

ASSIGNMENT AND ASSUMPTION OF CONTRACT

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT (this "Assignment and Assumption") is made by and among WASTE MANAGEMENT OF TEXAS, INC. ("Waste Management"), the CITY OF LEWISVILLE, TEXAS, a home rule city and municipal corporation of Denton County, Texas, duly acting by and through its City Manager ("City"); and ALLIED WASTE SYSTEMS, INC. ("Republic").

RECITALS

A. Waste Management currently provides services to the City pursuant to a certain Contract and Exclusive Franchise for Collection of Residential Garbage, Refuse, Yard Waste, Bulky Waste, Recyclables, Containerized Commercial Solid Waste and Multi-Family Recycling Within the City of Lewisville, Texas, dated April 7, 2014, and all executed amendments (collectively, the "Contract"); and

B. Waste Management desires to assign to Republic all its rights and obligations under the Contract, and Republic desires to assume Waste Management's rights and obligations in, under and to the Contract.

AGREEMENT

NOW, for and in consideration of the mutual benefits and promises contained herein, the above recitals, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. Waste Management hereby assigns to Republic, and Republic hereby assumes from Waste Management, all of Waste Management's rights and obligations in, under and to the Contract, attached hereto as Exhibit "A."

2. The City acknowledges and consents to the assignment of the Contract by Waste Management to Republic and the assumption of the Contract by Republic.

3. The City acknowledges that Republic will assume responsibility for all obligations under the Contract arising after the closing date of Waste Management's sale of certain assets to Republic and Waste Management has no further obligations to perform under the Contract after said closing date. Waste Management and Republic shall give the City written notice of said closing date no later than three (3) business days of said date.

4. Republic agrees to abide by the terms and conditions of the Contract from and after the above-referenced closing date.

5. Republic agrees that there will be no reduction in customer service related to this Assignment and Assumption of Contract.

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption as of the date written below.

DATED this the ____ day of _____, 2018.

WASTE MANAGEMENT OF TEXAS, INC.

By: 

Name: Rick Lora

Title: Director, Public Sector Solutions

ALLIED WASTE SYSTEMS, INC.

By: 

Name: Adrienne Wilhoit

Title: Vice President

CITY OF LEWISVILLE, TEXAS

Rudy Durham, Mayor

ATTEST

Julie Worster, City Secretary

EXHIBIT A

[the Contract]

ORDINANCE NO: 4062-04-2014

STATE OF TEXAS

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COUNTY OF DENTON

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**CONTRACT AND EXCLUSIVE FRANCHISE FOR COLLECTION OF RESIDENTIAL
GARBAGE, REFUSE, YARD WASTE, BULKY WASTE, RECYCLABLES,
CONTAINERIZED COMMERCIAL SOLID WASTE AND MULTI-FAMILY
RECYCLING WITHIN THE CITY OF LEWISVILLE, TEXAS**

THIS CONTRACT is made and entered into by and between the City of Lewisville, a home-rule municipal corporation in Denton County, Texas, acting herein by and through its duly authorized City Manager, hereinafter called "City", and Waste Management of Texas, Inc., (WMTX), a Texas corporation doing business in Texas, acting herein by and through its President, hereinafter called "Contractor."

THIS CONTRACT shall be for the exclusive collection of Residential Garbage, Refuse, Yard Waste, Bulky Waste and Recyclables; all containerized Commercial Solid Waste; and Multi-Family Dwelling Recycling as designated by the City. This Franchise does not include Commercial Recycling.

KNOW ALL BY THESE PRESENTS:

RECITALS

WHEREAS, the City desires to provide residential customers within its corporate city limits with Solid Waste and Recyclable Materials collection, transport and disposal services; commercial establishments within its corporate city limits with Solid Waste collection, transport and disposal services; and multi-family dwelling customers with recycling collection, transport and disposal services by engaging an independent contractor to perform such services; and,

WHEREAS, the City desires to enter into this Contract with the Contractor, with respect to that level of service more specifically described herein.

NOW, THEREFORE, in consideration of the terms, conditions and covenants herein set forth, the Parties mutually agree as follows:

SECTION 1
DEFINITIONS

In this Contract, the following words and phrases shall be defined as follows:

Affiliate shall mean any parent, subsidiary, or any other entity controlling, controlled by, or under common control of Waste Management, Inc., Waste Management Holdings, Inc., or Waste Management of Texas, Inc.

Applicable Law shall mean any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority, which in any case, shall be enacted, adopted, promulgated, issued or enforced that relates to or affects the City, the Contractor, or the performance by a party of its obligations hereunder.

Bulky Waste shall mean indoor/outdoor furniture; residential Construction and Demolition Waste generated by a Residential Service Customer in connection with a "do-it-yourself" project, (not generated by a commercial contractor); mattresses and box springs; carpet; swing sets; plastic swimming pools; large toys; bicycles; fish aquariums; large household appliances; White Goods; and similar items. Each Bulky Waste and White Goods item shall be of a size and weight that two men can reasonably and safely lift and place the item into a truck. Bulky Waste has a total limit of three (3) cubic yards.

