

**MUNICIPAL SOLID WASTE COLLECTION,
TRANSPORTATION AND DISPOSAL CONTRACT
(Residential, Commercial, Industrial, and Recycling)**

This **Solid Waste and Recyclable Materials Collection, Transportation, Disposal, and Processing Contract** ("**Contract**"), is entered as of the Effective Date by and between the **City of Tomball** (hereinafter called "**City**"), a Texas home rule municipality, and **Frontier Waste K2 LLC** (hereinafter called "**Contractor**"), a Texas Corporation, acting by and through their duly qualified representatives. (City and Contractor collectively referred to herein as "**Parties**" and individually as "**Party**.")

RECITALS

WHEREAS, City has found and determined that the public health and safety of City will be promoted and preserved by establishing an arrangement for the collection, transportation, and disposal of Solid Waste kept and accumulated by residential and multi-family neighborhoods; and

WHEREAS Contractor is engaged in the business of collection and Recycling of Solid Waste and is familiar with City's requirements and its Solid Waste services; and

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

WHEREAS, City has determined through a competitive process in accordance with state law that Contractor provides the best value for Solid Waste services for City's residents; and

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

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

WHEREAS Contractor has agreed to reimburse City for the development of the RFP and other Contract Documents in accordance with Section 8.1(f) of this Contract.

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

I. GRANT OF CONTRACT AND FRANCHISE; TERM

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

- (a) The sole right, duty, and privilege within City's Limits to conduct business for the purpose of collection and transportation, disposal and/or Processing of Waste Materials, Construction and Demolition Debris, and Recyclable Materials during the Term of this Contract from all Residential, Commercial, and Industrial Customers located within City's incorporated limits; with the exceptions listed below; and

(b) The sole right, duty, and privilege to collect Waste Materials and Recyclable Materials during the Term of this Contract from all Municipal Facilities.

1.2 **Initial Term.** The Initial Term of this Contract shall commence on October 1, 2024 (the "**Commencement Date**") and shall end on September 30, 2029 (the "**Expiration Date**"), unless otherwise terminated earlier or extended as provided herein.

1.3 **Extension Term.** City may extend, upon written mutual agreement by both parties, the Initial Term for five (5) additional one (1) year terms beginning October 1, 2029 (an "**Extension Term**") upon the same terms and conditions set forth in this Agreement. Notice of the extension of the Term of this Contract for the first Extension Term must be delivered in writing by City to Contractor on or before November 1, 2028. Notwithstanding anything regarding City's exercise of the Extension Terms, the Parties agree that City may, at any time prior to or after the expiration of the Initial Term and, if applicable, the first Extension Term, solicit bids or proposals for contracting for the collection of Waste Materials or such other services provided for herein for a period commencing after the Expiration Day, as original established and/or extended by the first Extension Term, if applicable.

II. DEFINITIONS

The words and phrases used in this Contract shall have the following meanings unless the context indicates a different meaning:

"Bag" means a plastic sack designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top.

"Brush" means any cuttings or trimmings from trees, shrubs, lawns, and similar materials not exceeding four (4) feet in length or four inches (4") in diameter. The term "Brush" specifically excludes debris resulting from the services of a Commercial Service Provider.

"Bulky Waste" means large rubbish items including, but not limited to, White Goods, bicycles, furniture, rugs, mattresses, televisions, fence material, auto parts, and other similar oversized items which are customary to ordinary housekeeping operations of a Residential Unit.

"Business Day" means a day that is not a Saturday, Sunday, or Holiday.

"City Facility" means a property owned, leased, and/or operated by City.

"Collection" means the act of removing from a Customer's property (i) Waste in any form for transport to a Disposal Facility, and (ii) Recyclables for transport to a Recycling Facility.

"Collection Area" means that portion of City's corporate limits in which Contractor provides collection services as described in the Contract Documents.

"Commercial Unit" means a commercial business or establishment, including, but not limited to, a store, office, restaurant, warehouse, and other nonmanufacturing facility, premises, location, or entity, public or private, within City's corporate limits.

"Commercial Waste" means all types of Solid Waste generated by Commercial Units, excluding Residential Waste and Industrial Waste.

“Commercial Service Provider” means a person or business entity that provides for compensation tree limb cutting and removal, or complete tree and stump removal services.

“Compactor Unit” means a mechanical unit that receives, compacts, and reduces the volume of municipal waste, refuse, or garbage, whether stationary or mobile.

“Construction and Demolition Debris” means non-compatible waste building materials resulting from construction, remodeling, repair, or demolition operations at a Residential Unit, Municipal Facility, or large commercial and industrial unit, including but not limited to carpet, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber, and wood products. Construction debris does not include Hazardous Waste.

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

“Container” means a receptacle with a capacity not greater than 96 gallons, constructed of plastic, metal, or fiberglass, having handles of adequate strength for lifting, the mouth of which has a diameter greater than or equal to that of the base.

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

“Contract Documents” means, collectively, (a) this Contract, all Exhibits attached hereto, and any amendments to this Contract; (b) the RFP, and (c) Contractor’s Proposal.

“Contract Year” means each twelve-month period during the Term of this Contract beginning on October 1st.

“Contractor’s Proposal” means Contractor’s response to the RFP dated and submitted February 22, 2024, and consisting of 161 pages, and supplemental submission dated March 26, 2024, and submitted Best and Final Offer, consisting of 2 pages, the original of which is retained in the office of City’s City Secretary in hardbound or electronic format and is incorporated herein by reference.

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

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

“Detachable Container” (also referred to as “dumpster”) means a watertight, all-metal container, equipped with a tight-fitting metal or plastic cover, and plugged to prevent drainage of leachate. The term shall also apply to containers of larger sizes (i.e., “roll-offs”) as well as plastic containers when it is found to be in the best interest of the City. Currently Roll-Off Containers are not required to have metal or plastic tarps while on a site. The business or residence renting the container will be responsible to provide any covering which could be required by any future regulation imposed by the City, the State, or a Federal Agency

“Disposal Facility” means a Class 1 Municipal Solid Waste landfill permitted by the TCEQ identified in Contractor’s response to the RFP or such other permitted C & D landfill as may be approved by City during the term of this Contract, which approval shall not be unreasonably withheld, delayed, or denied.

“Disaster Event” means an event or occurrence, including, but not limited to, wildfires, storms, floods, fires, tornados, earthquakes, train derailments, airplane crashes, and similar events determined by the City Manager to have caused widespread damage and destruction to personal property.

“Disaster Debris” means Waste Materials, including building materials, sediments, vegetative debris, personal property, and other materials resulting from a Disaster Event that are generated by anyone affected by a Disaster Event.

“Disaster Management Plan” means Contractor’s operational policies and procedures that will be implemented to collect, remove, and properly dispose of Disaster Debris when an event or occurrence is determined by City to be a Disaster Event, and when Contractor is selected to provide such additional services in accordance with the rates in Exhibit A.

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

“Excluded Waste” means Large Dead Animals, Hazardous Waste, Offal Waste, Stable Matter, Vegetable Waste, Construction and Demolition Debris, Special Waste, and other types of Waste expressly excluded from this Contract.

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

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

“Generator” means a person or municipality that produces or creates Municipal Solid Waste.

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

“Holiday” means New Year’s Day, Thanksgiving Day, and Christmas Day.

“Industrial Unit” means an industrial business or establishment, including manufacturing facilities, premises, locations, or entities, public or private, within the corporate limits of City.

“Industrial Waste” means Solid Waste resulting from or incidental to any process of industry or manufacturing, mining, or agricultural operations.

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

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

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

“Non-Recyclables” means any materials in Single Stream Materials or Recyclables that are not Recyclables.

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

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

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

“Poly Cart” means a 95-gallon poly cart plastic container provided by Contractor, clearly marked for MSW or Recycling, equipped with wheels, handles, and a tight-fitting cover, capable of being mechanically unloaded into Contractor’s collection vehicles. The terms “Cart” and “Wheeled Container” shall be considered interchangeable.

“Processing” means recycling of Single Stream Materials at a properly permitted Recycling Facility.

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

“Recycling Bin” means the 18-gallon bin to be provided by the Contractor for the storage of comingled recyclables prior to collection.

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

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

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

“Refuse” means the same as Rubbish.

“Request for Proposal” or “RFP” means City’s “Request for Proposals for Solid Waste & Recycling Services” issued January 17, 2024, a true and correct copy of which is on file in the office of City Secretary and incorporated herein by reference.

“Residential Curbside Recycling” means the collection of Recyclable Materials placed at Curbside by Customers residing in Single-Family Structures for collection, the delivery of such materials to a Recycling Facility, and the subsequent recycling of the collected materials.

