean limbs or Brush cut into lengths of 4 feet or less and securely tied with no limbs exceeding six inches in diameter and no bundle exceeding 50 pounds in weight.

Yard Waste Collection Service — Yard Waste Collection Service shall mean the Collection of Yard Waste and delivery to the Delivery Facility pursuant to this agreement.

SECTION 3 REPRESENTATIONS

3.1 Representations

3.1.1 Representations by the Town

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

3.1.2 Representations by the Contractor

The Contractor makes the following representations to the Town.

- (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 required to perform all required Services as contemplated by this Agreement.
- (ii) The Contractor has obtained or will provide the necessary processing and marketing capacity for Program Recyclable Material for the Initial Term and Optional Renewal Terms as defined in Section 7 of this Agreement.
- (iii) The Contractor will obtain at their own expense all applicable environmental and other governmental permits, licenses and authorizations as required under Federal, State, local law, regulation, rule, or ordinance that are necessary to perform the Services.
- (iv) The Contractor will obtain at their own expense all required insurance coverages specified in this Agreement.
- (v) The Contractor will obtain at their own expense the required performance bond or letter of credit specified in this Agreement.
- (vi) 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 and 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 Agreement, or any other related contract or instrument entered into by the Contractor.

SECTION 4 GENERAL CONDITIONS

4.1 Designated Representative

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

If to the Contractor: **[NOTE: Information will be added to final Agreement upon award by the Town to the successful Proposer]**

If to the Town: Executive Director of Administrative Services
 Town of Prosper
 250 W. First Street
 Prosper, Texas 75078

The Executive Director of Administrative Services serves as the Town's Representative for this Agreement and as the sole point of contact for the Contractor(s).

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.

4.2 Compliance with Laws and Regulations

The Contractor understands, acknowledges, and agrees the applicability of the Americans 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 Town 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 Agreement and may subject the Contractor or subcontractor to penalties up to and including termination of this Agreement or any subcontract.

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

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

The Town will not consider the Contractor or any of its subcontractors in material breach of this Agreement 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 Article shall be included in any agreements with subcontractors who provide services under this Agreement. "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, the Contractor shall comply with the following laws:

(i) Occupational Safety and Health Administration (OSHA)

The Contractor warrants that any work performed on Town property or in a location partially or entirely under the 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 Agreement.

(iii) Fair Labor Standards Act

Contractor is required and hereby agrees by execution of this Agreement 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.

SECTION 5 SERVICE AREA

The Contractor shall be required to perform the Services for all properties located within the Service Area, which includes the area contained within the limits of the Town of Prosper, Texas, as may be amended from time to time.

SECTION 6 RIGHT TO PROVISION OF SERVICES

6.1 Right to Operate Collection Vehicles

Town hereby grants the Contractor for the Agreement Term, the right and privilege to have, use and operate its vehicles on, over, and along, and across the present and future streets and alleys of the Town as reasonably required to perform the Services contemplated under the Agreement.

6.2 Exclusive Right to Provision of Collection Services

The Contractor shall have the exclusive right to provide all Collection Services within the Town including providing all Collection Services to Residential Service Units, Multi-family Complexes, and Commercial Service Units including industrial or institutional properties and construction sites. The Contractor, not the Town, shall be responsible for defending the rights granted herein against third parties.

Notwithstanding the Contractor's exclusive right to provide Collection Services, it is understood and agreed that a construction contractor may haul and dispose of Construction or Demolition waste generated by a project located within the Town that the construction contractor was hired to perform, provided that the construction contractor uses its own equipment to store and haul the Construction or Demolition Waste.

6.3 Franchise Fee

For the right and privilege of using the Town's public rights-of-way to provide Collection Services, the Contractor shall pay the Town on a monthly basis a franchise fee equal to five percent (5%) of gross receipts from Commercial Services under the Contract.

SECTION 7 EFFECTIVE DATE AND TERM OF AGREEMENT

7.1 Effective Date of Agreement

Except as otherwise provided for herein, the obligations of the parties shall take effect on the date of execution hereof.

7.2 Initial Term

Unless sooner terminated in accordance with Section 40, the Initial Term of the Agreement shall be for a seven (7) year period commencing on February 1, 2024 at 12:00 AM and continuing in effect until January 31, 2031 at 11:59 PM.

7.3 Optional Renewal Terms

After the Initial Term, the Town may, at its sole discretion, specify one or more Optional Renewal Terms for the Agreement with a combined total length of not more than three (3) years such that the total length of the Agreement including the Initial Term and Optional Renewal Terms shall not be longer than 10 years.

Optional Renewal Terms shall be on the same terms and conditions that were in effect on the date that the Initial Term or previous Optional Renewal Term expired. The Town shall provide written notice to the Contractor of its intention to exercise any Optional Renewal Term not later than one-hundred-eighty (180) calendar days prior to the scheduled expiration date of the Initial Term or the then current Optional Renewal Term of this Agreement. This provision in no way limits the Town's right to terminate this Agreement at any time during the Initial Term or any Optional Renewal Term pursuant to the provisions in this Agreement.

SECTION 8 RESIDENTIAL COLLECTION SERVICES

8.1 Residential Collection Services Scope

8.1.1 Residential Trash Collection Services Scope

The Contractor shall collect one (1) time per week, on a scheduled Collection Day, all Trash contained in Trash Carts. Each Residential Service Unit shall have a minimum of one (1) Trash Cart. A Trash Cart Set-Out shall not weigh more than 150 pounds, inclusive of the Cart and contents. A Resident may request that the Contractor increase the number of Trash Carts at their Residential Service Unit for an additional charge as specified in Appendix D. Upon the Contractor's receipt of a Resident's request to increase the number of Trash Carts at their Residential Service Unit, the Contractor shall collect, once per week on the same scheduled day as the first Trash Cart, all Trash contained in the number of Trash Cart(s) specified by the Resident.

8.1.2 Residential Recycling Collection Services

The Contractor shall collect one (1) time per week, on the same scheduled Collection Day of that week as Contractor Collects Trash, all Recyclable Materials in one (1) Recycling Cart. Each Residential Service Unit shall have a minimum of one (1) Recycling Cart. A Resident may request that the Contractor increase the number of Recycling Carts at their Residential Service Unit for an additional charge as specified in Appendix D. Upon the Contractor's receipt of a Resident's request to increase the number of Recycling Carts at their Residential Unit, Contractor shall collect, one (1) time per week on the same scheduled day as the first Recycling Cart, all Recyclable Materials contained in the number of Recycling Cart(s) specified by the Resident. Residential Service Units shall not be required to separate Recyclable Materials by type prior to Collection.

On a one-time appointment basis and at no additional cost to the Town, the Contractor shall Collect unlimited loose cardboard moving boxes from new Residents on a prearranged day within six (6) months of their moving date and deliver them to the Recyclable Material Facility for processing.

8.1.3 Residential Yard Waste Collection Services

The Contractor shall collect one (1) time per week, on the same scheduled Collection Day of that week as Contractor Collects Trash, all Yard Waste Bags and Yard Waste Bundles placed at the Curbside.

At no additional cost to the Town, the Contractor shall collect natural Christmas trees from Residents on regular Collection Days between December 26 and January 27 and deliver them to the Processing Facility for composting. Artificial trees, bagged trees, or trees with lights, ornaments, or flocking shall not be accepted. Residents are not required to cut and bundle trees as required for normal Yard Waste collection. In addition, the Contractor shall collect Christmas trees from up to two drop-off locations designated and operated by the Town.

8.1.4 Residential Bulky Waste Collection Services

The Contractor shall provide Curbside Collection of Bulky Waste to all Residential Service Units. Residents may set out up to four (4) cubic yards of Bulky Waste per Collection. [\[Note: Information about the frequency of collection will be updated based on the Town's service level selections at the conclusion of the RFP\]](#) Residents may request Additional Bulky Waste Collections Services in accordance with Section 8.1.5.

8.1.5 Additional Residential Bulky Waste Collection Services

A Resident may submit a request to the Contractor for Additional Residential Bulky Waste Collections Services. [\[Note: The definition of Additional Residential Bulky Waste Collection Services will be updated based on the Town's service level selections at the conclusion of the RFP\]](#). Upon receipt of a request from a Resident for Additional Residential Bulky Waste Services, the Contractor shall Collect, on a Collection Day agreed upon by the Contractor and Customer, all Bulky Waste as specified by the Resident for an additional charge as specified in Appendix D.

8.1.6 Household Hazardous Waste Collection Services

[\[Note: This section will be updated if the Town proceeds with Household Hazardous Waste Collection at the conclusion of the RFP\]](#)

8.2 Residential Collection Services Location

Except as described below, Residential Collection Services shall be provided at the Curbside.

If the Town deems that all Residents of a Residential Service Unit are unable due to age or verified physical limitations to safely move a Cart to the Curbside, the Contractor shall provide Residential Trash Collection Services and Residential Recycling Collection Services at a Modified Collection Location acceptable to the Resident and the Contractor. The Town reserves the right to designate the Modified Collection Location if the Resident and the Contractor cannot agree on an acceptable location or the location agreed upon by the Resident and the Contractor presents or may present health and safety hazards. Residential Yard Waste Collection Services and Residential Bulky Waste Collection Services shall be provided at the Curbside for such Residential Service Units.

In limited areas, as identified by the Town, the Contractor shall collect Trash, Recycling, and Yard Waste in alleys. Bulky Waste Collection shall be at the Curbside in front of the house and not the alley. Alley Service Units may not be conducive to operation of the Contractor's regular collection vehicles. The Contractor shall collect from Alley Service Units using modified equipment or operations if its regular collection vehicles are unable to safely operate in alleys.