Change in Law shall mean any of the following events or conditions that has a material and adverse effect on the performance by one or both the Parties of their respective obligations under this Agreement: (a) The enactment, adoption, promulgation, issuance, modification, elimination, or written change in administrative or judicial interpretation of any Applicable Law on or after the effective date; or (b) The order or judgment of any governmental body, on or after the effective date, to the extent such order or judgment is not the result of willful or negligent action, error or omission, or lack of reasonable diligence of a Party, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission, or lack of reasonable diligence.

City shall mean the City of Lewisville, Texas.

Collection Services shall mean removal of Solid Waste and Recyclables for transport elsewhere, or cause such to be done.

Commercial Container shall mean a containerized unit used to store or transport Solid Waste or Recyclables, such as a Front Loader Container or Roll-Off Container, which must be mechanically lifted onto a transport vehicle or emptied into a transport vehicle.

Commercial Franchise Fee shall mean an amount equal to 17.46 percent of commercial billings charged to the Commercial Customer by Contractor and payable to City for all exclusive commercial services provided by the Contractor within city limits. For Commercial Solid Waste services, the Commercial Franchise Fee shall be the difference between the rates established by the City for commercial collection and disposal services rendered by Contractor under this Contract and the Cost of Service rates to be received by Contractor for such services pursuant to this Contract. For Multi-Family Recycling services, the Commercial Franchise Fee shall be applied to the total of all billings for such services.

Commercial Solid Waste shall mean all types of Solid Waste generated by stores, offices, restaurants, institutions, Multi-Family Dwellings with more than (four) 4 units, warehouses, and manufacturing activities, excluding residential wastes and grease from commercial restaurants and other food service establishments.

Commercial Customer shall mean all commercial establishments, institutions, and Multi-Family Dwellings with more than four (4) units and within the City limits of Lewisville using steel or plastic containers, dumpsters or compactors to store Commercial Solid Waste or Recyclable Materials until their scheduled collection service.

Commercial Hand Collect Customer shall mean a Commercial Customer that generates no more than two (2) cubic yards of Solid Waste per week, which is collected in Refuse Storage Carts.

Compactor shall mean a truck-loaded container placed at a Commercial Customer location used for the purpose of compacting Solid Waste.

Construction and Demolition Recyclables shall mean those Construction and Demolition materials that have been separated at the site of the project from other Construction and Demolition Waste for the purpose of recycling. Acceptable items include but are not limited to segregated wood, road materials such as concrete and asphalt, masonry products, and metal.

Construction and Demolition Waste shall mean any and all Solid Waste as defined herein resulting from land preparation, construction, remodel, or demolition projects and the clean-up of such projects within the City limits; including but not limited to debris, concrete, rebar, paper, plastics, cartons, gypsum board, wood, excelsior, rubber, masonry, sheetrock, drywall, roofing materials, rock and earthen materials, brush or woody materials, Yard Waste and other materials resulting from or incidental to the clean-up of such projects or that are directly or indirectly the byproducts of land preparation, construction work, remodel work, or demolition work.

Contract shall mean this document.

Contractor shall mean Waste Management of Texas, Inc.

Contract Year shall mean January through December of each year.

Cost Adjustment Method shall mean the process for adjustment of Cost of Service unit prices for collection of all Solid Waste and Recyclable Materials collected and other services offered under this Contract by the Contractor for each year of the Contract. The Cost Adjustment Method is described in Attachment E to this Contract.

Cost of Service or Cost of Service Rate(s) shall mean the Contractor's prices for performing the services covered under this Contract as set forth in Attachment C and as adjusted each Contract Year.

Day shall mean calendar day, unless otherwise specified.

DFW Landfill shall mean the WMTX-owned landfill accepting municipal Solid Waste, located at 1601 Railroad Street, Lewisville, Texas.

Disabled Carryout shall mean collection of Garbage, Trash and Recyclables provided to disabled persons at the door or another designated location rather than curbside or alley as designated by the City. Disabled Carryout does not include Bulky Waste and Yard Waste, which shall be collected at the curb or alley as designated by the City.

Disposal shall mean ultimate dumping or depositing of Solid Waste into Contractor's DFW Landfill or such other disposal site that may be utilized by Contractor and approved by the City in the event of the temporary closure of DFW Landfill.

Disposal Facility shall mean Contractor's DFW Landfill or such other disposal site that may be utilized by Contractor and approved by the City in the event of the temporary closure of DFW Landfill.

Front Loader Customers shall mean all Commercial Customers in the city limits of Lewisville using Front Loader Containers ranging in size from two (2) to eight (8) cubic yards for the storage of Solid Waste or Recyclables until its scheduled collection day.

Front Loader Container shall mean a steel or plastic container of from two (2) to eight (8) cubic yards supplied by Contractor for transportation of Solid Waste from a customer's location to the DFW Landfill, or supplied by Contractor or another recycling hauler registered with the City and used for the purpose of collecting and/or transporting source separated Recyclable Materials from Commercial Customers. All Front Loader Containers shall display the name and phone number of the owner.