“Residential Unit” means a residential dwelling occupied by a person or group of persons comprising not more than four families. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied to the Residential Unit. Each condominium dwelling, whether of single or multi-level construction, consisting of four units, shall be treated as a separate Residential Unit.

“Residential Waste” means all Refuse, Garbage, Rubbish, Brush, and Bulky, and other Solid Waste generated by a Customer at a Residential Unit.

“Roll-off Container” means a Container provided to a Commercial Unit or Industrial Unit by Contractor measuring 20, 30, or 40 cubic yards, intended for high-volume refuse generating Commercial Units or Industrial Units, and capable of collection and transport to a Municipal Solid Waste Landfill by loading of the Container onto the rear of transporting vehicle, but excluding a Stationary Compactor.

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

“Small Business Garbage Generator” means a commercial business, which generates no more than one (1) cubic yard of Solid Waste per week.

“Solid Waste” means Garbage, Rubbish, Refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include: a) Solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26; b) Solid, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvement; c) Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or re-pressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 USC, SS6901 et seq.), or d) Unacceptable Waste.

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

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

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

“Unacceptable Waste” means any Waste, the acceptance, and handling of which by Contractor would cause a violation of any permit, or any legal or regulatory requirement, substantial damage to Contractor's equipment or facilities, or present a danger to the health or safety of the public or Contractor's employees, including, but not limited to, Hazardous Waste, Special Waste (except as otherwise provided herein), untreated Medical Waste, Dead Animals weighing ten pounds (10 lbs.) or greater, solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit, soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements.

“Unit” means, collectively, Residential Units, Commercial Units, and Industrial Units.

“Unusual Accumulation” means any Residential Unit Waste placed curbside for collection which does not meet the specifications defined by this Contract for regular garbage, bulky waste, and brush waste.

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

“Waste” or “Waste Materials” means all Residential Waste, Commercial Waste, and Industrial Waste to be collected by Contractor pursuant to this Contract. The term "Waste" specifically excludes Unacceptable Waste.

“White Goods” means refrigerators, stoves and ranges, water heaters, clothes washers and dryers, freezers, swing sets, bicycles (without tires) scrap metal, copper, and other similar domestic and commercial large appliances.

“Yard Waste” means accumulations of lawn, grass, or shrubbery cuttings or clippings, dry leaf rakings, small tree branches (not to exceed 4 feet in length), bushes or shrubs, green leaf cuttings, fruits, or other matter usually created by refuse in the care of lawns and yards, except large branches, trees, bulky or non-combustible materials not susceptible to normal loading and collection in “load packer” type sanitation equipment used for regular collections from domestic households. Notwithstanding the foregoing, all trees, shrubs, and brush trimmings must be cut, tied, and placed in Bundles or Brown Kraft Bags.

III. RATES

- 3.1 **Base Rates.** For the services provided by Contractor pursuant to this Contract, Contractor is authorized to charge and shall receive from City the rates set forth on Exhibit A attached hereto and incorporated herein by reference (“Base Rates”). The Base Rates are subject to adjustment from time to time as provided in Section 3.2., below.
- 3.2 **Modification of Rates.** Base Rates charged by Contractor for services will remain fixed and will not be adjusted until October 1, 2025. Commencing on October 1, 2025, and continuing annually on the first day of each Contract Year thereafter, Contractor may adjust the Base Rates (each an “Annual Adjustment”), subject to the following:
- (a) Not later than the later of (i) July 1st prior to the effective date of the Annual Adjustment, and (ii) the fifth (5th) business day after publication of the CPI described in Section 3.2(b)(1), below, Contractor must provide City written notice of the new schedule of Base Rates for the immediately following Contract Year based on the Annual Adjustment, which notice must include a copy of the new Base Rates schedule (the “Adjustment Notice”);
 - (b) Each Annual Adjustment shall not result in an increase in the Base Rates exceeding the lesser of:
 - (1) The percentage increase in the CPI for the twelve-month period ending on the May 31st immediately prior to the effective date of the Annual Adjustment; and
 - (2) Five Percent (5%) of the then current Base Rates.
 - (c) If the percentage change in the CPI for the twelve-month period ending on the May 31st before the effective date of the Annual Adjustment would result in a decrease in the Base Rates, the Base Rates shall remain unchanged for the immediately following Contract Year.
 - (d) If Contractor fails to timely deliver the Adjustment Notice as provided in Section 3.2(a), the Base Rates shall not be adjusted for the immediately following Contract Year; and
 - (e) If no Annual Adjustment is applied to a Contract Year following Contractor’s failure to timely deliver an Adjustment Notice to City, the Annual Adjustment for the following Contract Year shall continue to be based on the percentage change in CPI for the twelve-month period ending on the May 31st prior to the first day of the next Contract Year (i.e., there is not “catch-up” for the missed increase).

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

IV. SERVICE SPECIFICATIONS

- 4.1 **General/ Service Contracts.** The work to be performed by Contractor pursuant to this Contract consists of collection, transportation, and disposal, at its own expense, of Waste and Recyclable Materials collected from Residential Units, and Commercial Waste and Industrial Waste collected from Commercial Units and Industrial Units, within the corporate limits of City as the present and future boundaries exist, and the furnishing of all labor, methods or processes, tools, equipment and transportation necessary to meet the requirements of this Contract.
- 4.2 **Residential Solid Waste Collection.** Contractor will provide collection of Acceptable Waste from Residential Customer two (2) times per week subject to the following:
- (a) Subject to the limitations set forth in Section 4.15, Contractor will collect the Acceptable Waste placed Curbside within a Rented Poly Cart or up to seven (7) bags of Acceptable Waste placed by the Residential Customer for collection.
 - (b) The collection from each Residential Customer shall be on a regular schedule, Monday-Thursday or Tuesday - Friday, and at approximately the same time on such collection day.

Residential Unit and Municipal Facilities collection routes shall be established by Contractor. Contractor shall submit a map designating the Residential Unit and Municipal Facilities collection routes to City at least two (2) weeks in advance of the commencement date for such route collection activity. Contractor shall communicate route day changes via direct mailings at its own expense, a map of the Residential Unit collection routes of such size to clearly show all pertinent information. Contractor may from time to time make changes in routes or days of collection affecting Residential Units or municipal facilities provided such changes in routes or days of collection are submitted to City at least two (2) weeks in advance of the commencement date for such changes. Contractor shall properly give written notice to the affected Residential Units.

- 4.3 **Residential Collection not covered under the Base Rates.** The following are not covered under the Base Rates:
- (a) The collection or disposal of Excluded Materials, and
 - (b) The collection or disposal of any increased volume resulting from a flood, hurricane, tornado, ice storm, or similar or different Act of God over which Contractor has no control. In the event of such a flood, hurricane, tornado, ice storm, or other Act of God, Contractor and City may negotiate the work to be performed by Contractor under the Disaster Management Plan provided by Contractor, utilizing the rates for equipment, labor, and disposal rates provided in Exhibit A to this Contract.

- 4.4 **Residential Collection of Recyclable Materials.** Contractor shall provide one collection each week, on one of the days that MSW is collected, of Recyclable Materials placed in the Residential Unit's Rental Recycling Cart, or 18-gallon bin. Contractor shall not be required to collect any Recyclable Materials from a Residential Unit that are not placed in the Residential Unit's designated Recycling Container. Contractor may, but is not required to, treat as trash any Recyclable Materials placed at the Curbside but not in the Recycling Container.
- 4.5 **Changes in Recycling Market Conditions.** If market conditions develop that limit or inhibit Contractor from selling some or all of the collected Contractor may give written notice to City of (i) a need to redefine Acceptable Recycling Material and Non-Recyclables, (ii) update the Processing facility's Average Commodity Mix, (iii) suspend or discontinue any or all Recycling services, or (iv) dispose of Acceptable Recycling Material (as currently defined) at the Disposal Facility and update the pricing to City accordingly. Such actions may be reversed, upon approval from City, if market conditions dictate.
- 4.6 **Acceptable Recycling Material.** Recyclables that are eligible for collection ("**Acceptable Recycling Materials**") must be dry, loose (not bagged), un-shredded, and empty, and shall include only the following:

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

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

Plastic bags and bagged materials (even if containing Recyclables)	Microwavable trays
Porcelain and ceramics	Mirrors, window, or auto glass
Light bulbs	Coated cardboard
Soiled paper, including paper plates, cups, and pizza boxes	
Expanded polystyrene and #6 plastics	Coat hangers
Glass and metal cookware/bake ware	Household appliances and electronics
Hoses, cords, wires	Yard waste, construction debris, and wood
Flexible plastic or film packaging and multi-laminated materials	Needles, syringes, IV bags, or other medical supplies
Food waste and liquids, containers containing such items	Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.)