The Contractor shall provide Residential Collection Services from Town-approved Modified Collection Locations and Alley Service Units at no additional cost to the Town.

SECTION 9 COMMERCIAL COLLECTION SERVICES

9.1 Commercial Collection Services Scope

The Contractor shall offer Trash and Recycling Collection Services to all Commercial Customers within the Service Area. For the purposes of the Agreement, Commercial Customers are defined

to include but not be limited to Multi-family Complexes, businesses, industrial, and institutional properties, construction projects, and individuals renting one (1) or more Roll-offs located at their residence.

The Contractor shall provide Trash and Recycling Collection Service to Commercial Customers using Container types, sizes, and collection frequencies specified by the Customer. The Contractor shall provide collection frequencies up to six days per week using the following Commercial Container options.

Container Type	Size Options
Cart	96 Gallon
Dumpster (Uncompacted)	2 CY, 3 CY, 4 CY, 6 CY, 8 CY, 10 CY
Dumpster (Compacted)	2 CY, 4 CY, 6 CY, 8 CY
Roll-off (Uncompacted)	20 CY, 30 CY, 40 CY
Roll-of (Compacted)	15 CY, 20 CY, 30 CY, 35 CY, 40 CY

A Trash or Recycling Cart Set-Out shall not weigh more than 150 pounds, inclusive of the Trash Cart and contents.

9.2 Commercial Collection Service Location

Upon commencement of a new Commercial Collection account, the Contractor and the Customer shall agree upon a location that can be accessed by collection vehicles and that does not interfere with or endanger vehicles or pedestrians.

9.3 Unscheduled Extra Collections

The Contractor shall accommodate requests from Customers for additional Dumpster Collections on days other than their regularly scheduled Collection Days provided that the request is received at least 48 hours before the additional collection is scheduled to occur. The Collections Service Contractor shall invoice Customers for unscheduled extra collections at the Contract Rates provided in Appendix E.

9.4 Old Town

As defined in this Agreement, Old Town shall refer to the area bounded by First Street, Craig Road, 8th Street, and the railroad. Commercial Trash and Recycling Collection Services in the Old Town area are currently provided through a combination of Carts, Dumpsters, and Roll-off Containers. As redevelopment of Old Town proceeds, it is anticipated that increasing numbers of properties will be required to construct enclosures for Commercial Trash and Recycling Containers as required by Chapter 4, Section 5.2E of the Town's Code of Ordinances. Some of these enclosures may be shared between multiple businesses, and the Contractor shall be required to divide billings for a single shared enclosure among multiple customers if instructed to do so

by the Town. The Town shall determine the manner in which services in the Old Town will be provided in the future via a combination of Carts, Dumpsters, and Roll-off Containers.

SECTION 10 TOWN SERVICES

10.1 Trash and Recycling Collection at Town Facilities

At no additional cost to the Town, the Contractor shall provide Collection and Disposal of Trash and Bulky Waste and Collection and Processing of Program Recyclable Materials to all Town Facilities as designated by the Town. The Contractor and the Town shall mutually decide on the number and size of Carts and Containers and collection frequencies at each designated Town Facility. If a dispute arises concerning Trash or Recycling Collection for a Town Facility, the Town shall at its sole discretion determine the resolution of the disputed matter.

10.2 Town Events

At no additional cost to the Town, the Contractor shall provide Collection, Processing, and Disposal services for Town events as designated by the Town, including but not limited to the following.

10.2.1 Annual Spring Clean Up

The Town holds an annual Spring Cleanup event where residents may drop off shredded paper, electronics, scrap metal, Program Recyclable Materials, and Trash. To support this event, the Contractor shall supply up to 30 Roll-offs and 3 rear-load trucks and provide hauling and Disposal of Trash, and hauling and Processing of shredded paper, electronics, scrap metal, and Program Recyclable Materials at no additional cost to the Town.

10.2.2 Bulky Waste Drop Off Collection

The Town provides and supervises weekly Bulky Waste drop-off collection at the Public Works facility located at 601 W. Fifth Street. Customers are required to provide proof of residence. The Contractor shall supply Roll-offs or rear-load trucks as required and haul and dispose of the Bulky Waste collected at these events at no additional cost to the Town.

10.2.3 Additional Town Projects

In addition to Roll-offs requested for the Spring Cleanup or Bulky Waste Drop-off events, the Town may request up to 24 additional Roll-offs per year at no additional cost to support Town projects such as storm debris or litter clean up. The Contractor shall supply hauling and Disposal of the materials collected in these Roll-offs at no additional cost to the Town.

SECTION 11 COLLECTION DAYS AND HOLIDAYS

11.1 Residential Collection Days

Each Residential Service Unit shall receive Trash, Recycling, and Yard Waste Collection Services on a single, weekly Collection Day which shall occur on the same day each week

according to a published schedule. [\[Information on Bulky Waste Collection Days will be updated based on the Town's service option selected at the conclusion of the RFP\]](#)

11.2 Commercial Collection Days

Commercial Collection Services occur at a frequency and on Collection Days that are mutually agreed upon by the Customer and the Contractor up to six (6) times per week, Monday through Saturday.

11.3 Town Services Collection Days

Town Services Collection occurs at a frequency and on Collection Days that are mutually agreed upon by the Contractor and the Town.

11.4 Holidays

The Proposer shall not be obligated to provide Service on recognized holidays set forth in Appendix A. Holidays may be added, deleted, or changed upon the sole determination of the Town.

The Contractor shall not provide Collection Services on Thanksgiving and Christmas but may choose to provide Collection Services on other Holidays at their sole discretion. Any collection days missed due to holiday observances shall be made up on the following Saturday.

SECTION 12 HOURS OF OPERATION

12.1 Hours of Operation

Collection operations shall not be conducted outside the hours specified in the following table without written approval from the Town's Representative. Operating outside of approved hours will subject the Contractor to Liquidated Damages in accordance with Section 36.

Hours of Operation

Collection Service Type	Approved Operating Hours
Residential Collection Services	7:00 AM to 7:00 PM Monday – Friday Saturday Collection 7:00 AM to 7:00 PM permitted as required to provide make-up Collection for observed Holidays only.
Commercial Collection Services and Town Services	7:00 AM to 7:00 PM Monday - Saturday

SECTION 13 DISPOSAL SERVICES

[\[To be updated based on service option selected by Town at the conclusion of the RFP\]](#)

SECTION 14 RECYCLABLE MATERIAL PROCESSING SERVICES

14.1 Recyclable Material Facility Requirements

The Contractor shall deliver all Program Recyclable Material to the Recyclable Material Facility located at [\[update location at conclusion of RFP\]](#). The Contractor shall maintain sufficient capacity at the Recyclable Material Facility to receive and Process all Program Recyclable Material collected in the Town throughout the Agreement Term.

The Contractor shall operate the Recyclable Material Facility in compliance with all applicable laws. The Contractor shall use processing equipment at the Recyclable Material Facility capable of complying with product specifications of secondary materials buyers including, but not limited to, product form, size, weight, density, and degree of contamination. In addition, the Contractor shall use processing equipment capable of processing ninety-five percent (95.0%) by weight of Program Recyclable Materials into Recovered Materials monthly. The Town reserves the right to review the Contractor's operating records and/or perform material composition audits to verify compliance with these requirements.

The Contractor shall market one hundred percent (100%) of Recovered Materials to secondary markets. Disposal of Program Recyclable Materials or Recovered Materials is strictly prohibited and will subject the Contractor to Liquidated Damages in accordance with Section 36. Upon request by the Town, the Contractor shall provide information identifying where Program Recyclable Material is marketed, including location of such markets and whether markets are domestic or international. The Contractor shall also be responsible for Disposal of all Residue generated by processing of Program Recyclable Material. The cost of performing all Recyclable Material Processing Services is included in the Contract Rates for Residential and Commercial Recycling Collection in Appendix D and Appendix E.

14.2 Addition and Deletion of Program Recyclable Materials.

The Town reserves the right to add other Program Recyclable Materials to the program if the processing facility accepts such material from other customers or if the parties agree it is economically and technically feasible. In addition, the Town reserves the right to delete Program Recyclable Materials from the program if the parties agree it is economically and technically prohibitive.

SECTION 15 YARD WASTE PROCESSING SERVICES

[\[To be updated based on service option selected by Town at the conclusion of the RFP\]](#)

SECTION 16 HOUSEHOLD HAZARDOUS WASTE PROCESSING SERVICES

[\[To be updated based on Town decision at the conclusion of the RFP\]](#)

SECTION 17 COMMINGLING OF MATERIALS AND DISPOSAL OF PROGRAM RECYCLABLE MATERIALS AND YARD WASTE PROHIBITED

17.1 Commingling of Materials

Reserved

[Note: The Contractor shall be allowed to commingle material collected under the Agreement with material collected from other sources outside the Town provided that the Town does not contract with the City of Denton for Disposal of Residential Trash and Bulky Waste and/or Processing of Yard Waste. If the Town does contract with the City of Denton, then this section shall be updated to prohibit commingling of those materials with Commercial material or material from sources outside the Town.]

17.2 Disposal of Program Recyclable Materials Prohibited

The Contractor shall not dispose of any Program Recyclable Material or market Program Recyclable Materials to markets that the Contractor knows or reasonably should have anticipated will dispose of the Program Recyclable Material except when approved in writing by the Town.