Garbage shall mean Solid Waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

Governmental Body shall mean, as appropriate, any one or several of any court of competent jurisdiction, the United States of America, the State of Texas and/or any appropriate jurisdiction over activities relating to the services provided for under the terms of this Contract; or any

agency, authority, regulatory body or subdivision of any of the above as may have jurisdiction over or power and authority to regulate the City, the Contractor, or the collection of Solid Waste and Recyclables.

Government Approvals shall mean all licenses, permits and approvals required from any Governmental Body for performance of the Contractor's obligations under this Contract.

GVW shall mean gross vehicle weight.

Holiday(s) shall mean Thanksgiving Day, Christmas Day, and New Year's Day.

Host Fee shall mean certain compensation paid to the City by Contractor pursuant to that certain "Agreement" between the City and Contractor.

Hazardous Waste shall mean any Solid Waste identified or listed as a Hazardous Waste by the administrator of the United States Environmental Protection Agency (U.S.E.P.A) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 USC, §6901 et seq, as amended, or pursuant to any other federal or state law.

Initial Term shall mean the first ten (10) years of the Contract commencing on the effective date of this Contract as defined in Section 6 and ending December 31, 2024.

Letter of Credit shall mean as it is described in Section 26.

Material Obligation of City shall mean the acts or omissions of City as set forth in Section 17.A.3.

Material Obligation of Contractor shall mean the acts or omissions of Contractor as set forth in Section 16.A.3.

Medical Waste shall mean waste generated by health-care-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 (Definition, Treatment, and Disposition of Special Waste from Health-Care Related Facilities) or any successor. The term does not include Medical Waste produced on farmland and ranchland as defined in Agriculture Code, §252.001(6) (Definitions--Farmland or ranchland) or any successor, nor does the term include artificial, nonhuman materials removed from a patient and/or requested by a patient, including but not limited to orthopedic devices and implants.

Multi-Family Dwelling or Multi-Family Complex shall mean a building designed exclusively for residential occupancy by more than four (4) families or dwelling otherwise approved by the City.

Non-Recyclables shall mean any material included or contained in a Recyclables Storage Cart set out for Recyclables collection, which materials are not acceptable materials as set forth in Attachment G.

Performance Bond shall mean a corporate surety bond that guarantees compensation to the City in the event that the City must assume the obligations or duties of the Contractor in order to continue the services defined in the Contract.

Person shall mean any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Governmental Bodies.

Recyclables or Recyclable Materials shall mean material that has been recovered or diverted from the non-hazardous Solid Waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products, which may otherwise be produced using raw or virgin materials. Recyclables are not Solid Waste. However, Recyclables may become Solid Waste at such time as it is abandoned or disposed of rather than recycled, whereupon it will be Solid Waste with respect only to the party actually abandoning or disposing of the material. Acceptable Recyclable Materials are specifically identified in Attachment G.

Recyclables Storage Cart or Recycling Cart shall mean a leak-proof maximum 96-gallon plastic container with attached lid and wheels that will allow the automated or semi-automated collection of Recyclables, which shall be provided by and owned by the Contractor.

Recycling Facility shall mean a facility whose activities include but are not limited to the separation and processing of source separated Recyclable Materials to produce a marketable commodity or product(s) for beneficial use.

Refuse shall mean non-putrescible Solid Waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible Refuse includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials; noncombustible Refuse 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).

Refuse Storage Cart shall mean a leak-proof 96-gallon plastic container with attached lid and wheels that will allow the automated or semi-automated collection of Solid Waste, and which shall be provided by and owned by the Contractor.

Residential Service Customer(s) shall mean a single-family, two-family, condominium, townhouse or other permanent living unit which is positioned on a single lot with individual City water meter and sewer service in which the Solid Waste is set out in 96-gallon carts provided by Contractor, and Recyclables are set out in Contractor's 96-gallon carts, and other units designated by the City for service at the curb or alley way. Residential Service Customer shall

not include apartments, hotels, motels, lodging houses, or other non-permanent residential establishments.

Residential Solid Waste Container shall mean a residential customer-owned, sealed, leak proof plastic bag of at least one (1) millimeter in thickness, or a sealed, covered garbage can not to exceed 39 gallons in capacity and to be used for Solid Waste collection.

Roll-Off Customers shall mean all Commercial Customers using Roll-Off Containers for the storage of Solid Waste or Recyclables until its scheduled collection day.

Roll-Off Container shall mean a steel container from ten (10) to forty-two (42) cubic yards, either open or closed top, supplied by Contractor for transportation of Solid Waste from a customer's location to the DFW Landfill, or supplied by the Contractor or a recycling hauler registered with the City and used for the purpose of collecting and/or transporting source separated Recyclable Materials. All Roll-Off Containers shall display the name and phone number of the owner.