Excluded Materials or containers which contained Excluded Materials	Napkins, paper towels, tissue, paper plates, paper cups, and plastic utensils
Any paper Recyclable materials or pieces of paper Recyclables less than 4" in size in any dimension	Propane tanks, batteries

- 4.8 **Recycling Contamination:** Recyclable Materials collected within City and delivered by Contractor to the Recycling Facility may not contain more than 25% Non-Recyclables or Unacceptable Waste. For Non-Recyclables exceeding the allowable percentage, City may pay a contamination charge for additional handling, processing, transporting, and/or disposing of Non-Recyclables. A report of each non-conforming load detailing the composition of the load and including photographic evidence of the load will be provided to City not later than one (1) business day after the load is transported to the Disposal Facility.
- 4.9 **Residential Brush/Bulk Collection:** Contractor will collect (i) Brush and (ii) Bulky Materials once per week on the second collection day the Residential Unit receives MSW collection. Contractor shall not be obligated to collect Brush Materials set out for collection that:
- (a) Contains limbs exceeding four (4) feet in length or four (4") in diameter.
 - (b) Is not stacked at the curb in such a manner that Contractor's employee can reasonably and safely lift the material into the collection vehicle;
 - (c) Is not Debris resulting from the services of a Commercial Tree Service Provider;
 - (d) Does not consist of more than two (2) cubic yards of Brush and Bulky materials per collection;
 - (e) Is a White Good or other appliance designed to contain freon or other refrigerant materials that has not been tagged certifying that all refrigerants have been removed by a certified refrigerant technician prior to their placement for collection as required by Section 4.12.
- 4.10 **White Goods.** White Goods such as a freezer, refrigerator, water cooler, dehumidifier, air conditioner, and any other appliances containing refrigerants must be tagged certifying that all refrigerants have been removed by a certified refrigerant technician prior to their placement for collection. Contractor shall not accept for collection refrigerators or other devices known to contain chlorofluoro-carbons (CFCs) unless the Residential Customer establishes the item is free of CFCs by providing a written certification of CFC removal and may be lawfully disposed or recycled at Disposal Facilities.
- 4.11 **Residential Unusual Accumulation Collection.** When a Customer desires a collection of more material than the weekly limit for MSW or Brush and Bulk, the Customer may request an Unusual Accumulations Collection, which Contractor may perform subject to Customer's payment of a fee for such collection to Contractor reflecting a cost per hour for the use of the Collection vehicle, plus applicable disposal, as set forth in Exhibit A hereto. Any additional fees that might be charged by Contractor to a Customer for services that will be rendered over and above the requirements of the Contract will be determined after visual inspection by Contractor's supervisor, and such fees must be approved by the Customer prior to commencing work.

4.12 Disaster Debris Collection. When City determines that an event or occurrence is a Disaster Event, City may request Contractor to collect Disaster Debris placed for collection from Single Family Residential Units and City Facilities within the Collection Area. Notwithstanding Section 1.1 to the contrary, City shall have the right to contract with a third-party to provide Disaster Debris Collection in addition to or in lieu of Contractor providing collection services. If City elects to use the services of Contractor to collect these additional materials resulting from the Disaster Event, City shall grant Contractor variances in routes and Exhibits, as deemed necessary.

4.13 Residential Rental Carts and Recycling bins. When a Residential Unit requests a Rental Cart, Contractor agrees to provide one (1) new Poly Cart for placement of MSW Waste ("**Waste Cart**"). Contractor agrees to provide one (1) new Cart for Recyclable Materials ("**Recycling Cart**"), or 18-gallon bin, to each Residential Unit. Both Rental MSW Waste Carts and Contractor-provided Recycling Carts, and 18-gallon bins, shall be delivered (per list from the City) not later than five (5) days prior to the Commencement Date. Upon written notice from City, Contractor agrees to provide one (1) new Waste Cart and one (1) new Recycling Cart to new Residential Units constructed within City during the Term of the Contract. New Carts will be delivered to the Residential Unit with written instructions for proper use, including information regarding any actions taken by a Resident that may void manufacturer warranties, such as the placement of hot ashes in the Cart. New Recycling Carts and replacement lids for existing Recycling Carts will have recycling guidelines heat molded on the top of the lid determined by Contractor subject to City's approval, which approval shall not be unreasonably withheld or delayed.

- (a) Contractor shall not be required to collect any Waste or Recyclable Materials that are not placed in the designated Cart or within bags as provided in Section 4.2, bags of Waste Materials exceeding ten (10) placed for collection on a single collection day, any Waste or Recyclable Materials from a Cart that weighs more than 170 pounds, or a Cart and/or bags that are not properly placed Curbside; provided, however, prior to refusing to collect any Waste from a Residential Customer because such Waste is not properly prepared (i.e. placed in a Poly Cart or bagged) and/or placed at Curbside, Contractor shall notify the Residential Customer and then the City Manager if it believes the Waste is not prepared and/or located correctly by the Residential Customer, in which case the City Manager shall be the sole and final judge as to whether or not such Waste was properly placed for collection and should be collected; and
- (b) Carts shall remain at the location of the Residential Unit where delivered by Contractor. Should a Cart be lost or stolen from a Residential Unit, Contractor shall provide a replacement Cart. Contractor shall assess a \$75.00 charge to the Resident for new replacement carts and shall look solely to the Resident to pay such charge. If a Cart is damaged while at a Residential Unit, the Residential Customer shall contact Contractor directly to request a replacement Cart. Contractor shall replace a damaged Cart with a reconditioned Cart at no additional charge.

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

4.14 Special Needs Waste Placement for Collection Assistance. If the City Manager determines that all residents of a Residential Unit are physically disabled or because of age or verified physical limitations cannot safely move their Carts to the curb for collection, Contractor personnel will

collect the Carts at the side yard or garage door and return to the same place once emptied (“**Special Needs Collection**”). All requests for Special Needs Collection will be considered by Contractor and the decision on whether to provide Special Needs Collection to a Customer forwarded by Contractor to the City Manager and Residential Customer. The City Manager may either approve or reject a Contractor’s determination to not provide Special Needs Collection for a qualified Residential Customer. The rate for Special Needs Collection shall be the same as a regular collection.

4.15 Right to Reject Unacceptable Waste. Contractor may, in its sole discretion, reject Unacceptable Waste placed curbside for collection by a Customer, in which case neither title to, nor liability for, such Unacceptable Waste shall pass to Contractor.

4.16 Adding Residential Customers. Contractor will establish New Residential Customer Service not later than the next collection day for the subject Residential Unit following receipt of the written request for such commencement of service from City.

4.17 Small Businesses Garbage Collection. Collections from all Small Business Garbage Generators shall be performed at least weekly on the same day and at approximately the same time each week using 95-gallon Carts provided by Contractor. If a Small Business Garbage Generator elects to receive Recycling Service, Contractor shall provide one 95-gallon Recycling Cart to be collected once per week on the same day as the collection of the Waste Cart. Contractor is not responsible for collecting Carts weighing more than 170 pounds from Small Business Garbage Generators. Contractor shall notify the Small Business Garbage Generator and the City Manager if Contractor believes the Small Business Garbage Generator’s Waste is not prepared and/or located in an area accessible to the Collection Vehicle; provided; however, the City Manager’s determination shall final as to such conditions and locations and whether the collection should proceed.

4.18 Detachable Containers-Generally.

- (a) Prior to the Commencement Date, Contractor shall provide Detachable Containers and, if applicable, Compactor Units, to all Commercial and Industrial Units receiving collection service under the Contract.
- (b) Detachable Containers will be standard Containers capable of being serviced by front load, collection vehicles, and/or roll-off vehicles compatible with compactor and open-top containers.
- (c) Detachable Containers shall be painted a uniform color, bear Contractor’s name and telephone number, and bear a serial number coded for Container size.
- (d) Detachable Containers (Dumpsters) placed for the collection of wet or odorous wastes shall be painted or changed out at least once every 2-1/2 years. This only applies to requirements from the City’s Health Department for certain establishments such as daycares, assisted living homes and facilities, food service facilities, etc. The change-out may be performed at the request of the City’s Health Department per the requirement of area facilities.
- (e) Roll-Off Compactor containers shall be steam cleaned at least once each year or as directed by City.
- (f) Detachable Containers shall be located on the Customer’s property at a location approved by the City Manager and convenient for collection by Contractor. The City Manager,

whose decision shall be final and binding, shall mediate any disagreements over Detachable Container placement and collection.

- (g) Contractor is not required to collect from Detachable Containers if access across the Customer's private property is blocked.