17.3 Disposal of Yard Waste Prohibited

The Contractor shall not dispose Yard Waste or deliver finished or unfinished products derived from Yard Waste to markets that the Contractor knows or reasonably should have anticipated would dispose of the products derived from Yard Waste except when approved in writing by the Town.

SECTION 18 STORM AND DISASTER DEBRIS MANAGEMENT

In the event of an emergency declaration by the Town, the President of the United States, or Federal Emergency Management Agency (FEMA) affecting the Service Area, the Contractor shall not be responsible for collection of debris generated from or as a result of such emergency, to the extent that such debris is in excess of normal volumes and material types collected through services provided under this Contract.

In the event of such emergency declarations, the Contractor shall be required to continue provisions of services in accordance with this Contract, including collection of all materials and material quantity limits as defined herein. On a non-exclusive basis, the Town may negotiate with the Contractor for additional services if required or may negotiate with other service providers for quantities in excess of normal volumes.

Emergency declaration, as defined in this Section, shall not automatically invoke Force Majeure terms, as defined in Section 39.

SECTION 19 COLLECTION VEHICLES

19.1 Inspection of Collection Vehicles

The Town may inspect the Contractor's equipment at any time to ensure compliance with this Agreement. Upon notification from the Town, the Contractor shall be required to repair or replace equipment that is no longer in acceptable condition for its intended purpose. The Contractor shall, upon notification from the Town, sanitize, wash, or repaint equipment that is unsightly.

19.2 Appearance of Collection Vehicles

The Contractor shall paint all collection vehicles uniformly as approved by the Town and with the Contractor's name, 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.

The Contractor shall use vehicles to which wrap graphics may be applied and shall apply wrap graphics upon request by the Town. Wrap graphics may be for the purpose of Town-related education, events, announcements, or other content approved by the Town. Application of wrap graphics to collection vehicles shall be performed by the Contractor and production and application shall be Town's sole cost.

No advertising shall be permitted on vehicles for persons other than the Contractor. No advertising shall be permitted on vehicles for third parties.

19.3 Age of Collection Vehicles

Upon commencement of the Agreement, the Contractor shall use vehicles that are not more than 36 months old. Throughout the Initial Term and any Optional Renewal Terms the average age of the Contractor's collection vehicle fleet shall not exceed 7 years.

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

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

All collection vehicles shall be equipped with back-up cameras and spill kits for oil and hydraulic fluids.

19.5 Collection Vehicle Specifications

The Contractor shall use Automated Side Loader (ASL) collection vehicles as the standard collection vehicle type to provide all Cart-based collection services (Residential Trash Collection Services and Residential Recycling Services). The Town recognizes that there may be areas within the Service Area that are not conducive to safe operation of ASL collection vehicles. In these areas, the Contractor may use collection vehicle type(s) other than ASL.

All collection vehicles used by the Contractor to provide Collection Services under the Agreement shall be designed to prevent leakage, spillage or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency noise emission regulations and other applicable noise control regulations. The Contractor shall also ensure that Gross Vehicle Weights (GVW) do not exceed vehicle license limitations.

All collection vehicles shall include both in-cab and exterior cameras that are able to document set outs and provide any service verification needs as determined by the Town and the Contractor. Cameras shall be supported by a data management platform that is 5G enabled and compatible with the Town's data management system. Additionally, all collection vehicles shall have the capability to have routing and in-field re-routing capabilities and contain an Application Programming Interface (API) that is interoperable with the Town's data management system. The Town reserves the right to request that the Contractor provide technology improvements from time to time as appropriate to maintain performance.

SECTION 20 CARTS

20.1 Ownership of Carts

Title to and ownership of all garbage and recycling Carts is, at all times, with the Town regardless of whether such Carts are in the possession of Contractor, Residential Service Units, Commercial Service Units, Town Facilities or any other entity or individual.

20.2 Cart Operations

The Contractor shall be responsible for Cart operations, as defined herein, at no additional cost to the Town. The Town shall retain ownership of all Carts, in accordance with Section 20.1.

The Contractor shall be required to provide Trash Services and Recycling Services utilizing Carts for all Residential Service Units and any other Service Units receiving service using Carts. The Contractor shall be responsible for Cart operations whether the Carts are owned by the Contractor or the Town.

[If the Contractor purchases Carts on the Town's behalf, the Agreement shall state that the Contractor shall be responsible for assembly and initial distribution of Carts to Residential and Commercial Customers and Town Facilities. If the Town purchases Carts directly from the manufacturer, the Agreement shall be updated to reflect the Cart distribution option selected by the Town in accordance with Section 7.2.3 of the RFP.]

The Contractor shall be responsible for storage, assembly, repair, and maintenance of all Carts, and delivery of repaired and replacement Carts to Residential and Commercial Customers. The Contractor shall have computer software capable of supplying the Town with detailed information as to the performance of the of the required services under this Section of the Agreement, including Cart purchase and delivery history, service times, types of service performed, types of repairs being made, and other reports as requested by the Town. The Contractor shall also be required to provide additional data and reports as required herein.

20.3 Cart Inventory Data

20.3.1 Cart Inventory Database

The Contractor shall develop and maintain a database which contains the following information. The Contractor shall make the then current database, or any data contained therein, available to the Town upon request by the Town.

Each Cart purchased or managed under the Agreement shall have an associated Cart ID or serial number, unique to that Cart, which shall be used to track all Cart information as required under the Agreement, including:

- (i) Location (address) and date of delivery of each Cart, including current and historical locations where Cart has been in-service;
- (ii) Occurrences of maintenance, repair, and replacement performed for each Cart; and
- (iii) Number and type of Carts at each Residential Service Unit, Commercial Service Unit, and Town Facility, in accordance with Section 20.3.2.

20.3.2 Requirements for Cart Inventory Report and Collection of Excess Carts

Upon commencement of the Agreement, and once every three (3) years thereafter for the duration of the Initial Term and any Optional Renewal Term, the Contractor shall be required to provide the Town with a comprehensive report summarizing current Cart inventory information from the database in accordance with Section 20.3.1. The initial report shall be submitted to the Town within three (3) months of the Service Commencement Date and shall be based upon information gathered during initial Cart distribution. Subsequent Cart inventory reports shall be submitted once every three (3) years thereafter, on the same month in which the Agreement commenced. Subsequent Cart inventory reports shall be based on in-field Cart data collection activities by the Contractor to verify the number of Trash and Recycling Carts being serviced at each Residential Service Unit, Commercial Service Unit, and Town Facility and update the database if required.

The Town shall use the comprehensive report to identify the number of Trash Service Carts and Recycling Service Carts that are collected at each Residential Service Unit, to determine the cost of Additional Carts to be paid to the Contractor by the Town, in accordance with the rates established in Appendix D to the Agreement.

Upon notification and request by the Town, the Contractor shall be required to collect from Residential Service Units, Commercial Service Units, Town Facilities, and Town Events any unwanted excess Carts. The Contractor will be responsible for storing these Carts until they can be used.

20.4 Cart Inventory Replacement

At Service Commencement, the Town may require the Contractor to assemble and distribute Carts to Residential and Commercial Customers at no additional cost. The number of Trash or Recycling Carts to be distributed shall be equal to the number of each type of Cart in use by each Residential Service Unit or Commercial Customer or Town Services location at that time.

Throughout the Agreement Term, the Contractor shall be responsible for delivery of repaired, replacement or new Carts to Residential Service Units, Commercial Customers, and Town Facilities and Events. The Contractor shall deliver repaired or replacement Carts at no additional cost to the Town provided that the delivery occurs due to addition of a new Service Unit, warranty replacement, or replacement due to normal wear and tear or damage due to Contractor fault. If a replacement is required due to loss or damage of a Cart by the Customer, then the Contractor may charge the Town a one-time fee for delivery of a replacement Cart at the rate specified in Appendix D.

20.5 Cart Operations Facility and Location

The Contractor shall use its own facilities for Cart operations required including but not limited to Cart storage, maintenance, and repair. The Contractor's Cart operations facility shall be used for receipt and storage of all Carts and replacement parts used in provision of Services under this Agreement.

20.6 Cart Purchase

[To be updated based on Town's service option selection at the conclusion of the RFP]

20.7 Cart Maintenance, Repair, and Replacement

- (i) The Contractor shall maintain and repair Carts for the collection of Trash and Program Recyclable Materials., in accordance with the Agreement
- (ii) The Contractor shall maintain, repair, and deliver repaired, and replacement Carts as needed. Contractor responsibilities shall include picking up damaged Carts, processing warranty replacements, repairing, and delivering repaired, replacement Carts to Residential Service Units, Commercial Customers, and Town Facilities and Events.
- (iii) The turn-around time for the maintenance, repair, or replacement of a Cart shall not exceed two (2) business days from the time a request for service is received by the Contractor. Maintenance and repair shall not interfere with normal collection of the Cart.
- (iv) The Contractor shall purchase and use replacement parts as specified by the Cart manufacturer as required to repair and maintain Carts.
- (v) The Contractor shall make the necessary repairs or replacement within forty-eight (48) hours of receipt of request. The Contractor shall be responsible for maintaining records of such customer service requests and their resolution.
- (vi) Contractor shall be responsible for and incur all costs for the disposal or recycling of Carts damaged beyond repair.

20.8 Cart Specifications

The following represent the minimum specifications for Carts used to provide Collection Services under this Agreement.

- (i) Carts shall have a minimum 10-year warranty in accordance with Section 20.10.