Rubbish shall mean the same as Refuse.

Senior Citizen's Rate shall be 80% of the standard rate as shown in Attachment A during the term of the Contract. The City shall determine which residents qualify for this rate and shall provide names and addresses of qualifying residents to Contractor on a monthly basis.

Single-Family Dwelling shall mean a building designed exclusively for residential occupancy by not more than one family.

Solid Waste shall mean any Garbage; Rubbish; Refuse; Construction and Demolition Waste generated at residential and nonresidential sites; Bulky Waste; Yard Waste; White Goods; 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 the Water Code, Chapter 26;
- B. Soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements;
- C. Recyclable Materials; or
- D. Unacceptable Waste.

Special Event Material shall mean Solid Waste, and for specific events agreed to by both Parties, Recyclables collected from City-sponsored or City-authorized events including Trinity Trash Bash, Western Days Festival, Household Hazardous Waste collections (excluding Unacceptable Waste), and other City-sponsored events that the Parties mutually agree upon or that have historically been collected by Contractor free of charge.

Special Waste shall mean waste as defined in Title 30 Texas Administrative Code (30 TAC), Chapter 330, 330.3, which waste requires special handling and disposal because of its quantity, concentration, physical or chemical characteristics, or biological properties.

Ton shall mean a short ton of 2000 pounds.

Trash shall mean the same as Garbage and/or Refuse.

Treated Wood shall mean wood that has been treated or preserved with chromated copper arsenate (CCA), pentachlorophenol, or other chemicals which have been classified as known human carcinogens by the U. S. E. P. A.

Unacceptable Waste shall mean any and all waste, including but not limited to Hazardous Waste, Class I non-hazardous Special Waste, and untreated Medical Waste, or other waste not mutually-agreed upon by the Parties, the acceptance and handling of which by Contractor would cause a violation of any permit condition, legal or regulatory requirement, substantial damage to Contractor's equipment or facilities, or present a substantial danger to the health or safety of the public or Contractor's employees.

Uncontrollable Circumstances includes "unanticipated events," and shall mean any act, event or condition (excluding those which result from the willful or negligent action or inaction of a Party) occurring during the term that has, or may reasonably be expected to have, a material and adverse effect on a right or an obligation of either or both Parties to this Contract, if such act, event or condition is beyond the reasonable control of the party relying thereon as justification for not performing under this Contract. Uncontrollable Circumstances shall include, but are not limited to, the following: an act of God, landslide, lightning, earthquake, fire, explosion, flood, ice storm, nuclear radiation, acts of a public enemy or terrorist, war, blockade, insurrection, riot or civil disturbance or any similar occurrence, or a condemnation or other taking by or on behalf of any public, quasi-public or private entity, but not including reasonably anticipated weather conditions for the geographic area of the City. Uncontrollable Circumstances shall not include:

- A. Insolvency or inability to pay any amount;
- B. Inability to obtain any Letter of Credit, surety bond, payment or Performance Bond or any other security required by this contract;
- C. A public or private labor dispute relating to the collection, transportation or disposal of Solid Waste.

Vehicle shall mean every device in, upon, or by which Contractor uses to transport materials and/or waste upon a public or private highway or road to perform the services and related services described for by this Contract.

Violation shall mean any determination by a Governmental Body that the Contractor is in violation of or not in compliance with any portion of its Governmental Approvals or Applicable Law.

White Goods shall mean appliances such as refrigerators, stoves, washers, dryers and other large enameled appliances, which do not contain PCB or CFC units and have been officially certified to that effect.

Working Day shall mean Monday through Saturday for residential and commercial collections. Contractor may collect Commercial Solid Waste on Sunday if requested by a Commercial Solid Waste Customer and approved by the City prior to collection.

Yard Waste shall mean leaves, yard trimmings, yard and garden debris, Christmas trees, and brush, including clean woody vegetative material, shrub limbs, and tree limbs no greater than four inches in diameter or four feet in length, which results from landscaping maintenance and land-clearing operations and is placed at the regular trash collection location by the Residential Service Customer. The term does not include stumps, roots, or shrubs with intact root balls, and specifically excludes all Treated Wood. Yard Waste must not be loose, and must be placed in a Residential Solid Waste Container or compostable bag or be securely tied in a bundle. Each Residential Solid Waste Container, compostable bag, or bundle must not exceed 50 pounds, and no bundle shall exceed four feet in length. Yard Waste placed out for collection must not exceed three (3) cubic yards.

Yard Waste Collection Program means a program approved by the City Council where Contractor delivers the Yard Waste it collects from residents to a reuse, composting or some other type of non-disposal facility. If this Program is adopted, then residents must place all Yard Waste in compostable bags or bundles (none can be placed in Residential Solid Waste Containers). This Program is a service enhancement option set forth on Attachment B of this Contract. The size and volume limitations in the definition of Yard Waste apply to this Program.