4.19 Commercial Unit Collection. Subject to the limitations of collection days and times in Section 5.2, Contractor shall make at least two (2) weekly collections at all Commercial Units on a regular schedule on the same days and approximately the same times each week subject to the terms of the Contract Documents and at sufficient additional intervals necessary to perform adequate services and to protect the environment unless otherwise approved in advance by City. If a Commercial Unit's Waste is exclusively non-putrescible and of sufficiently low volume such that the Waste generated by the Commercial Customer does not exceed the volume of the Commercial Customer's Containers between collections, once-a-week collection is permitted. Contractor shall not be required to perform the collection of Commercial Units during emergencies resulting from Acts of God or when the Commercial Customer has failed to pay Contractor for the services received. Dumpsters will be located at a place convenient and safely serviceable to the Contractor and the Commercial Unit Customer.

4.20 Detachable Container Maintenance.

- (a) Contractor shall be responsible for the maintenance and repair of Contractor's Detachable Containers damaged due to Contractor's negligence.
- (b) Contractor shall repair or replace not later than one (1) business day any Detachable Container after the City Manager notifies Contractor of a determination that the Detachable Container does not comply with ordinance standards or constitutes a health or safety hazard.
- (c) Contractor shall remove graffiti from its Detachable Containers not later than five (5) business days after notification by City or a Customer of the existence of the graffiti. Contractor shall keep a record of the locations of Detachable Containers containing graffiti, take a photograph of the graffiti prior to its removal, and provide such location information and photographs to City as part of the Monthly Report.
- (d) Each Detachable Container to be placed at a City Facility is subject to inspection by City and approval as to appearance and condition before placement at any City Facility. A Detachable Container shall be reconditioned and repainted, if necessary, before being located at a City Facility that has not used it earlier. Contractor shall clean and/or repaint a Detachable Container showing excessively damaged paint and/or an accumulation of waste residue within the Detachable Container not later than thirty (30) days after delivery of a written request by City.

4.21 Overloaded Containers. No commercial container, dumpster, or roll-off container should be overloaded to the point where the lid or covers will not close, or the tarp will not properly cover the load. Contractor may decline to empty an overloaded container until the Customer unloads the dumpster or roll-off container to the point where the lid(s) will close, or where the load may be safely tarped prior to transport.

4.22 Stationary Compactor Units. The purchase, lease, installation, maintenance, and repair of Stationary Compactor Units or any related parts or accessories, as well as the Detachable Container,

will be by agreement between Contractor and the property owner and/or authorized property manager of the property where the Stationary Compactor Unit(s) will be placed. Contractor's agreement with Customers using Stationary Compactor Units shall provide for the collection and transport of the Compactor Unit's Detachable Container. The rental of a Detachable Container shall be in accordance with the Roll-Off Rates set forth in Exhibit A attached hereto.

4.23 Excluded Waste.

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

V. COLLECTION OPERATIONS – GENERAL PROVISIONS

5.1 Disposal: Contractor shall deliver all Waste collected pursuant to this Contract to a Disposal Facility.

5.2 Hours of Collection.

- (a) Unless otherwise agreed by the Contract Administrator in accordance with Section 5.2(c), collection of Waste from Residential Customers shall not start before 7:00 A.M. Central Time or continue after 7:00 P.M. Central Time on the same day in any residentially zoned area of City's corporate limits or otherwise within 500 feet of a Residential Unit Collection from Residential Units shall not occur on Sundays unless authorized in writing by the Contract Administrator following a weather-related event (e.g. winter storm event) or other circumstance that has resulted in Contractor being unable to perform regular collections on schedules days.
- (b) Unless otherwise agreed by the Contract Administrator in accordance with Section 5.2(c), collection of Waste from Commercial and Industrial Customers shall be performed on a regular schedule on the same days and approximately the same times each week, Monday

through Saturday between the hours of 5:00 A.M. Central Time and 7:00 P.M. Central Time; provided, however, unless otherwise approved by the Contract Administrator, which approval shall not be unreasonably withheld, collection from a Commercial or Industrial Customer shall not occur before 7:00 A.M. Central Time if the location where the collection will occur is within 500 feet of a Residential Unit.

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

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

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

5.4 Holidays. Contractor may, at Contractor's option, suspend collection on a Holiday. If Contractor elects not to provide collection services on a Holiday, Contractor shall notify City not less than two (2) weeks in advance of the Holiday of the dates that collection will occur for those Customers whose regular collection day falls on the Holiday on which a collection did not occur, provided such delayed collection shall be not later than the next business day following the Holiday unless otherwise agreed by the Contract Administrator. Contractor will observe the following Holidays: Thanksgiving and Christmas Day. If either of these Holidays falls on a service day, i.e., Thursday-Thanksgiving Day, the service will be provided on the next scheduled service day. When Christmas falls on a scheduled service day, Contractor will service on the next scheduled service day. Contractor will supply a calendar showing all expected service interruptions and when the service will resume.

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

- (a) The address of the Customer making the complaint;
- (b) The time the call or e-mail was received from the Customer;
- (c) Whether the Customer is a Residential, Commercial, or Industrial Customer;
- (d) A summary of the follow-up action taken by Contractor to resolve open complaints from the same or prior days, including the date of the original complaint, the date(s) and time(s) of subsequent communications with the Customer regarding the complaint, the name of Contractor's employee(s) who interacted with the Customer regarding the complaint, a summary of the contents of the communications between Contractor's employee(s) and the Customer, and the date when Contractor has deemed the complaint to be resolved and closed.

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

- (a) All vehicles shall be not older than four (4) model years on the Commencement Date and not older than ten 10 model years at any time during the term of this Agreement;
- (b) All vehicles shall be kept in good operating order and a clean and sanitary condition with the interior of the cab free of clutter;
- (c) All collection equipment shall be operated and maintained in compliance with all applicable state and federal safety standards;
- (d) Contractor shall obtain and maintain current all required operating permits and registrations for the collection vehicles;
- (e) Collection vehicles shall be painted in Contractor's color schemes. Vehicle numbers, at least six-inch (6.0") high shall be painted on each side of the rear of the vehicle in a contrasting color from the body color;
- (f) No advertising shall be permitted on the collection vehicle other than the name and address of Contractor;
- (g) Contractor shall place the appropriate customer service telephone number on all collection trucks;
- (h) The type, number, and capacity of collection vehicles shall be sufficient to service all Structures at the frequency and level of collection specified in the Contract and capable of handling, in the safest and most efficient method available, the Carts, Containers, and material specified for each structure on its route;
- (i) All vehicles shall be operated in conformity with applicable federal and state laws and regulations;
- (j) All vehicles used by Contractor's management personnel, including route supervisors, shall be equipped with cell phones with voice mail so they can be contacted by City;

- (k) Collection vehicles will be equipped with two-way communication devices so that Contractor's staff and the driver may communicate during the route collection; and
- (l) All collection vehicles shall be equipped with Global Position System ("GPS") tracking equipment to allow for tracking and locating collection vehicles, which tracking information can be stored and retrieved by Contractor and is provided to City upon written request

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

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

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

5.9 Contractor's Employees.

- (a) Contractor's officers, employees, or agents assigned to perform collection services to Customers pursuant to this Contract shall:
 - (1) at all times when collecting Waste Materials and/or Recyclable Materials, wear uniforms and carry identification cards and/or badges bearing the name and photo of the officer or employee and identifying the person as an officer or employee of Contractor;
 - (2) possess at all times the appropriate State of Texas operator's license for the vehicle being operated when driving any vehicles used in connection with the performance of this Contract;
 - (3) never identify themselves, or in any way represent themselves, as being employees or agents of City;

- (4) not possess or consume alcoholic beverages or controlled substances while on duty or in the course of performing duties under this Contract, and Contractor shall maintain and enforce a policy consistent with this prohibition;
 - (5) interact with Customers and other members of the public in a neat, orderly, courteous, helpful, and impartial manner and refrain from belligerent behavior and/or profanity when interacting with Customers;
 - (6) conduct collection serves with as little noise and as little disturbance to Customer as reasonably possible taking into consideration the noise customarily generated by the normal operation of Collection Vehicles and other collection equipment;
 - (7) not disturb or otherwise unreasonably interfere with a Customer's property that is adjacent to where the Customer's container(s) are located for collection; and
 - (8) take reasonable precautions to prevent damage to property, including lawns, shrubs, flowers, and other plants while performing Collection Services.
- (b) Contractor shall be solely responsible for managing and disciplining Contractor's employees. If Contractor receives a report alleging one or more of Contractor's employee(s) was wanton, discourteous, belligerent, profane, or in any way intimidating, either physically or verbally, or appeared to be under the influence of drugs or alcohol, Contractor shall submit a written report to City providing the details of the incident, which report shall include: the nature of the incident, time, date, and location of the incident; name, address, and telephone number of the person alleging the violation; the name and title Contractor's officer(s) and/or employee(s) involved in the incident; and what disciplinary action, if any, was taken by Contractor. If an employee of Contractor is the subject of repeated allegations or a single egregious allegation of the type described above, such employee shall be removed from an assignment from providing Collection Services under this Contract not later than ten (10) days after receipt of City's written request for such removal, which removal shall continue for the duration of the Term of this Contract (including Initial Term and any Extended Term) unless otherwise agreed in writing by the Contract Administrator.