- (ii) The Cart shall be compatible with both standard American semi-automated, bar-locking lifters (ANSI type B) as well as automated arm lifters (ANSI type G). All Carts should be rotationally or injection molded using linear high or medium density polyethylene that contains resin with an ultraviolet stabilizer and color shall be non-fading throughout the warranty period.
- (iii) The body of the Cart shall be composed of first quality recyclable (25% PCR of total) medium or high-density polyethylene with a BCSR rating of not less than 500 hours.
- (iv) The resin shall meet or exceed the following American Society for Testing Materials (A.S.T.M) molded property specification: Environmental Stress Crack Resistance (E.S.C.R) Condition "A" for rotational Carts or Condition "B" for injection molded Carts.
- (v) The capacity of Carts shall be approximately 96 U.S. gallons.
- (vi) The Cart is provided with adequate wheels (minimum ten-inch (10") diameter with five-eighth inch (5/8") diameter solid axle) and handles so that it can be pushed or pulled with little effort.
- (vii) Carts shall be furnished complete with all hardware needed for assembly and use. Contractor shall establish an inventory stock of replacement parts for field repairs. Replacement parts should be available upon request of repair to ensure repairs are made in a timely manner in accordance with Section 20.7 of the Agreement. The following are considered replacement parts:
 - a. Wheels and assemblies;
 - b. Lids and assemblies;
 - c. All associated fasteners and brackets.
- (viii) The Cart is designed to accommodate a load of three hundred thirty-five (335) pounds for a 96-gallon Cart excluding the weight of the Cart, without permanent damage, deformation or structural failure. Carts and all components shall be capable of withstanding temperature extremes ranging from negative thirty (-30) degrees Fahrenheit to one hundred and fifty (150) degrees Fahrenheit, when under two hundred (200) pounds per square inch compression, applied from opposite sides by the gripping arms of a Vehicle without permanent damage, deformation or structural failure.
- (ix) Carts shall be made with plastic material using hot melt compounding that is specifically prepared to be colorfast so that the Carts do not alter appreciably in normal use. Carts shall be stabilized against ultraviolet light attack with UV 531 or equivalent.
- (x) Cart lids shall have the following specifications:
 - a. Shall be designed to facilitate water run-off.
 - b. Design prevents the lid from being flung open by the wind.
 - c. Shall be closed by the weight of the lid only. No latches are used or required.

- d. The lid is designed in such a manner as to allow opening without having to touch the bottom edge of the lid.
- (xi) The Cart is designed to prevent being turned over by winds of up to 40 mph in any direction.
- (xii) In the event of any recall notice, technical service bulletin, or other important notification affecting any Carts or replacement parts purchased under this Agreement, a notice shall be sent to the Town. It shall be the responsibility of the Contractor to assure that all recall notices are sent directly to the Town.
- (xiii) If the Carts include a bar code system, bar codes should be located on the front of the container above the serial number. The bar code should be readable with the devices that meet industry standards. The scanned value of each code should match each Cart's serial number. The bar code shall remain scannable throughout the warranty period.

20.9 Cart Appearance

- (i) Carts shall have an appearance as specified by the Town, including, but not limited to:
 - a. Color.
 - b. Labels, logos, and other identifying information, including size and color of letters, numbers, and markings.
 - c. Serial numbers or other numbering system of Town's choosing.
 - d. Size and color of the Carts are Navy Blue, Brown, Forest Green or other color as directed by the Town, and are stabilized against ultraviolet light attack with UV 531 or equivalent.
 - e. Upon request, cart lids shall have a hot stamp informational message educational message, and/or In-Mold Label (IML) option as needed by the Town.
 - f. Non-Residential Carts shall have a different lid color from Residential Carts to distinguish Service Unit type.
- (ii) Carts shall have no markings or advertising for any entity other than the Town.

20.10 Cart Warranty

The following Cart warranty specifications represent the warranty requirements for Cart maintenance, repair and replacement. All Carts and hardware furnished shall be unconditionally warranted for a period of a minimum ten (10) years against defects including, but not limited to: cracking, chipping, peeling, distortion, failures at attachment, weathering degradation, defective or insufficient material, poor material workmanship on the part of the manufacturer and lowered ultraviolet resistance to aging in the process or normal operational use. If at any time during the warranty period, a defect should occur with any Cart, the Cart shall be replaced by the Contractor at no cost or obligation to the Town. The Contractor expressly warrants all items to be new, free from defects in design, materials and workmanship, and to be fit and sufficient for their

intended purpose. All warranties shall survive acceptance and payment by the Town. The Town reserves the right to have any or all Carts submitted for consideration evaluated by an independent testing facility to ensure full compliance with specifications. Warranty includes, but is not limited to, the factors listed below:

- (i) Failure of the lid to prevent rainwater from entering the Cart when closed on the Cart body.
- (ii) Damage to the Cart body, the lid, or any component parts through opening or closing the lid.
- (iii) Does not continuously perform in the intended manner as set forth in Section 20.8 (including smooth maneuverability).
- (iv) Failure of the lid hinge to remain fully functional and continually hold the lid in the originally designed and intended position when either is opened or closed.
- (v) Failure of any plastic component to be resistant to damage in the event of contact with common household or residential product/chemicals.
- (vi) Failure of any plastic component resulting from rodents or other wildlife damage.
- (vii) Failure of any portion of the bottom of the Cart to remain impervious to wear-through after repeated contact with rough and abrasive surfaces. The Cart shall remain free of holes or penetrations that will cause the container to leak throughout the warranty period with the Cart in normal use.

Cart or lid failures during the warranty period shall constitute failure of the Cart and require replacement with a new and complete Cart (including shipping and assembly), at no cost to the Town. The determination of failure will be at the sole discretion of the Town. Warranty replacement will be due to the Town within sixty (60) days from the time the Town submits the claim.

SECTION 21 OTHER COLLECTION EQUIPMENT

Contractor shall provide other collection equipment and vehicles sufficient in number and capacity to perform the work required by this Agreement including, but not limited to dumpsters, roll-off containers and any vehicles used to service Commercial Service Units, Town Facilities and Town Events.

21.1 Appearance of Other Collection Equipment

The Contractor's name, local telephone number, call center telephone number shall be displayed in letters and numbers no less than four (4) inches high and the vehicle identification number shall be displayed in letters and numbers no less than two and one-half (2.5) inches high on all other collection equipment. Contractor shall not place the Town's logo on other collection equipment vehicles. Contractor shall paint all other collection equipment uniformly as approved by Contractor shall maintain all containers in a clean manner.

Other collection equipment used in the collection of materials under the Agreement shall be thoroughly washed on a regular basis to present a clean appearance. Town may

inspect Vehicles at any time to determine compliance with cleaning and maintenance requirements.

21.2 Other Collection Equipment Specifications

All other collection equipment and vehicles used by Contractor in providing collection of materials under the Agreement shall be designed to prevent leakage, spillage or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency noise emission regulations and other applicable noise control regulations. Contractor shall also ensure that GVW of all vehicles, even when loaded, does not exceed vehicle license limitations to protect the roadways of the Town.

21.3 Purchase, Operation, Storage and Replacement of Other Collection Equipment

Unless otherwise stated in this Agreement, Contractor, at its sole cost, shall purchase, operate, and maintain other collection equipment pursuant to this Agreement.

The Town, at its sole discretion, shall determine whether the Contractor is or is not properly maintaining the collection equipment. If the Town determines the Contractor is not properly maintaining the collection equipment, Contractor shall replace such equipment in accordance with this Agreement and Town may assess administrative charges in accordance with this Agreement. Unless otherwise stated in this Agreement, Contractor, at its sole cost, shall replace collection equipment if such equipment is lost, stolen or damaged beyond normal wear and tear. If Contractor or Town determines that other collection equipment requires replacement, Contractor shall replace such equipment within fourteen (14) calendar days with comparable equipment. Contractor shall be responsible to make the appearance of the replacement equipment in adherence with the requirements of this Agreement.

21.4 Other Collection Equipment Inspection and Maintenance

Contractor shall furnish and maintain other collection equipment in accordance with all standards in this Agreement and any maintenance considered to be necessary for execution of the work in an acceptable manner and at a satisfactory rate of progress. Contractor shall inspect each vehicle and each piece of equipment daily to ensure that all equipment is operating properly and complies with Applicable Law. Vehicles which are not operating properly or do not comply with Applicable Law shall be taken out of service until they are repaired and operate properly and comply with Applicable Law.

21.5 Ownership of Collection Equipment other than Carts

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

SECTION 22 UNACCEPTED SET-OUTS

The Contractor may designate a set-out as an Unaccepted Set-out only for the following reasons.

- (i) A set-out of Recycling that contains more than thirty percent (30%) materials that are not Program Recyclable Materials
- (ii) A set-out exceeds quantity limits as established in this Agreement

- (iii) A set-out is not placed at the Curbside or is inaccessible due to barriers
- (iv) A set out is placed in bags or other non-standard containers
- (v) Waste materials are placed on top of a Cart or a Cart cannot be closed
- (vi) A set-out presents a substantial danger to the Contractor's employees or the public
- (vii) A set-out contains Hazardous Waste or other prohibited materials that cannot be easily separated

In the event of an Unaccepted Set-out, the Contractor shall:

- (i) Take a photograph of the entire set-out
- (ii) Collect any portion that is properly set-out and can be easily separated
- (iii) Leave an Unaccepted Set-out Notice stating the reason the set-out or portion of the set-out was designated an Unaccepted Set-out
- (iv) Record the location address

For Bulky Waste set-outs that are Unaccepted Set-outs due to exceeding the quantity limit the Contractor shall, if possible, collect a portion of the set-out approximately equal to the quantity limit.