SECTION 2
SCOPE OF CONTRACTOR'S SERVICES
RESIDENTIAL & COMMERCIAL COLLECTION

Contractor hereby covenants and agrees to diligently and faithfully perform the services listed below (hereinafter "Collection Services"). Contractor shall have the exclusive right to perform the Residential Solid Waste and Recyclables Collection Services as described herein, and the exclusive right to perform the Commercial Solid Waste Collection Services as described herein during the term of this Contract, excluding commercial recycling. If the City requires mandatory

Multi-Family Dwelling Recyclables Collection, then the Contractor shall have the exclusive right to collect Recyclables at Multi-Family Dwellings.

Contractor's Collection Services shall include the furnishing of all labor, tools, equipment, materials, insurance, Performance Bonds (to the extent set forth herein), supervision and all other items necessary to perform such work and services. All work and services to be performed under this Contract shall be carried out in the manner, at the times, in the locations and at the unit prices specified in Attachments A, B, C, and D, which rates shall all be subject to adjustment as provided in Attachment E. Per the Attachments, the City has the right to approve optional service enhancements at the rates and under the terms set forth in each Attachment. In addition, if any new state, federal or city mandated fees, taxes or surcharges (except ad valorem taxes or income taxes) are imposed upon the services provided hereunder after the effective date of this Contract as defined in Section 6, Contractor shall be entitled to increase the unit prices by the amount of such increases, and such increases shall be effective upon the date when such tax, fee or other charge takes effect.

Contractor will provide the City with assistance developing and distributing public information on changes to or new Collection Services provided by Contractor under this Contract. Public education materials shall be developed, produced and distributed by the City in collaboration with the Contractor. Public education materials may include mailings, internet postings, or other methods approved by the Parties. Contractor shall not be obligated to spend or incur more than \$25,000.00 in the first year of this Contract for public education, and such expenditures must be reasonably necessary and mutually agreed upon in advance by the Parties. Each subsequent year thereafter of the Contract term, including any renewal term, Contractor shall not be required to spend or incur more than \$5,000.00 for public education in any year, and such expenditure must be reasonably necessary and mutually agreed upon in advance by the Parties.

Contractor shall pay to the City a Commercial Franchise Fee of 17.46 percent on billings for all Commercial Solid Waste services, special negotiated rates, and other miscellaneous charges that are not included within the rate matrix of this Contract in Attachments C. In the event Multi-Family Dwelling Recyclables Collection Services are franchised exclusively to the Contractor, Contractor shall pay the Commercial Franchise Fee of 17.46 percent to the City on billings included within the rate matrix in Attachment D.

Contractor shall pay to the City during the month of January of each year an annual contribution of \$50,000 for Lewisville civic events or for another purpose identified by the City. The first \$50,000 payment will be due in January 2015.

A. Collection Services

1. Residential Service

- a. Once a week collection of residential Solid Waste contained in Refuse Storage Carts from Residential Service Customers within the City. A Residential Service Customer

may set out a maximum of two (2) Residential Solid Waste Containers in addition to the Refuse Storage Cart for Solid Waste collection.

- b. Once a week collection of Recyclables in Recyclables Storage Carts from Residential Service Customers within the City. Recyclables will be collected on the same day as Solid Waste.
- c. Once a week Bulky Waste collection from Residential Service Customers within the City. Bulky Waste materials shall be limited to a maximum of three (3) cubic yards of material and shall be of a size and weight that two (2) men can reasonably and safely place such item into a truck. Bulky Waste shall be collected on the same day as Solid Waste.
 - 1) No White Goods set out for Bulky Waste collection shall contain any hazardous material, including but not limited to Freon.
 - 2) Construction and Demolition Waste from "do-it-yourself" residential projects shall be collected as Bulky Waste provided such waste is bundled in four foot lengths not to exceed 50 pounds each or is placed in Residential Solid Waste Containers not to exceed 50 pounds each in total weight.
 - 3) In the event Bulky Waste exceeds the above size and volume limitations, Contractor shall not be required to collect excess Bulky Waste. Contractor shall tag the excess Bulky Waste to notify resident of the reason for not collecting the Bulky Waste. At resident's request, Contractor shall provide a cost estimate for collection and Disposal services to the resident, and if resident and Contractor agree upon the price, Contractor shall provide such collection and Disposal services.
- d. Once a week collection of Yard Waste to be collected on the same day as the Residential Service Customer's weekly Solid Waste collection.
 - 1) Yard Waste from a Residential Service Customer generated by a commercial enterprise or service provider may be placed at that Residential Service Customer's collection location provided the volume of Yard Waste does not exceed three (3) cubic yards. Yard Waste placed out for collection at a Residential Service Customer location must have been generated at that Residential Service Customer location.
 - 2) In the event that Yard Waste contained in a compostable bag, Residential Solid Waste Container, or a bundle exceeds 50 pounds per bag or bundle, or the volume of Yard Waste placed for collection exceeds three (3) cubic yards, Contractor shall not be required to collect this excess Yard Waste. Contractor shall tag the excess Yard Waste to notify resident of the reason for not collecting the Yard Waste. At resident's request, Contractor shall provide a cost estimate for

collection and Disposal services to the resident, and if resident and Contractor agree upon the price, Contractor shall provide such collection and Disposal services.