VI. REPORTING REQUIREMENTS

- 6.1 Reports Generally; Format.** Contractor shall provide to City the reports or notifications to the City's Contract Administrator described in this Article VI in addition to any daily reports required by this Contract. If not established by an outside authority, the Parties shall agree on the required report format, provided each report contains at least the information required by Article VI. All information provided in the reports delivered by Contractor to City pursuant to this Article VI becomes the property of City. City shall have the right to use the data from the reports provided by Contractor for whatever purposes City deems appropriate.
- 6.2 Monthly Reports.** Not later than the tenth (10th) of each month during the term of this Contract, Contractor shall deliver to the City Manager in the agreed format a report relating to the collection activity during the prior calendar month ("Monthly Reports"). Monthly Reports shall include route-by-route information regarding Participation Rates, Recycling Rates, and Tonnage Collected and contain, as a minimum, the following information:
- (a) Number of Residential Units served.

- (b) Number of Commercial Units served.
- (c) Tonnage of Waste collected during the month and delivered to the Disposal Facility, broken down by collection from Residential Units, Commercial Units, and Industrial Units.
- (d) Tonnage of Residential Recycling Materials collected and delivered to the Recycling Facility.
- (e) Tonnage of Residential Bulk and Brush collected.
- (f) Tonnage of Waste collected from Commercial Units.
- (g) Tonnage of Waste collected from Roll Off Units.
- (h) Residential Recycling Participation Rate, being the percentage of Residential Units participating in recycling collection services.
- (i) Summary of motor vehicle accidents or moving violations involving Contractor's vehicles occurring while providing services under the Contract during the month.
- (j) Summary of property damage claims or personal injury claims received by Contractor during the month as a result of providing services under the Contract, even if the events giving rise to such claim occurred in a prior month; and
- (k) List of Customer complaints received by Contractor either directly or forwarded by City, arranged and listed by category, including the date the complaint was received, the address of the complainant, the address of the property about which the complaint was made (if different than Customer's address, name of the complainant, nature of the complaint, how the complaint was resolved, the date the complaint was resolved when the complainant was contacted about the resolution of the complaint, and if the complaint has not been resolved as of the date of the Monthly Report, when and how Contractor expects the complaint to be resolved.

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

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

The obligation to submit the Annual Report for the last Contract Year shall survive the termination or expiration of this Contract. City may withhold payment of balances due to Contractor at the end of the Contract until such final report is received and accepted by City. Contractor shall cooperate fully with providing information relevant to reporting requirements. The reporting requirements are part of the material consideration and failure to comply with reporting requirements shall constitute a material default and shall be subject to penalties and/or termination of this Contract.

VII. PUBLIC EDUCATION CAMPAIGN SERVICE AND CITY FACILITY SERVICE

- 7.1 **Public Education Campaign.** To inform and educate Residential Customers regarding Contractor's commencement of services under this Contract, Contractor shall, at Contractor's cost:
- (a) Distribute a professionally prepared brochure to each Residence at least one (1) time approximately four (4) weeks before the commencement of collection by Contractor, which brochure shall, as a minimum, describe the upcoming changeover in the provider of Waste Material, Recyclable Material, Bulk and Brush collection services to Residential Customers, the date Contractor will start providing such services, Contractor's contact information to be used by Residential Customers wishing to ask questions or lodge complaints, and any other relevant information necessary to enhance community education;
 - (b) Provide to City a sufficient number of additional copies of the above-described brochure to allow City to provide to people requesting such information; and
 - (c) Coordinate with and supply all information reasonably requested by City's Director of Marketing & Communication and Public Works Director to facilitate City's efforts to notify Residential Customers of this transition.
 - (d) Contractor shall provide an annual contribution of five Thousand Dollars (\$5,000) to promote optimum participation in all environmental programs. Payment shall be made on February 1 of each year of the contract term.
- 7.2 **City Facilities and Special Events.** Contractor agrees to provide Dumpster(s) and/or Roll-Offs for the Special Events and at City Facilities set forth in Exhibit B attached hereto and incorporated herein by this reference. The type of equipment and frequency of collection is set out in Exhibit B and may be adjusted as agreed to by City and Contractor. Necessary increases in service as agreed to between City and Contractor to existing City Facilities will be added to the Exhibit and serviced at no charge. Any additional events not listed in Exhibit B or necessary increases in service to events listed in Exhibit B will be serviced by Contractor at a charge.

VIII. CONTRACTOR RESPONSIBILITIES

- 8.1 **Generally.** In providing the Collection Services required by this Contract, Contractor's responsibilities shall include:
- (a) Furnishing all skill, labor, equipment, materials, supplies, and utility services required for providing all services in accordance with this Contract.
 - (b) All actions and activities of its subcontractors.
 - (c) Supplying all records and information required by this Contract.

- (d) Securing at Contractor's expense all governmental permits and licenses and required regulatory approvals, including those required by City ordinances.
- (e) Paying all applicable taxes and Franchise fees.
- (f) Paying to City not later than the thirtieth (30th) day after the Effective Date the one-time reimbursement of City's costs for the development of the RFP and the Contract Documents including, but not limited to, this Contract, the estimated total of which is \$39,940.
- (g) Complying with applicable laws and regulations.
- (h) Performing all work in a timely, thorough, and professional manner.
- (i) Disposing of all collected MSW at a permitted MSW Landfill.
- (j) Processing and marketing Recyclable Materials collected by Contractor from Residential Units.
- (k) All wage increases for Contractor's collectors or other employees, any benefits or added costs resulting from changes in technology, laws, and regulations, labor practices, availability of equipment, and other business risks that may affect the performance of this Contract; and
- (l) Collecting all missed collections for any service provided within 24 hours after being notified of the missed collections, including picking up on Saturday if notified of a missed collection on a Friday; provided, however, missed pick-ups for which Contractor receives a notification on a Saturday will be collected on the immediately following Monday.

8.2 Contractor's Office. Contractor shall maintain an office or such other facilities through which it can be contacted by direct visit or by local (toll-free) call from anywhere in the City on regular collection days, as follows: (i) Monday through Friday between 7:00 A.M. and 7:00 P.M. Central Time; and (ii) Saturday between 9:00 A.M. and 3:00 P.M. Central Time. Such office shall be staffed by a responsible person in charge and an adequate number of additional staff available to answer the phone from 7:00 a.m. to 7:00 p.m. on regular collection days. When the collection is postponed one day for scheduled or unscheduled reasons, Contractor's customer service personnel must be available to answer phones on all days during which collection service is provided. An informative recording answering frequently asked questions shall be available at all other hours, thereby providing a 24-hour, 7-day per week customer service line. Contractor's Operations Office is located at Contractor's Jersey Village office. Contractor's Customer Service Center is located at Contractor's Pearland office (with a backup at Contractor's Corpus Christi office). Contractor will provide four (4) different ways for 24 hour, 7-day access for all residents and businesses to contact Contractor. Normal Customer Service hours are 8 am to 5 pm Monday through Friday. Contractor also provides the Frontier Waste APP for the residents to stay in touch with Contractor and confirm schedules, set up alerts for weather and service reminders and learn more about recycling. A 1-800 toll-free number is also available 24/7 and Contractor has email available 24/7. Contractor's website is also available to access information. All Businesses have access to a portal where they can review the service schedule and access the information about the services provided and the standards for commercial business. Contractor's Customer Service number is on all Contractor's vehicles, carts, and dumpsters/ roll-off s with contact information.

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

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

8.4 Street Damages. Contractor shall be responsible for the repair of damage to paved surfaces on public streets, alleys, bridges, or easements when such damage is caused by Contractor's negligent or inappropriate operation of its collection equipment. Contractor shall not be responsible for normal wear and tear of public rights of way or regular maintenance of such rights of way. Substantiation of cause shall be determined by the mutual agreement of City and Contractor. At no time shall Contractor operate a vehicle in City's Limits that:

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

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

8.5 City Facilities. Contractor shall not charge City for collection services from City Facilities as described in Exhibit "A" or from any additional City Facilities that City may add.