The Contractor shall provide a list of the Unaccepted Set-outs including the address, and reason for non-acceptance to the Town by 10:00 AM the next business day. If the Contractor fails to provide notice to the customer and to the Town in accordance with this Section, the Contractor shall be subject to Liquidated Damages in accordance with Section 36.

SECTION 23 MISSED COLLECTIONS

A missed collection complaint occurs when a customer reports that their material was set out at the correct time and in the manner prescribed by the Agreement and was not collected by the Contractor.

If the Town or the Contractor receives a missed collection complaint, the Contractor shall investigate using the collection vehicle's onboard cameras. If the Contractor cannot demonstrate that the material was not set-out, or that an Unaccepted Set-Out notice was delivered due to a non-compliant set-out, then the complaint shall be considered confirmed, and the Contractor shall be subject to Liquidated Damages in accordance with Section 36. If the Contractor is notified of a confirmed missed collection prior to 1:00 PM then the Contractor shall return to the property to pick-up the missed collection on the same day that notice is received. If the Contractor is notified of a missed collection after 1:00 PM then the Contractor shall return to the property pick up the missed collection no later than 5:00 PM on the day after the complaint is received.

SECTION 24 PUBLIC EDUCATION NOTICES

The Contractor shall provide the following services associated with public education notices at no additional cost to the Town or the customer. The Contractor shall submit all public education notices to the Town for approval at least thirty (30) days prior to distribution. Contractor will at

no time place public education notices inside customers' mailboxes. Contractor shall not distribute any public education notices within the Town without written approval from the Town.

(i) Transition Notice

The Contractor shall develop, print, and distribute a Transition Notice informing customers of the change in service provider, if applicable. The final Town-approved Transition Notices shall be delivered to Customers by the Contractor between one (1) and fourteen (14) days after the Service Commencement Date.

(ii) Program Introduction Notice

Contractor shall develop, print, and distribute a Program Introduction Notice for each Residential Service Unit describing all Residential services that will be provided, including new services and changes to services. Program Introduction notice shall include, at a minimum:

- Types of Residential Services that will be provided;
- Service frequency or procedure for requesting each service; and
- Set-out requirements (types of materials accepted, configuration, and limits).

Final Town-Approved Program Introduction Notices shall be distributed 10 to 15 days prior to the Service Commencement Date.

(iii) Unaccepted Set-out Notices

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

(iv) Development, Printing and Distribution of Additional Public Education Notices

At the request of the Town, the Contractor shall develop, print, and distribute, at Contractor's own expense, other Public Education Notices to Residential Service Units for purposes and needs identified by the Town.

The Contractor shall be required to provide to the Town at no cost any existing public educational materials previously developed and used for Residential services, including, but not limited to flyers, mailers, informational or instructional videos, etc. The Town shall be permitted to use such materials for public education purposes within the Town at the Town's discretion.

SECTION 25 SPILLAGE, LEAKAGE AND NUISANCES

25.1 Spillage, Leakage, and Litter

The Contractor shall conduct all operations in a manner that does not allow leaks, spills, or blowing litter to occur. The Contractor shall be responsible for cleanup of any spillage, leakage, or blown litter caused by its operations within two (2) hours of the earlier of either (i) receiving notification of spillage, leakage or blown litter or (ii) knowledge of spillage, leakage, or blown litter by the Contractor or Contractor's employees. The Contractor's vehicles shall carry spill containment kits with supplies for containing and cleaning up small spills of engine fluids or other hazardous materials. The Contractor shall also be required to maintain an on-call subcontractor for the purpose of cleaning up larger spills in a timely manner. Failure by the Contractor to adequately prevent or clean up spills, leakage, or blown litter may result in assessment of Liquidated Damages by the Town in accordance with Section 36.

SECTION 26 CUSTOMER LIST

At least one month prior to the Service Commencement Date, the Town shall provide the Contractor with a customer list for Residential and Commercial Collection Services. The Contractor will report in writing to the Town any Residential set-outs and Commercial accounts or service requests that are not on the then current customer list, and the Town will thereafter update the customer list as applicable. The Contractor shall work cooperatively with the Town to keep the Residential and Commercial customer lists up to date throughout the term of the Agreement. Regardless of the customer list, the Contractor shall provide services to all properties in accordance with this Agreement.

SECTION 27 COST ADJUSTMENT

27.1 Annual Cost Adjustment Process

The Contract Rates in Appendix D and Appendix E shall remain effective from the execution of this Agreement through September 30, 2025. Thereafter, cost adjustments may be requested by the Contractor(s) each new Fiscal Year and are subject to approval by the Town. Cost adjustments shall meet the following requirements for each Service offered under the Agreement:

- (i) Cost adjustments will be based on annual changes to indices agreed to by the Town and the Contractor.
- (ii) Cost adjustment requests must be received by June 1st of each year (taking effect the following October 1st to align with the Town's budget development and approval process) or the Contractor forfeits the right to request a cost adjustment for the upcoming year.
- (iii) The Town may implement cost decreases (based on the cost adjustment indices for each service described below) even if the Contractor does not submit the request by June 1st of a year.

- (iv) The Contractor shall receive no other financial compensation outside the terms of the Agreement(s). Further, costs shall not be adjusted other than as explicitly authorized in the Agreement.

All indices used represent the Consumer Price Index (CPI), Employment Cost Index (ECI), EIA Natural Gas Texas Commercial or components of the Producer Price Index (PPI), as published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) or the Energy Information Administration. Since some indices are not finalized for several months, cost adjustments will be applied when data is released and updated, if necessary, when final data is released. If BLS changes the methodology for calculating ECI or components of the PPI, which causes historical data used to calculate this cost adjustment to be restated, such changes shall only apply to future adjustments and not to adjustments already implemented.

The annual cost adjustment shall neither exceed five percent (5%) in any single year nor exceed a cumulative increase of fifteen percent (15%) over a four-year period.

27.2 Annual Cost Adjustment Index

Subject to Town approval, the Contract Rates shall be adjusted on October 1, 2025 and every October 1st thereafter for the term of the Agreement. The adjustment shall be based on the year-over-year change in the average value of the U.S. Consumer Price Index: Urban Consumer – Garbage and Trash Collection over the 12-month period ended September.

SECTION 28 PERSONNEL

28.1 Contractor's Representative

The Contractor shall assign a qualified person or persons to oversee its operations and performance of Services, and shall provide the name, office telephone number, mobile phone number, email address, and fax number of the Contractor's representatives and key personnel to the Town. Such records shall be updated as personnel or contact information changes.

The Contractor shall have a competent and reliable representative on duty at all times that is authorized to make decisions and act on its behalf. The Contractor agrees that the Town shall have twenty-four (24) hour access to said representative via non-toll call from the Town. Answering machines, pagers or other devices that do not provide for immediate contact with the Contractor's said representative(s) shall not meet the requirements.

28.2 Personnel Standards

- (i) The Contractor shall hire and maintain qualified personnel to provide service under this Agreement. The Contractor is responsible for ensuring that all personnel are supplied with all equipment and have obtained any training, licenses, or certifications required by law to perform their work. As for personnel operating commercial vehicles, the Contractor shall ensure such personnel have a valid commercial driver's license while operating commercial vehicles in the Town or in connection with this Agreement. If deemed qualified, the Contractor is encouraged to hire Town residents to fill vacant positions at all levels.

- (ii) The Contractor shall furnish each employee involved in the performance of this Agreement with a uniform and safety vest, shirt or jacket which clearly displays the name of the Contractor. Such uniforms and safety equipment shall make the employee readily visible and identifiable. The Contractor's employees shall wear complete uniforms and safety vest, shirt, or jacket at all times.
- (iii) Contractor shall not, nor shall it permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for Service(s) provided under the Agreement.
- (iv) The Contractor shall provide regularly scheduled, on-going operating and safety training for all employees. In addition, the Contractor's employees shall be trained to perform their duties to maximize the Town's recycling rate, minimize contamination, and promote recycling at all times. Such meetings shall be mandatory for all collection and supervisory personnel and held not less than once per month. Training manuals and schedules shall be maintained at the local office of the Contractor and available for review at any time by the Town.
- (v) All employees involved in the performance of this Agreement including office and all front-line personnel, shall be provided adequate training before and during their employment with the Contractor. This training shall familiarize employees with the required duties, standards of performance, and specific requirements of their roles. All front-line, administrative, supervisory and customer service personnel shall receive customer service training prior to and during the time they are employed by the Contractor
- (vi) The Contractor's employees shall treat all customers, co-workers, Town 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.
- (vii) In performance of all Services, the Contractor's employees shall adhere to municipal, Town, State and federal laws.

The Town reserves the right to make a complaint regarding any employee of the Contractor who violates any provision herein, or who is wanton, negligent or discourteous in the performance of his/her duties. The Town reserves the right to have the Contractor remove employees who fail to meet these criteria from providing service to the Town.

SECTION 29 CUSTOMER SERVICE

29.1 Customer Service Responsibilities

The Contractor understands, acknowledges, and agrees that customer service is important to the Town. The Contractor shall work cooperatively with the Town to maintain a high level of customer service and ensure that Services are delivered in an accessible, professional, and responsible manner. The Contractor shall meet with the Town's Representative on a regular basis to discuss process improvements, performance metrics, performance issues, and service planning.

The Contractor shall at all times supply labor, information, and resources as reasonably required to assist the Town with responding to customer service issues, including but not limited to following protocols for missed collection, Unaccepted Set-outs, property damage, and other events as described elsewhere in the Agreement.