- 3) Contractor has the right to deliver the Yard Waste to a disposal facility or a reuse facility, at its discretion.
- 4) The City Council has the option of adopting a Yard Waste Collection Program to divert Yard Waste from the Landfill, as set forth in Attachment B, for its Residential Service Customers. If the City chooses this option, the Contractor will deliver the Yard Waste to a reuse, composting or some other type of non-disposal facility. The rate for the Yard Waste Collection Program is contained in Attachment B to this Contract.
- c. All Residential Service Customer Collection Services will be performed between the hours of 7 a.m. and 7 p.m.
- f. Contractor will observe Thanksgiving Day, Christmas Day, and New Year's Day as Holidays, and will not provide any residential Collection Services, including Solid Waste, Recycling, Bulky Waste or Yard Waste services, on these Holidays. The Contractor shall be responsible for providing make-up collection for residential routes that occur on the specified Holiday. Make-up days shall be the next Working Day following the Holiday, excluding Sundays.
- g. Pricing for the above services, with the exception of special rates to be generated by the Contractor for excess volumes of Bulky Waste or Yard Waste, is reflected in Attachment A.
- h. The City shall have the right during the first five (5) contract years of the Initial Term of this Contract to add service enhancements as listed in Attachment B, taking into consideration all appropriate annual adjustments. Notice of the City's desire to implement service enhancements shall be made with 180 day advance written notice to Contractor. During implementation of such new service enhancement, there shall be a moratorium on all events of default by Contractor and assessment of liquidated damages directly relating to implementation of such new enhancement. Such moratorium shall not in any way affect the City's rights with respect to events of default or liquidated damages relating to activities not directly associated with the implementation of such new enhancement.

2. Commercial Service.

- a. All Commercial Solid Waste shall be contained in Refuse Storage Carts, Front Loader Containers, Roll-Off Containers, Compactors or such other storage containers acceptable to the City, and shall be collected at such frequency as requested by the

Commercial Solid Waste Customer, provided Commercial Solid Waste is collected a minimum of once per week.

- b. Commercial Hand Collect Customers may request Contractor provide Refuse Storage Carts for Solid Waste storage. Such carts shall be serviced a minimum of once a week. Commercial Hand Collect Customers may request up to four (4) carts, with the first cart provided at the standard cart rate and an additional charge per cart for up to three additional carts according to the rates in Attachment C. Storage needs which exceed four carts will require the rental of a Front Loader Container.
- c. All Commercial Containers used for Solid Waste collection shall be obtained through the Contractor. All Refuse Storage Carts, Solid Waste Roll-Off and Front Loader Containers shall display the name and phone number of the Contractor. A closed Roll-Off Container used as a Compactor component for Commercial Solid Waste may be owned by the customer; however, transportation and disposal shall be performed exclusively by the Contractor. The Commercial Solid Waste Customer shall not lease Roll-Off Containers or Compactors for Solid Waste from any other party other than through the Contractor, and leasing, including any lease-type arrangement such as a lease-purchase, through a third party is prohibited.
- d. City and Contractor agree that Recyclable Materials generated by or at a Commercial Customer location are not encompassed within Contractor's exclusive services under this Contract, with the exception of Recyclable Materials generated at Multi-Family Dwellings should the City choose to franchise Multi-Family Dwelling Recycling exclusively to the Contractor. The City has the option to franchise Multi-Family Dwelling Recycling exclusively to Contractor during the first five (5) years of this Contract Term at the rates identified in Attachment D and as adjusted per the method described in Attachment E.
- e. Disposal of all containerized Commercial Solid Waste from commercial units or developments shall be at DFW Landfill, excluding disposal of source separated material that is being recycled at a State approved Recycling Facility.
- f. All commercial accounts within 500 feet of a residential home or Multi-Family Complex must be serviced during the hours of 7 a.m. to 7 p.m.

3. Construction and Demolition Waste

- a. Any Roll-Off Container, Front Loader Container, or other Commercial Container used to collect, hold, or transport Construction and Demolition Waste to be disposed of as Solid Waste shall be those owned and operated by the Contractor.
- b. All Construction and Demolition Waste generated within City limits shall be disposed of at the DFW Landfill, excluding source separated materials to be recycled.

- c. City and Contractor agree that Construction and Demolition Recyclables generated by or at a Commercial Customer location are not encompassed within Contractor's exclusive services under this Contract.
- d. Construction and Demolition Waste that is collected and transported by pickup, pickup and trailer(s), dump truck, dump truck and trailer(s), semi-tractor/trailer or any combination thereof is expressly excluded from the Contract. However, disposal of all Construction and Demolition Waste generated within Lewisville city limits shall be at DFW Landfill, regardless of collection and hauling method used, excluding disposal of source separated materials to be recycled at a Recycling Facility.