8.6 Enforcement. In order to maintain the exclusive franchise in favor of the Contractor contained herein, the City shall take any and all appropriate legal action against any company, customer, or third-party infringing upon the exclusive rights of the Contractor. In the event that the City fails to pursue appropriate legal action in order to remedy an infringement on the Contractor's exclusive-franchise rights, the Contractor may retain a subrogation right from the City against any and all

violations of the exclusive-franchise grant described herein and shall be entitled to any and all actual and consequential damages arising from the City's failure to enforce this Contract. Contractor has the right to seek an injunction against any third party which is believed to be infringing upon the rights of Contractor to this Contract, including Contractor's right to be the sole provider of Waste and Recyclable Materials collection within City per this Contract.

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

IX. LIQUIDATED DAMAGES

- 9.1 **Generally.** Acceptable performance standards pursuant to this Contract include the provision of daily services¹ on a timely basis with minimal interruptions, Contractor being environmentally responsible while providing such daily services, and Contractor responding promptly to both residential and commercial Customers and resolving any complaints relating to the failure to promptly and correctly providing such daily services. For failure in meeting acceptable performance standards, Contractor will be liable to City for Liquidated Damages as set forth in Section 9. City may charge Liquidated Damages to Contractor as set forth in Section 9.2 on a monthly basis and shall, at the end of each month during the term of the Contract, notify Contractor in writing of the amount of Liquidated Damages assessed for such month, if any. If Contractor wishes to contest any Liquidated Damages assessment, Contractor will request in writing a meeting with the City Manager or designee to attempt to resolve the issue. The decision of the City Manager shall be final. Liquidated damages shall not start before the 61st day after the commencement date of Solid Waste and Recycling Services.
- 9.2 **Liquidated Damages Assessed.** City may assess liquidated damages to Contractor as follows:
- (a) Missed collection: \$100 per missed collection in excess of five (5) missed collections on the same collection day. A missed collection occurs when a Customer reports a missed collection, the address was not reported by Contractor as an unacceptable set-out, and Contractor cannot provide data demonstrating the collection vehicle traveled on the street and collections occurred on the street on the day on which the complaint relates;
 - (b) If a missed collection has not been collected within the time required by Section 8.1(k): \$100 per occurrence per day;
 - (c) \$500 per incident for Contractor failing to collect Waste on a block containing Residential Units. A missed Residential Unit block is where three (3) Residential Units on one side of

a street between cross streets, or an entire cul-de-sac, report a missed collection. A missed Residential Unit block occurs when the addresses reporting missed collections were not reported by Contractor as unacceptable setouts, and Contractor cannot provide data demonstrating the collection vehicle traveled on the block during the day of the complaint:

- (d) Commencement of residential collection prior to 7:00 a.m., or operating within City after 7:00 p.m. except as expressly permitted: \$250 per route per occurrence;
- (e) Commencement of commercial collection within 500 feet of a Residential Unit prior to 7:00 a.m., commencement in other areas prior to 5:00 a.m., or operating within City after 7:00 p.m. except as expressly permitted: \$250 per route per occurrence;
- (f) Failure to complete a majority (50%) of the collections on a given day: \$5,000 for each incident (unless Contractor has reported to City that collections cannot be made due to unsafe conditions (roadway freezing, etc.);
- (g) Failure to maintain a vehicle in a manner consistent with the Contract: \$100 for each incident;
- (h) Failure to clean up spilled Solid Waste or Recyclables resulting from Contractor loading and/or transporting within two (2) hours of notification: \$250 per impacted address;
- (i) Failure to resolve properly reported bona fide Customer complaints within one business day: \$200 for each incident;
- (j) Failure to submit an accurate Monthly or Annual report in the specified format, as required by the Contract: \$250 per report per calendar day delinquent;
- (k) Failure to submit accurate accounting invoices and/ or complaint reports in the specified format: Non-payment until an accurate accounting is submitted;
- (l) Failure to return carts and containers to approximately original collection location: \$50 each incident, for each affected address;
- (m) Failure to leave a public education notice when material that is inappropriately prepared is not collected: \$50 each incident;
- (n) Failure to be prepared to perform services on or after the Commencement Date: \$ 3,000 per calendar day on and after the Commencement Date the services are not being performed by Contractor;
- (o) Failure to deliver or replace carts for any reason within five (5) business days of written notification: \$50 per incident per affected address;
- (p) Contractor commingling Recyclable Materials with MSW: \$ 1,000 for each incident.
- (q) Disposal of Recyclable Materials to a site other than a proper recycling facility: \$ 2,000 for each incident.

9.3 Liquidated Damages and Not Penalty. Because Contractor's failure to perform the specific tasks described in Section 9.2 and the damages that would be incurred by City being required to assist

Customers in handling and resolving complaints (which Residential Customers are citizens and/or property owners located in City's Limits), cannot be reasonably estimated and calculated by the Parties, and because the precise nature and amount of damages that may be incurred cannot be reasonably foreseen by the Parties, City and Contractor agree that the amount assessed in accordance with Section 9.2 constitute liquidated damages and not a penalty.

X. CITY'S REPRESENTATIONS AND WARRANTIES

City hereby makes the following representations and warranties to and for the benefit of, Contractor:

- (a) City is a home rule municipality duly organized and validly existing under the Constitution and laws of the State of Texas, with full legal right, power, and authority to enter into and perform its obligations under this Contract.
- (b) City has duly authorized the execution and delivery of this Contract, and this Contract constitutes a legal, valid, and binding obligation of City that is enforceable against City according to its terms.
- (c) To the best of City's knowledge, information, investigation, or belief, no action, suit, or proceeding, at law or in equity, before or by any court or governmental authority, commission, Council, agency, or instrumentality is pending against City wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or in connection with the obligations, undertakings, and transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Contract or any other contract or instrument entered into by City in connection with the obligations, undertakings, transactions contemplated hereby; and
- (d) To the best of City's knowledge, information, investigation, or belief, as of the Commencement Date, City has the legal right and authority to grant this exclusive franchise and shall defend, and use reasonable efforts to uphold this Contract, and City's right to adopt and/or enforce this exclusive franchise if City's right to adopt and/or enforce this exclusive franchise or enter into this Contract is ever challenged, litigated or disputed during the term of the Contract. City acknowledges that this is an essential term of the Contract that Contractor is relying upon in entering into the Contract. Contractor's sole and exclusive remedy with respect to a determination after the Effective Date that City's legal rights and authority as set forth in this paragraph (d) are not accurate shall be as set forth in Section 17.05, below.

XI. CUSTOMER BILLING AND PAYMENTS TO CONTRACTOR

- 11.1 Residential Customer Billing; Payment for Service.** City shall provide billing and bill collection services for Residential Customers during the term of this Contract. Not later than the 5th day of each calendar month during the Term of this Contract, Contractor shall obtain from City a count of Residential Units billed for collection services in the prior calendar month with a subtotal of Residential Customers. Based on the number of Residential Customers, Contractor shall deliver to City an invoice setting forth sums due by City to Contractor for services rendered to Residential Customers under this Agreement

City shall remit to Contractor payment for such services not later than thirty (30) days after receipt of invoice.

- 11.2 Non-Paying Customers.** City shall notify Contractor in writing of any Residential Customer that has failed to pay City for waste collection services. Upon written direction from City, Contractor shall cease servicing such delinquent Residential Unit until notified by City to resume service. Contractor shall have the right to cease servicing any Commercial Unit or Industrial Unit that is delinquent in payment to Contractor.
- 11.3 Commercial Customer Billing.** City shall be solely responsible for billing and bill collection services to Commercial Units. City shall be obligated to pay Contractor for Commercial Collection services provided by Contractor to Commercial Units or Industrial Units. Not later than the tenth (10th) day of each calendar month during the Term of this Contract, City shall provide to Contractor a report showing the billings to Commercial Units or collection and other services provided to Commercial Customers within the City during the immediately prior calendar month, including the services rendered, the rate for such service, and Contractor shall reconcile Contractor's billing to the City to match that amount shown in the report.
- 11.4 Industrial Customer Billing.** Contractor shall be solely responsible for billing and bill collection services to Industrial Units. City shall not be obligated to pay Contractor for Industrial Collection services provided by Contractor Industrial Units. Not later than the tenth (10th) day of each calendar month during the Term of this Contract, Contractor shall provide to City a report showing the billings to Industrial Units for collection and other services provided to Industrial Customers within the City during the immediately prior calendar month, including the services rendered, the rate for such service, and the amount of payments received by Contractor for such services during the calendar month covered by the report.