The Town will log any service requests, complaints or inquiries that it receives before forwarding them to the Contractor for appropriate action.

The Contractor shall inform the Town of any service requests, complaints, or inquiries that it receives from residential customers. At minimum, the Contractor shall supply the Town with the following information:

- (i) Customer name, address, and phone number;
- (ii) Description of request, complaint, or inquiry;
- (iii) Date and time the request, complaint, or inquiry was received;
- (iv) Summary of any investigations or actions taken to address the issue; and
- (v) Name of Contractor employee responsible for follow-up.

The Contractor shall be the primary point of contact for commercial service requests, commercial billing, and related inquiries.

SECTION 30 PLANNING DOCUMENTS

30.1 Contingency Plan

The Contractor shall be prepared at all times to provide facilities, vehicles, equipment, personnel, subcontracted services, or other resources as required to maintain uninterrupted Services during equipment failures, natural disasters, emergency downtime, outages, labor disputes or any other situation or condition that impairs the Contractor's ability to provide Service in accordance with the Contingency Plan in Appendix B. The Contingency Plan shall be implemented in a timely manner and at no additional cost to the Town. The Contractor shall follow the notification procedures in the Contingency Plan prior to implementing contingency measures.

30.2 Transition Plan

The Contractor understands, acknowledges, and agrees that smooth transitions between service providers at the beginning and end of the Agreement is essential for the health and safety of the Town and its residents and businesses. The Contractor shall cooperate fully with the Town to ensure timely, smooth, and uninterrupted transitions between service providers in accordance with the Transition Plan in Appendix C.

The Contractor shall make all preparations necessary to provide Services beginning on the Service Commencement Date and provide the Town with such information prior to the Service Commencement Date as reasonably required for a smooth transition from the previous service provider. At the end of the Agreement, whether by expiration or termination, the Contractor shall continue to diligently provide Services until the final day of the Agreement and provide the

Town with such information as reasonably required to ensure a smooth transition to the successor service provider.

If the Contractor fails to fully and completely comply with the transition requirements in Section 30 or the Transition Plan, the Town may engage the services of another provider to perform the required services, and the reasonable expenses incurred by the Town shall be paid by the Contractor. Alternatively, the Town may terminate the Agreement and employ other remedies in accordance with Section 40.

30.3 Hazardous Waste and Special Waste Contingency Plan

The Contractor shall submit to the Town for approval a Hazardous Waste and Special Waste Contingency Plan at least three (3) months prior to the Service Commencement Date. This plan shall detail what actions shall be taken by the Contractor upon discovery of Hazardous Waste and/or Special Waste at a facility. The Contractor shall include in the plan a copy of a signed contract(s) with a permitted Hazardous Waste and Special Waste transporter(s) to handle any Hazardous Waste and Special Waste discovered during the course of operations. The plan shall comply with all State and Federal regulations regarding the handling of Hazardous Waste and Special Waste.

SECTION 31 DAMAGE TO PROPERTY

The Contractor shall take all necessary precautions to protect public and private property during the performance of this Agreement. Except for reasonable wear and tear, the Contractor shall repair or replace any private or public property which is damaged by the Contractor. The damaged property shall be restored to its original condition through repair or replacement at no charge to the property owner, within seven (7) days. The Contractor shall notify the property owner and the Town of any damaged property as soon as possible after the damage occurs and provide the property owner and the Town with the anticipated schedule for repair or replacement.

If the Contractor fails to address the repair or replacement of damaged property within seven (7) days, the Town 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 32 NUISANCE CONTROL

For all Services the Contractor(s) shall be conduct operations as quietly as possible and shall conform to applicable Federal, State, County and Town noise level regulations. The Contractor shall maintain facilities and equipment that is used to provide services in a manner that prevents odor, noise, vermin, dust, and other nuisances. The Contractor shall routinely clean equipment used to collect, transport, or process waste.

SECTION 33 TOWN'S RIGHTS TO INSPECT FACILITIES AND EQUIPMENT

The Town or any of its duly authorized representatives reserves the right to inspect the Contractor's facilities and equipment, as the Town deems reasonably necessary, to verify compliance with the terms of the Agreement either on a continuing or random inspection basis. The Town shall conduct the inspection of facilities and equipment during regular hours of

operation. The Contractor shall make available to the Town all reasonable assistance to facilitate performance of inspections.

SECTION 34 OWNERSHIP AND RISK OF LOSS FOR TRASH, BULKY WASTE, YARD WASTE AND PROGRAM RECYCLABLE MATERIALS

Title to Trash, Bulky Waste, Yard Waste and Program Recyclable Material shall pass to the Contractor once the Contractor takes possession of the materials, and responsibility for its proper management in accordance with the Agreement and applicable law remains with the Contractor.

SECTION 35 INSURANCE REQUIREMENTS

Before commencing performance of Services pursuant to this Agreement, the Contractor shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the State and acceptable to the Town. The Contractor shall furnish to the Town certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the project/contract number and provide proof of coverage in the following amounts.

- (i) Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate. Coverage shall be written on an occurrence form. The General Aggregate shall apply on a per project basis.
- (ii) Workers' Compensation insurance with Texas statutory limits; and Employer's Liability coverage with minimum limits for bodily injury: a) by accident, \$500,000 each accident, b) by disease, \$500,000 per employee with a per policy aggregate of \$500,000.
- (iii) Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined single limit of \$1,000,000.

With reference to the foregoing required insurance, the Contractor agrees to the following:

- (i) A waiver of subrogation in favor of the Town, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.
- (ii) The Town, its officials, employees and officers shall be covered as additional insureds on the Commercial General Liability and Business Automobile Liability policies.
- (iii) Policies of insurance shall not be cancelled, non-renewed, terminated, or materially changed unless and until thirty (30) days' notice has been given to the Town.

Insurance limits can be met with a combination of primary and excess/umbrella coverage. All insurance shall be purchased from insurance companies that meet a financial rating of A-VI or better as assigned by A.M. Best Company or equivalent. The Contractor shall require any contractors, sub-contractors, and other persons doing business with or for the Contractor related to the work to maintain at least the insurance as required, or their liability shall be covered by the Contractor.

SECTION 36 LIQUIDATED DAMAGES

If the Contractor does not perform its obligations in a timely manner pursuant to the terms of this Agreement, the Town will suffer damages which are difficult to determine and adequately specify. The Contractor hereby agrees, in addition to any other remedies available to the Town, that the Town may withhold payment from the Contractor in the amounts specified below as Liquidated Damages for failure of the Contractor to fulfill its obligations.

The Contractor shall be given a grace period of thirty (30) calendar days from the Service Commencement Date during which missed collections will be noted but no Liquidated Damages will be assessed for up to five (5) service units missed on any route. Any misses of over five (5) Service Units on any route will not be covered by the grace period. To receive relief from Liquidated Damages during the grace period the Contractor shall be required to demonstrate continual and satisfactory efforts to resolve all issues.

The Contractor shall be liable for Liquidated Damage amounts upon determination by the Town that performance has not occurred consistent with the provisions of the Agreement. The Town shall notify the Contractor in writing or electronically of each act or omission in this Agreement reported to or discovered by the Town. It shall be the duty of the Contractor to take whatever steps or action may be necessary to remedy the cause of the complaint.

The Town may deduct the full amount of any damages from any payment due to the Contractor. The remedy available to the Town under this paragraph shall be in addition to all other remedies which the Town may have under law or at equity and is mutually agreed upon due to the difficulty of determining the Town's actual damages to find, secure and fund immediate assistance to prevent public health and safety hazards.

The Contractor shall not be deemed liable for Liquidated Damages where the inability to perform the Services is the result of conditions of Force Majeure as set forth in this Agreement.

36.1 Liquidated Damages - General

- (i) Violation of any local, State, or Federal regulations
\$500 each incident
- (ii) Failure to clean up leakage, spills, or litter caused by the Contractor within two (2) hours of receiving notification or becoming aware of the leakage spills or litter, whichever is earlier
\$250 each incident
- (i) Failure to maintain vehicles or other equipment in manner which prevents leaks, spills, litter, odor or other nuisances
\$100 each incident
- (ii) Failure to notify the property owner and the Town of damage to private or public property or restore the damaged property to its previous condition by repair or replacement within 7 days as required by this Agreement
\$250 each incident
- (iii) Failure to provide a timely or complete monthly or annual report

\$250 each incident

36.2 Liquidated Damages -Collection Services

(i) Missed Collection

\$50 for each missed collection above two (2) misses per Collection Day, to be assessed at the end of each collection month. A missed collection occurs when a customer reports that their material was set out at the correct time and was not collected provided that the address was not reported and documented by the Contractor as a Non-Set-out or Unaccepted Set-out

(iv) Missed Block Collection

\$500 for each incident of the Contractor failing to pick up material on a block containing multiple service units. A missed block is defined as one side of a street between cross streets or an entire cul-de-sac where at least three service units report that their material was set out before at the correct time and was not picked up and the address was not reported and documented by the Contractor as a Non-Set-out or Unaccepted Set-out

(v) Failure to Provide Collection Services within specified Hours of Operation

\$250 for each Contractor vehicle providing Collection Services up to 2 hours before or 2 hours after the specified start and end times for that type of Collection Service

\$500 for each for each Contractor vehicle providing Collection Services 2 hours or more before or after the specified start and end times for that type of Collection Service

\$500 each incident

(vi) Failure to perform proper billing procedures and/or failure to obtain customer approval before performing and billing for Additional Bulky Waste Services