B. Designated Service Area

All collections under the terms of this Contract shall be in the incorporated limits of the City. The designated service area may be adjusted by the City Manager as annexation, disannexation or new development occurs.

C. Delivery

All collections under the terms of this Contract, unless otherwise determined by the City Manager, shall be delivered as follows:

- 1. All Solid Waste generated within City limits must be disposed at DFW Landfill or alternate State approved facility for the Disposal of Solid Waste if DFW Landfill is unavailable for any reason.
- 2. All Recyclables collected under this Contract shall be delivered to a State approved Recycling Facility within a 30 mile radius of the City limit as agreed to by the Parties. Selection of the Recycling Facility shall allow Contractor to maintain its Cost of Service rate structure as shown in Attachment A.

SECTION 3
COMMERCIAL FRANCHISE PAYMENTS

Contractor hereby agrees to collect all Solid Waste generated by Commercial Solid Waste Customers within the corporate limits of the City of Lewisville. Contractor shall have the exclusive right to collect Commercial Solid Waste within the City. The Contractor shall, at its own cost and expense, furnish trained personnel and appropriate well maintained Vehicles and other equipment of the highest quality to collect Solid Waste from Commercial Solid Waste Customers; and will establish and maintain scheduled collection routes and special schedules as may be necessary to meet the collection services requirements of the Commercial Solid Waste Customers located within the corporate limits of the City. Further, Contractor, at its own cost and expense, shall provide for the solicitation, servicing and billing of Commercial Solid Waste Customers, and shall recommend schedules of service to said Commercial Solid Waste

Customers, such schedules being subject to the approval of the City. Unless otherwise established by City ordinance, Collection Services schedules for Commercial Solid Waste shall be determined by the Contractor based upon negotiations with its Commercial Solid Waste Customers. The Contractor acknowledges and agrees that Contractor shall be obligated to take such actions as necessary to fulfill its duties and obligations hereunder and that the City and Contractor may clarify the scope of Contractor's services to fulfill the intent of this Contract. Any commercial services and billings not included in Attachments C and D shall be subject to assessment of the Solid Waste Franchise Fee of 17.46 percent.

A. Commercial Hand Collect Customers

Contractor will be responsible for billing all Commercial Hand Collect Customers within City limits for Refuse Storage Carts up to a maximum of four carts collected once a week. Contractor will receive payment for the requested service from the customer based on the customer rates approved by the City. Annually City shall advise Contractor in writing of the City's customer collection rates for such services and Contractor shall bill Commercial Hand Collect Customers the applicable rate. All amounts for Commercial Hand Collect Customer service billed by the Contractor as directed by the City which are in excess of the rates listed in the Contractor's Cost of Service Rate matrix shown in Attachment C, as adjusted, shall be submitted monthly to the City as the Commercial Franchise Fee.

B. Front Loader Customers

Contractor will be responsible for billing all Solid Waste Front Loader Customers within City limits for container size and frequency of service as requested by the Front Loader Customer. Contractor will receive payment for the requested service from the customer based on the customer rates approved by the City. Annually City shall advise Contractor in writing of the City's customer collection rates for such services and Contractor shall bill Front Loader Customers the applicable rate. All amounts for Front Loader service billed by the Contractor as directed by the City which are in excess of the rates listed in the Contractor's Cost of Service Rate matrix shown in Attachment C, as adjusted, shall be submitted monthly to the City as the Commercial Franchise Fee.

C. Roll-Off Customers

Contractor will be responsible for billing all Commercial Solid Waste Roll-Off Customers in the City based on Roll-Off Container size and frequency of service requested by the Commercial Solid Waste Customer. Contractor will receive payment for the requested service from the Roll-Off Customer based on the customer rates approved by the City. Annually City shall advise Contractor in writing of the City's customer collection rates for such services and Contractor shall bill Roll-Off Customers the applicable rate. All amounts for Roll-Off service billed by the Contractor as directed by the City which are in excess of the Contractor's Cost of Service Rate matrix shown in Attachment C, as adjusted, shall be submitted monthly to the City as the Commercial Franchise Fee.

D. Compactor Customers

All Commercial Solid Waste Customers desiring to lease Compactors must lease such Compactors from Contractor. Commercial Solid Waste Customers shall have the right to purchase Compactors from third Parties, but must utilize Contractor for Compactor Solid Waste hauling and Disposal services. Contractor will be responsible for billing all Commercial Solid Waste Compactor Customers in the City based on Compactor size and frequency of service requested by the Commercial Solid Waste Customer. Contractor will receive payment for the requested service from the Compactor Customer based on the customer rates approved by the City. Annually City shall advise Contractor in writing of the City's customer collection rates for such services, and Contractor shall bill Compactor Customers the applicable rate. All amounts for Compactor service billed by the Contractor as directed by the City which are in excess of the Contractor's Cost of Service Rate matrix shown in Attachment C, as adjusted, shall be submitted monthly to the City as the Commercial Franchise Fee.