XII. TITLE TO WASTE MATERIAL

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

XIII. CONTRACTOR'S PROPERTY

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

XIV. RECORDKEEPING / RIGHT TO INSPECT

Contractor shall maintain all records generated in connection with the performance of its obligations and/or provision of Services under this Contract for a period of at least four (4) years after submission of the last Monthly Report. City retains the right to examine, inspect, audit, and copy, regardless of location, all documents, records, files, data, and information generated or utilized by Contractor in the performance of its obligations and/or provision of Services under this Contract. In addition to the Monthly Reports and Annual Reports, City may request periodic reports pursuant to services rendered regarding information not contained in the Monthly Reports or Annual Reports. Such reports must be provided in a reasonable and timely manner, but in no case later than fifteen (15) business days following receipt of the written request unless the request specifies a later deadline. City may withhold making payments due to Contractor pursuant to this Contract if any report required to be made pursuant to this Contract has not been delivered to City on or before the fifth (5th) day following the date that such report is required to be delivered to City pursuant to this Contract and may continue to be withheld until the second business day after such report is delivered.

XV. TERMINATION OF CONTRACT

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

the fiscal year for which funds are lawfully appropriate; or (b) an obligation creating a pledge of, or a lien on, City's tax or general revenues resulting in the creation of a debt.

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

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

If such injunction is applicable to any services provided under this Contract other than Residential Waste Collection services, Contractor shall have the right to terminate the provision of such other services pursuant to this Contract but shall not be authorized to terminate the provision of Residential Waste Collection services or continue providing such services on a non-exclusive basis. Following any termination pursuant to this Section 17.05, neither Party shall have any further obligation under this Contract other than for claims for personal injuries or property damage and the right to be indemnified therefor as expressly provided in this Contract and arising prior to such termination date.

XVI. INSURANCE

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

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

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

Provided Contractor maintains at least the types of coverage and minimum coverage limits described above, Contractor shall secure and maintain throughout the Term of this Contract insurance of such types and in such amounts as may be necessary to protect itself and the interest of City against all hazards or risks of loss as hereinafter specified. It shall be the responsibility of the Contractor to

maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve Contractor of any contractual responsibility or obligation.

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

- (a) Name City, its officers, agents, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance.
- (b) Provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance; and
- (c) No insurance policy shall not be canceled, non-renewed, or coverage thereunder reduced unless City has received notice of cancellation, non-renewal, or reduction in coverage, in each such case (except for notice of cancellation due to non-payment of premiums) such notice to be sent to City not later than thirty (30) calendar days (or the maximum period of calendar days permitted under applicable law, if less than thirty (30) calendar days) prior to the effective date of such cancellation, non-renewal, or reduction in coverage, as applicable. If any insurance policy required to be carried by or on behalf of Contractor pursuant to this Contract is to be canceled due to non-payment of premiums, the requirements of the preceding sentence shall apply except that the notice shall be sent to City on the earliest possible date but in no event less than ten (10) calendar days prior to the effective date of such cancellation.

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

XVII. PERFORMANCE BOND

Contractor shall deliver to City a performance bond in the amount equal to one hundred percent (100%) of the annual value of the Contract, executed by a good and sufficient corporate surety eligible to conduct business in Texas, and conditioned that Contractor shall well, truly, and faithfully perform its obligations under this Contract and shall satisfy all claims and demands of any kind incurred under the Contract, including, but not limited to, the payment of all amounts owed by Contractor to City or landfills, and Contractor shall fully indemnify and save harmless City from all costs and damage which City may suffer by Contractor's failure to pay such amounts owed and shall reimburse and repay City all outlay and expense which City may incur in making good any such payment default, then the obligation shall be void; otherwise, to remain in full force and effect. Said performance bond will be renewed annually for the term of the Contract. The performance bond shall be in a form reasonably acceptable to City. Contractor shall pay any and all premiums for the bond. A certificate from the surety showing that the bond premiums are paid in full shall be submitted to City on an annual basis for the Term of the Contract.

XVII. INDEMNITY

CONTRACTOR AGREES TO AND SHALL INDEMNIFY, DEFEND, AND HOLD CITY AND CITY'S ELECTED AND APPOINTED OFFICERS, EMPLOYEES, AND AGENTS(COLLECTIVELY, THE "CITY INDEMNITEES"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, LOSSES, DAMAGES, COSTS OR EXPENSE OF ALL TYPES TO ANY PERSON OR ENTITY (INCLUDING, BUT NOT

LIMITED TO, ALL CLAIMS FOR MONETARY DAMAGES, CLAIMS AT LAW, CLAIMS IN EQUITY, AND REASONABLE ATTORNEYS' FEES) ARISING OUT OF, RESULTING FROM, OR OCCURRING IN CONNECTION WITH CONTRACTOR'S PERFORMANCE OF THE SERVICES UNDER THIS CONTRACT WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT, STRICT LIABILITY OR OTHER ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR OR SUPPLIER OF CONTRACTOR, THEIR RESPECTIVE AGENTS OR EMPLOYEES OR ANY OTHER PARTY FOR WHOM ANY OF THEM MAY BE LIABLE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CONTRACT, TO THE EXTENT THAT ANY EMPLOYEE OR CONTRACTOR ASSERTS A CLAIM AGAINST ONE OR MORE OF THE CITY INDEMNITEES THAT WOULD HAVE BEEN BARRED UNDER WORKERS' COMPENSATION INSURANCE, CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY AND HOLD THE CITY INDEMNITEE(S) FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, LOSSES, DAMAGES, COSTS OR EXPENSE FOR ANY SUCH CLAIMS NOTWITHSTANDING THE FACT THAT CONTRACTOR IS A NON-SUBSCRIBER TO WORKERS' COMPENSATION INSURANCE IN THE STATE OF TEXAS. THE INDEMNITY AND HOLD HARMLESS PROVISIONS OF THIS CONTRACT SHALL ALSO APPLY TO CLAIMS ARISING FROM ACCIDENTS TO CONTRACTOR, ITS AGENTS, OR EMPLOYEES, WHETHER OCCASIONED BY CONTRACTOR OR ITS EMPLOYEES. IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH CONTRACTOR AND ONE OR MORE OF THE CITY INDEMNITEES, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CONTRACTOR OR CITY UNDER TEXAS LAW, IT BEING THE INTENT THAT CITY SHALL BE RESPONSIBLE FOR THE NEGLIGENCE APPORTIONED TO THE CITY INDEMNITEE(S) AND CONTRACTOR SHALL HAVE NO INDEMNIFICATION OBLIGATIONS UNDER THIS CONTRACT TO THE EXTENT OF THE CITY INDEMNITEE'S NEGLIGENCE. CONTRACTOR'S INDEMNIFICATION OBLIGATION PURSUANT TO THIS ARTICLE XVII SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER THE WORKERS' OR WORKMEN'S COMPENSATION ACTS, DISABILITY ACTS OR OTHER EMPLOYEE BENEFIT ACTS OR TO THE LIMITS OF ANY INSURANCE COVERAGE.

XVIII. MISCELLANEOUS

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

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

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

If intended for City:

401 Market Street
Tomball, Texas 77375

With Copy to:

501 James Street
Tomball, Texas 77375

If intended for Contractor:

Frontier Waste
5959 S Sam Houston Parkway E
Houston, Texas 77048
_ ATTN: General Manager

- 18.9 **Counterparts.** This Contract may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties.

- 18.10 Compliance with Federal, State & Local Laws.** The Parties shall comply in the performance of Services under the terms of this Contract with all applicable laws, ordinances and regulations, judicial decrees or administrative orders, ordinances, and codes of federal, state, and local governments, including all applicable federal clauses.
- 18.11 Force Majeure.** No Party will be liable for any default or delay in the performance of its obligations under this Contract, including any obligation of Contractor to pay liquidated damages pursuant to Sections 9.01 and 9.02, if and to the extent such default or delay is caused, directly or indirectly, by a Disaster Event, riots, civil disorders, acts of terrorism, compliance with laws or governmental orders, inability to access a container, fires, inclement weather, acts of God, epidemic or pandemic, or any similar cause beyond the reasonable control of such Party, provided the non-performing Party is without fault in causing such default or delay. The non-performing Party agrees to provide written notice of the Force Majeure delay to the other Party as soon as possible but in no event later than 24 hours after the earlier of the Party's first knowledge of or the first occurrence of the Force Majeure and further agrees to use commercially reasonable efforts to recommence performance as soon as possible.
- 18.12. Proposal Representations.** Contractor expressly acknowledges that City has entered this Contract in express reliance on the truth of the statements and representations set forth in the Proposal (response to RFP) submitted to City by Contractor and agrees that the representations made by Contractor in the Proposal are true and correct as of the Effective Date.
- 18.13 Confidentiality Regarding Waste Material.** Contractor has no confidentiality obligation with respect to any Waste Materials or Recyclable Materials collected pursuant to this Contract.
- 18.14 No Waiver for Delay.** The failure or delay on the part of either Party to exercise any right, power, privilege, or remedy under this Contract shall not constitute a waiver thereof. No modification or waiver by either Party of any provision shall be deemed to have been made unless made in writing. Any waiver by a Party for one or more similar events shall not be construed to apply to any other events whether similar or not.
- 18.15 Effective Date.** The effective date of this Contract is the date upon which it is signed by the authorized representatives of both Parties (the "**Effective Date**").
- 18.16 Non-discrimination.** In the provision of services hereunder or the performance of this Contract, Contractor shall not discriminate against any person because of race, sex, age, creed, color, religion, or national origin.
- 18.17 Compliance with Federal Immigration Laws.** Contractor agrees at all times to comply with Federal Immigration laws with respect to employment and to make available during Contractor's regular business hours on request of City, employee documentation verifying an employee's status to be employed by an employer in the United States. Contractor agrees to verify current and future employee's status by utilizing the E-Verify internet-based system as operated by the United States Department of Homeland Security, or I-9 verification.
- 18.18 Boycott Israel; Boycott Energy Companies; and Prohibition of Discrimination against Firearm Entities and Firearm Trade Associations.** Contractor verifies that:
- (a) Contractor does not boycott Israel and agrees that during the term of the Contract it will not boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended;