\$250 each incident

(vii) Failure to Complete a Majority (50%) of the collections on a given day

\$2,500 each incident

(viii) Failure or to collect materials from a Missed Collection location within the amount of time specified in the Agreement

\$250 each incident

(ix) Failure to maintain Carts or Containers in proper working order ten (10) calendar days after notice has been provided by the Town

\$100 each incident

(x) Failure to return Cart or Container to approximately original location

\$50 each incident

(xi) Placing Recyclable Material in Solid Waste containers or vehicles

\$1,000 each incident

- (xii) Failure to provide updated route maps to Town after change in routing
\$50 per day each day beyond thirty (30) calendar days after change in routing
- (xiii) Failure to leave an education tag when material that is inappropriately prepared is not collected
\$100 each incident
- (xiv) Distributing Carts or other Containers that do not meet specifications in this Agreement
\$100 each incident
- (xv) Failure to respond to any customer complaint received by the close of the following business day
\$100 per business day thereafter per incident
- (xvi) Failure to provide the Town with the required resolved customer complaint documentation
\$50 per business day after the close of the business day following the date of the incident
- (xvii) Failure to provide Collection Services on any scheduled Collection Day on or after the Service Commencement Date
\$3,000 each day
- (xviii) Failure for three or more consecutive calendar days to collect Trash or Recyclable Materials from at least 95% of Residential Service Units or 95% of Commercial Customers
\$50,000 as a one-time cost and \$15,000 per calendar day from the inception of such failure to perform for as long as such failure to perform continues

36.3 Liquidated Damages -Processing and Disposal Services

- (iii) Failure to accept materials during hours of operation
\$250 per hour, up to \$2,500 per day
- (iv) Failure to market Recovered Materials
\$2,500 per occurrence
- (v) Failure to market mulch or compost from Yard Waste Processing
- (vi) \$2,500 per occurrence.
- (vii) Disposal of Program Recyclable Material or Yard Waste
\$2,500 per occurrence.

36.4 Performance Incentive

[Performance incentives may be established at the Town's discretion to incentivize Contractor(s) to meet the performance standards of any Service(s) by waiving the assessment of some or all Liquidated Damages incurred.]

SECTION 37 PAYMENT WITHHELD

In addition to express provisions contained elsewhere in this Agreement, Town may withhold from any payment otherwise due the Contractor such amount as determined necessary to protect the Town's interests, or, if it so elects, may withhold or retain all or a portion of any monthly payment on account of:

- (i) Unsatisfactory progress of the work not caused by condition Beyond Contractor's Control
- (ii) Defective work not corrected
- (iii) Contractor's failure to carry out instructions or orders of the Town or its representative
- (iii) A reasonable doubt that the Agreement can be completed for the balance then unpaid
- (iv) Execution of work not in accordance with the Agreement
- (v) Claim filed by or against Contractor or reasonable evidence indicating problem filing of claims
- (vi) Failure of Contractor to make payments to any subcontractor for material or labor
- (vii) Damage to another contractor
- (viii) Unsafe working conditions allowed to persist by Contractor
- (ix) Failure of Contractor to provide required reports and other reports as required by Town
- (x) Use of any subcontractors without the Town's prior written approval
- (xi) Failure of Contractor to provide accurate invoices and supporting data as describe elsewhere in this agreement.

When the above grounds are removed, payment shall be made for amounts withheld because of them and the Town shall never be liable for interest on any delayed or late payment. The Town's right to withhold payments under this Section will be reasonable considering the nature of the claim and the amount of available performance bond pursuant to this Agreement.

SECTION 38 PERFORMANCE SECURITY

At least one (1) month prior to the Service Commencement Date, the Contractor(s) responsible for performing Collection Services and Recycling Processing Services shall each (1) make, execute and deliver to the Town a good and sufficient letter of credit (preferred) or performance bond (alternate) to secure the full, complete and faithful performance of the terms and conditions

of the Agreement. Such letter or credit or performance bond shall be in an amount based on six (6) months projected fees and shall be renewed each year thereafter throughout the Agreement Term.

SECTION 39 FORCE MAJEURE

Except for any payment obligation by either party, if the Town or Contractor is unable to perform, or is delayed in its performance of any of its obligations under this Agreement 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 Town 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 Town or Contractor from performing any of its obligations (other than payment obligations) under this Agreement:

- (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;
- (ii) Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities; or
- (iii) Suspension, termination or interruption of utilities necessary for performance of the Services.

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 40 TERMINATION

40.1 Termination for Cause

Town may terminate this Agreement without liability to Contractor and pursue all of its legal and equitable remedies for default upon any of the following events or actions of the Contractor.

- (i) Suffering an Event of Bankruptcy or Insolvency;
- (ii) Suffering the appointment of receiver of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) thereafter;
- (iii) Being adjudicated as a bankrupt;
- (iv) Filing of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding;

- (v) Committing an act of default; or
- (vi) Failing to timely and fully pay any or all impositions.

If the Town elects to terminate this Agreement prior to expiration for any of the reasons listed above, the Town shall provide written notice to the Contractor and specify at its sole discretion the revised date when the Agreement will end. The Contractor shall continue to be obligated to diligently perform Services until the Agreement end date specified by the Town, and provide information and assistance as reasonably required to ensure a smooth transition to a successor service provider in accordance with Section 30.2 and the Transition Plan.

If the Contractor refuses or is unable to continue providing Services, the Town shall have the right, at its sole option and in addition to its rights under the Performance Bond, to immediate possession of all vehicles, equipment, containers, facilities, or other instrumentalities in possession of the Contractor as may be necessary to permit the Town to provide and perform uninterrupted service until such a time as a satisfactory substitute contractor may be put into place or the parties hereto otherwise agree, in which event the Town shall fairly compensate the Contractor for the fair market rental value of such vehicles, equipment, containers, facilities or other instrumentalities, subject to any offsets or claims by the Town against the Contractor. Contractor shall obtain any necessary agreements from lien holders to insure Town of its rights hereunder.

SECTION 41 ACTS OF DEFAULT OR DEFAULT

Failure of the Contractor to comply with each material obligation pursuant to this Agreement in a full, complete, and timely manner shall be an act of default. Substantial compliance short of full compliance shall be an act of default unless waived in writing by Town. The Contractor specifically understands, acknowledges, and agrees that non-material breach(s) of this Agreement shall constitute a material default when the breaches, even if different breaches, are frequent or regular or repetitive. Contractor specifically understands, acknowledges, and agrees that non-material breaches shall include, but not be limited to, the acts and omissions subject to administrative charges in accordance with this Agreement. Town may terminate this Agreement and pursue all legal and equitable remedies upon a material default of this Agreement.

SECTION 42 DISPUTE RESOLUTION

42.1 Interpretation of Agreement

Except as provided otherwise in this Agreement and to the extent permitted by law, the Town shall be responsible for interpreting this Agreement to resolve disputes that may arise hereunder.

42.2 Definition of Claim

As used herein "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of the Agreement terms, or other relief, arising under or relating to this Agreement. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, where the submission is subsequently not acted upon in a

reasonable time, or disputed either as to liability or amount, it may become a claim for the purpose of this clause. A claim by the Contractor or the Town shall be submitted in writing to the other party.

When a controversy cannot be resolved by mutual agreement, the Contractor shall submit a written request for final decision to the Town. The written request shall set forth all the facts surrounding the controversy.

42.3 Process for Dispute Resolution

In connection with any claim under this Agreement, the Contractor and the Town agree that the Contractor and the Town shall, as a condition precedent to the institution of any action regarding claims arising under this Agreement, first submit any claim to the Town. The Town shall render a written decision on all claims within thirty (30) business days of receipt of the Contractor's written claim, unless the Town determines that a longer period is necessary to resolve the claim. The decision shall be furnished to the Contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. If a decision is not issued within thirty (30) calendar days, the Town shall notify the Contractor of the time within which a decision shall be rendered and the reasons for such time extension.

Upon the written decision of the Town, the Contractor and the Town agree that the Contractor and the Town shall, as a condition precedent to the institution of any action regarding claims arising under this Agreement, first submit any claims to the Town Council. The Town Council shall render a written decision on all claims within thirty (30) business days of receipt of the Contractor's written appeal, unless the Town Council determines that a longer period is necessary to resolve the claim. The decision shall be furnished to the Contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. If a decision is not issued within thirty (30) calendar days, the Town Council shall notify the Contractor of the time within which a decision shall be rendered and the reasons for such time extension.

Upon the written decision of the Town Council, the Contractor and the Town agree that the Contractor and the Town shall, as a condition precedent to the institution of any action regarding claims arising under this Agreement, first submit any claims to mediation before a professional mediator selected by the Contractor and the Town, at a mutually agreed time and place, and with the mediator's fees split equally between the Contractor and the Town. If mediation is unsuccessful within forty-five (45) calendar days of the date of the initial mediation, the Contractor and the Town agree that if the Contractor and/or the Town elect to institute any action regarding claims arising under this Agreement such claims shall be submitted to the exclusive jurisdiction of the courts in Collin County, Texas.

42.4 Operations During Dispute

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

The Contractor expressly recognizes the paramount right and duty of Town to provide adequate services to its residents and further agrees that in the event of a dispute, it will not seek injunctive relief in any court without first negotiating with Town in good faith in accordance with the dispute resolution process described in Section 42.3.

Notwithstanding the other provisions in this Section, the Town reserves the right to terminate this Agreement if the service provided by Contractor fails to meet reasonable standards of the trade, after the Town provides written notice to Contractor pursuant to Section 40 of this Agreement. Upon termination, Town may call the performance bond (Section 38) to cover excess costs of engaging a firm to provide services for the balance of the Agreement period.