- (b) Contractor does not boycott Energy Companies and agrees that during the term of this Contract it will not boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended; and
- (c) Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended; and will not discriminate during the term of this Contract against a firearm entity or firearm trade association.

This Section 18.18 does not apply if Contractor is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Contractor has ten (10) or more full-time employees and (ii) this Contract has a value of \$100,000.00 or more to be paid under the terms of this Contract.

Signatures on Following Page

SIGNED AND AGREED on _____, 2024.

CITY OF TOMBALL, TEXAS

By: _____
_____, City Manager

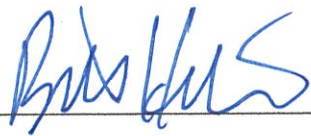
ATTEST:

_____, City Secretary

APPROVED AS TO FORM AND LEGALITY:

_____, City Attorney

SIGNED AND AGREED on _____, 2024.

By:  _____

Name: Bill Killian

Title: VP & South Texas District Manager

EXHIBIT A

RATES

RESIDENTIAL RATES – Option 1 (4-day collection)	
Service 1	2 x week MSW Collection of up to 7 bags or a RENTED Poly Cart
Service 2	1 x week Recyclables Collection in a Rented Poly Cart or Bin
Service 3	1 x week Brush/Bulky Materials Collection (max 2 cubic yards per collection)
Total Price per home per month before Rental Fees	\$19.98
Monthly Rental Rate for Poly Carts (includes delivery, maintenance, and removal)	
95-gallon MSW Poly Cart Rate per Month per Cart	\$1.75
95-gallon Recycle Poly Cart per Month per Cart	\$1.75
Rate per Cart if not MSW and Recycling Carts are Rented – 95-gallon	\$1.75
65-gallon MSW Poly Cart Rate per Month per Cart	\$1.75
65-gallon Recycle Poly Cart per Month per Cart	\$1.75
Rate per Cart if not MSW and Recycling Carts are Rented – 65-gallon	\$1.75
18-gallon Recycling Bin rate per month per Bin	\$1.00
Replacement of MSW or Recycling Cart (one-time fee)	\$75.00

COLLECTION OF UNUSUAL ACCUMULATIONS	
Rate per hour for Vehicle (any type) and Crew	\$220.00
Disposal fee per yard collected	\$15.00
*Fee to be determined by estimated time servicing the home, not portal-to-portal for each home	

DISASTER MANAGEMENT RATES	
Rate per hour for Roll-Off Truck and Container	\$524.30
Rate per Hour for Grapple Truck	\$455.00
Rate per Hour for Rear Load Truck and Crew	\$220.00
Disposal Fee per ton collected	\$149.50

SMALL COMMERCIAL WITH 95-GALLON POLY CART RATES	
One Cart once per week	\$19.50
One Cart twice per week	\$29.50
Each Additional Cart(s) once per week	\$10.00
Each Additional Cart(s) twice per week	\$19.50
One Recycling Cart once per week	\$ 5.00

COMMERICAL FRONT LOAD RATES							
Size	1x	2x	3x	4x	5x	6x	Extra pick up
2 yard	\$80.43						
3 yard	\$102.15	\$162.08	\$245.16	\$306.44	\$382.71	\$458.99	\$114.41
4 yard	\$110.31	\$175.69	\$262.83	\$329.60	\$398.81	\$494.39	\$114.41
6 yard	\$143.01	\$224.73	\$339.14	\$423.58	\$529.30	\$633.33	\$114.41
8 yard	\$152.54	\$276.48	\$365.01	\$446.73	\$562.50	\$675.55	\$114.41

*All fees include disposal cost

Casters (fee per month per container) \$ 11.37 per month
 Locks (fee per collection per container) \$ 2.27 per collection
 Enclosures (fee per collection per container) No additional charge for this service

Roll-Off – Temporary EXCLUSIVE TO CONTRACTOR				
Size	Delivery	Daily Rental	Haul Rate	Disposal per Ton
20 yard	\$120.00	\$6.00	\$262.04	\$61.95
30 yard	\$120.00	\$6.00	\$283.30	\$61.95
40 yard	\$120.00	\$6.00	\$297.47	\$61.95

Roll-Off – Permanent EXCLUSIVE TO CONTRACTOR				
Size	Delivery	Daily Rental	Haul Rate	Disposal per Ton
20 yard	\$120.00	\$6.00	\$262.04	\$61.95
30 yard	\$120.00	\$6.00	\$283.30	\$61.95
40 yard	\$120.00	\$6.00	\$297.47	\$61.95

Roll-Off – Compactor EXCLUSIVE TO CONTRACTOR			
	Monthly Rental	Haul Rate	Disposal per Ton
30 yd SC**	\$550.00	\$273.00	\$61.95
35 yd SC**	\$550.00	\$273.00	\$61.95
40 cubic yard Receiving Container	\$550.00	\$389.53	\$61.95

Relocate/Block Fee \$ 65.00 per haul
 Wash Out \$ 175 per container

EXHIBIT "B"

Contractor shall provide the containers and collection of the Waste Materials from the following municipal facilities and Special Events at no charge to the City:

Facility Name	Address	Service	Frequency
Police Dept Garbage	400 Fannin	2-95 carts	2 x week
Police Dept Recycling	400 Fannin	2-95 carts	2 x week
Marketing Garbage	215 W. Main	2-95 carts	2 x week
Marketing Recycling	215 W. Main	1-95 carts	2 x week
IT Garbage	105 S. Cherry	1-95 carts	2 x week
It Recycling	105 S. Cherry	1-95 carts	2 x week
Matheson Pool Garbage	1240 Ulrich	3-95 carts	2 x week
City Hall	401 Market	1-8 yard	3 x week
Public Works	501 James St	1-8 yard	3 x week
Fire Station 1	1200 Rudel	1-8 yard	3 x week
Fire Station 2	11725 Holderrieth	1-8 yard	3 x week
Fire Station 4	10333 Mahaffey	1-8 yard	3 x week
Fire Station 5	19900 Telge	1-8 yard	3 x week
Community Center	221 Market	1-8 yard	3 x week
Treatment Plant	615 Hufsmith	1-8 yard	3 x week
Depot	201 S Elm	2-8 yard	3 x week
Juergens Park	1331 Ulrich	2-8 yard	3 x week
Broussard Park	1414 E Hufsmith	1-8 yard	3 x week
Tomball Little League	615 N. Cherry	3-8 yard	3 x week
Public Works	501 James	1- 40 yard	1 x week
Treatment Plant	614 Hufsmith	3-40 yards	Monthly
Landfill		2-40 yards	Monthly

City Events

Name of event	Quantity	Container
Tomball German Heritage Festival	5	40 yards
THS Booster Club Crawfish Boil	1	40 yard
Rotary Fish Fry	1	40 yard
Rails & Tails Mudbug Festival	1	40 yard
Recycling Day	Truck and Driver for 8 hours	One load – 1200 pounds
Clean Up Week	2	40 yards (in addition to the containers there)
July 4 th Celebration	1	40 yard
Groovfest	1	40 yard
Spooktacular	1	40 yard
Rotary Big Show	1	40 yard
Depot Day Fall Festival	1	40 yard
Tomball German Heritage Christmas Market	5	40 yards
Tomball FFA Project	1	8 yard
Tomball FFA Project	1	20 yard