SECTION 43 RECORDKEEPING

The Contractor shall maintain at the local customer service office adequate records relating to the performance of their respective duties under this Agreement. The Contractor shall maintain separate records in a form sufficient to identify its investment, revenues, and expenses related to its performance under this Agreement, intending thereby to separate the accounting records of the Town's operation from its other operations. The records of the Contractor applicable to its performance under this Agreement shall be made available at any time during reasonable business hours for inspection by the Town and for a period of five (5) years after last or final payment. At a minimum, the Contractor shall create, maintain, and make available records as defined herein and/or required by Applicable Law, and any reports as are reasonably necessary to:

- (i) Document services provided by type of service, container type, container size, collection frequency, fees charged, and other information as requested by the Town
- (ii) Document deliveries of materials by type of material, time delivered to facility, tonnage of material delivered, source of material, route, and other information as requested by the Town
- (iii) Document missed collections and photographic evidence of Unaccepted Set-outs on a daily basis by address, time and date for each and the reason and notice for Unaccepted Set-outs or missed collection
- (iv) Document damaged Carts by address, description of damage, and other information as requested by the Town
- (v) Document the number of Carts that have been lost, stolen, destroyed, or damaged beyond repair and other information as requested by the Town
- (vi) Document complaints by address, date and time of receipt of complaint, date and time of resolution of complaint, description of complaint resolution, and other information as requested by the Town
- (vii) Document inactive accounts by address and other information as requested by the Town
- (viii) Document damage to Town-owned or private property as a result of conducting Service(s) within two (2) hours of damage occurring

- (ix) Document monthly tonnage collected by material type as part of Residential Services, Commercial Services, and Town Services
- (x) Document spills and property damage by date and time of incident, description of incident, date and time of resolution, description of resolution, and other information as requested by the Town
- (xi) Document loads delivered by time delivered to all Disposal Sites and Processing Facilities, tonnage of material delivered, Unaccepted Loads by weight and date collected, and other information as requested by Town. A monthly and annual summary shall also be submitted to Town
- (xii) Provide written notice and photographs for any load designated as an Unaccepted Load prior to the collection vehicle departing the Delivery Facility and/or Material Recovery Facility to the driver and the Town
- (xiii) Any missing criteria, data, guidance, information or other such other documents and reports as Town may reasonably require to verify compliance with the Agreement or to meet the Town's reporting requirements.

SECTION 44 REPORTING

The Contractor shall provide the Town with a monthly report within seven (7) calendar days following the end of the month and an annual report within thirty (30) calendar days following the end of the calendar year summarizing the following information.

- (i) Services provided by type of service, container type, container size, collection frequency, fees charged, and other information as requested by the Town.
- (ii) Tonnages delivered to all Disposal Sites and Processing Facilities by material type, source of material, and other information as requested by the Town.
- (iii) Missed collections and Unaccepted Set-outs on a daily basis by address, time and date for each and the reason and notice for Unaccepted Set-outs.
- (iv) Damaged Carts by address, description of damage, and other information as requested by the Town.
- (v) Number of Carts that have been lost, stolen, destroyed, or damaged beyond repair and other information as requested by the Town.
- (vi) Complaints by address, date and time of receipt of complaint, date and time of resolution of complaint, description of complaint resolution, and other information as requested by the Town.
- (vii) Inactive accounts by address and other information as requested by the Town.
- (viii) Document spills and property damage by date and time of incident, description of incident, date and time of resolution, description of resolution, and other information as requested by the Town. Additionally, the Contractor shall promptly notify the Town and the property owner in the event that any property damage occurs.
- (ix) Such other documents and reports as Town may reasonably require to verify compliance with the Agreement or to meet Town's reporting requirements.

SECTION 45 INVOICING

The Contractor shall invoice the Town for Residential Services on a monthly basis. The invoice shall be based on the Contract Rates multiplied by the number of applicable units. Within thirty (30) calendar days of receiving the Contractor's invoice, the Town shall remit to the Contractor payment for the amounts on the invoice less disputed amounts, Liquidated Damages, and payments withheld. Franchise Fees equal to 5% of gross monthly receipts from Commercial Services shall be shown as a credit on the Contractor's invoices to the Town for Residential Services. Within ten (10) days of the end of each month, the Contractor shall provide the Town with a statement of all fees invoiced for Commercial Collection Services for the month and a calculation of the franchise fee credit amount.

The Contractor's shall invoice Commercial Customers based on the number, size, and Collection frequency for in-service Carts and Containers charged at applicable Contract Rates. The Contractor shall also invoice residents for any Additional Bulky Waste Collection Services that are requested in accordance with Section 8.1.5. The Contractor shall be required to divide billings for a single shared Container or enclosure between multiple Commercial Customers if instructed to do so by the Town.

SECTION 46 MISCELLANEOUS

46.1 Indemnification

The Contractor shall defend, indemnify and save harmless the Town and all its officers, agents and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the Contractor, or of any agent, employee, subcontractor or supplier in the execution of, or performance of Services pursuant to the Agreement. The Contractor shall pay any judgment with cost which may be obtained against the Town growing out of such injury or damages.

46.2 Assignment and/or Subcontracting

This Agreement and any permits required for performance of the Agreement may not be assigned, subcontracted, conveyed, or otherwise disposed of without the written permission of the Town, which will not be unreasonably withheld. No such assignment or subcontracting shall relieve Contractor of its liability under this Agreement. In the event Contractor elects to use any subcontractors, this does not relieve Contractor from any prime responsibility of full, complete satisfactory and acceptable performance. However, the Agreement may be assigned for the purpose of financing after notification and approval of the terms of such assignment by the Town's Representative.

46.3 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 Agreement, Contractor shall assist the Town in applying for and obtaining such tax credits and exemptions which shall be paid or credited to the Town.

46.4 Succession of Agreement

This Agreement 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.

46.5 Survival

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

46.6 Joint Preparation

The preparation of this Agreement 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.

46.7 No Penalties

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

46.8 Relationship

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

46.9 Further Assurance

The Contractor and the Town agree to execute, acknowledge and deliver all such further documents and perform such actions as may reasonably be requested to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

46.10 Time of the Essence

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

46.11 Captions and Section Headings

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

46.12 No Waiver

No waiver of any provision in this Agreement 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.

46.13 Entire Agreement and Modification

This Agreement 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.

46.14 Severability

In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained herein.

46.15 Knowledge

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

46.16 Appendices

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

[NOTE: Appendices will be included as a component of the final awarded Agreement.]

46.17 Governing Law

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

46.18 Attorney Fees

In the event of arbitration or litigation between the parties regarding this Agreement, each party shall be responsible for their own attorney's fees and costs.

46.19 Anti-Boycott and Anti-Discrimination

In accordance with Chapter 2271, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it:

- (i) Does not boycott Israel; and
- (ii) Will not boycott Israel during the term of the contract.

Chapter 2271 does not apply to (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Contractor is not subject to Chapter 2271

for the reasons stated herein, the signatory executing this Agreement on behalf of the Contractor verifies by its signature on this Agreement that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

In accordance with Senate Bill 13, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it:

- (i) Does not boycott energy companies; and
- (ii) Will not boycott energy companies during the term of the contract.

Chapter 2274 does not apply to (1) a company that has fewer than ten (10) full-time employees; and (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Contractor is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Contractor verifies by its signature on this Agreement that the Contractor does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

In accordance with Senate Bill 19, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it:

- (i) Does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
- (ii) Will not discriminate during the term of the contract against a firearm entity or firearm trade association.

Chapter 2274 does not apply to (1) a company that has fewer than ten (10) full-time employees; and (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Contractor is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Contractor verifies by its signature on this Agreement that the Contractor does have a practice, policy, guidance, or directive that discriminate against a firearm entity or firearm trade association and will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.

Notwithstanding the foregoing, such provision does not apply to a governmental entity that:

- (i) Contracts with a sole-source provider; or
- (ii) Does not receive any bids from a company that is able to provide the required written verification.

46.20 Authorization

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

SECTION 47 SIGNATURES

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

TOWN OF PROSPER _____ Approved in Form and Content

By: _____ By: _____

Printed Name: _____ Printed Name: _____

Town Name: _____ Town Name: _____

Attest: _____

CONTRACTOR:

By: _____

Printed Name: _____

Company Name: _____

Attest: _____

APPENDIX A HOLIDAYS

The Contractor may observe the following holidays in accordance with Section 11.4

- (i) New Year's Day
 - (ii) Memorial Day
 - (iii) Independence Day
 - (iv) Labor Day
 - (v) Thanksgiving
 - (vi) Christmas
-

APPENDIX B
CONTINGENCY PLAN

[**NOTE:** The successful Proposer's Contingency Plan, upon approval by the Town, shall be included as an Appendix to the final awarded Agreement.]

APPENDIX C

TRANSITION PLAN

[NOTE: The successful Proposer's Transition Plan, upon approval by the Town, shall be included as an Appendix to the final awarded Agreement.]

APPENDIX D
RESIDENTIAL COLLECTION SERVICES UNIT PRICES

[NOTE: Appendix D will be updated and included as an Appendix to the final awarded Agreement, based on terms agreed to by the Town and the successful Proposer.]

APPENDIX E
COMMERCIAL COLLECTION SERVICES UNIT PRICES

[NOTE: Appendix E will be updated and included as an Appendix to the final awarded Agreement, based on terms agreed to by the Town and the successful Proposer.]