E. Special Collection Services**1. Special Event Material**

Contractor is hereby granted the exclusive right to collect and dispose of Special Event Material to be disposed of as Solid Waste as defined herein. Contractor shall collect and dispose of Special Event Material free of charge to the City. On a case by case basis, Contractor may also collect Recyclables from Special Events as requested by the City and agreed to by the Contractor.

2. City Facilities

Contractor shall provide Commercial Solid Waste and Recyclables Collection and Disposal Services free of charge for all existing and future City government buildings and facilities throughout the term of the Contract, excluding Disposal of Special Waste and sludge from the City water and wastewater treatment facilities.

3. Old Town Containers

Contractor shall provide free Commercial Containers, free Collection Services, and free Disposal for Solid Waste and Recyclables collection for the Old Town area on City property with placement as directed by City.

4. Storm and Disaster Debris

In the event of a disaster or storm event, the City has the right to contract with any contractor or entity of its choice to provide disaster or storm debris services within the City. Contractor agrees to provide disaster or storm debris services at the rates set forth in Contractor's Disaster Management Plan attached hereto as Attachment F, and

Contractor has no obligation to provide such services at any other rates. The Parties agree to work together diligently as set forth in Attachment F to ensure that the City's disaster or storm debris needs are met in a safe and efficient manner.

SECTION 4
SCOPE OF CITY SERVICES

The City agrees to perform the following services:

- A. Designate City Manager or his designee to provide timely direction to the Contractor and render City decisions;
- B. Each month, the City shall notify the Contractor in writing of (i) the Residential Service Customers to be added or dropped from the Contractor's Collection Services or a change in service, (ii) the house count (i.e., total number of Residential Service Customers to bill) for the month, (iii) the names/addresses or changes thereto of senior citizen discount Residential Service Customers; (iv) other information the Contractor may require to timely invoice the City, and (v) Multi-Family Dwelling counts should the City approve exclusive franchise for Contractor for Multi-Family Dwelling Recyclables Collection Services in this Contract;
- C. Perform timely review and response, if necessary, to reports submitted by Contractor;
- D. Make timely payments upon review and approval of invoices with appropriate accompanying reports submitted by the Contractor;
- E. Monitor the personnel, equipment, and Vehicle standards as described in the terms of this Contract;
- F. Cooperate with Contractor on educational programs and material to the City's residential customers to educate citizens on the proper way to set out Solid Waste and Recyclables for collection under the terms of this Contract and the City's ordinances;
- G. Work with Contractor to resolve customer service issues, including customer's failure to abide by the requirements of the City Code of Ordinances;
- H. Review and approve all route and service delivery dates;
- I. Determine, assess, and collect liquidated damages as determined by the City, pursuant to this Contract; and
- J. Perform all other obligations of the City as required hereby.

SECTION 5
TERM

The term of the Contract shall be for a period of ten (10) years commencing on August 4, 2014 and ending December 31, 2024 (Initial Term). At the expiration of the Initial Term, the Parties may extend the Contract for up to ten (10) additional years upon mutual written agreement. All renewals shall have the same terms, conditions and fees as set forth herein, unless agreed to otherwise in writing by both Parties in an amendment to this Contract. Contract renewals are subject to the provisions set forth below. Consent to such extension by the City shall not be unreasonably withheld, provided that:

- A. The City may review the market for new technology in waste collection and recycling practices to ensure the service the City is receiving represents the most recent technology and provides the best service for the City;
- B. The City agrees it will not re-open the issue of the Host Fee payments by Contractor as a requirement for renewal of the Contract;
- C. Service being provided by Contractor is satisfactory as demonstrated by current and past performance and service levels are as desired, and;
- D. The rates for Collection and Disposal Services provided by Contractor to the City are comparable to rates of other cities in the Metroplex, after making appropriate adjustments to the Contractor's rate for all other consideration provided by Contractor to the City, with the exception of the Host Fees paid to the City.

SECTION 6
EFFECTIVE DATE

The effective date of this Contract shall be August 4, 2014. For the period of January 1, 2014 through August 4, 2014, all rates and service requirements shall remain as identified in the 2004 franchise agreement and its amendments, if any.

SECTION 7
PAYMENT

A. Residential Solid Waste Services

- 1. Within fifteen days of the end of each month during which residential Solid Waste Collection and Disposal services are provided by the Contractor, Contractor shall submit to the City a monthly invoice detailing the services provided by Contractor under this Contract. If the City fails to timely provide the Contractor with the necessary monthly

information set forth in Section 4.B, then the Contractor shall use the prior month's counts. Contractor's monthly invoice shall contain the following:

- a. Number of Residential Service Customers;
 - b. Number of Senior Citizens provided service at discounted rate;
 - c. Number of mobile home park units;
 - d. Volume of materials collected;
 - e. Any liquidated damages assessed by the City as per Section 20;
2. The monthly payment for residential services to be paid by the City shall be the sum of:
- a. The number of Residential Service Customers as billed by the City on a monthly basis multiplied by the Cost of Service as identified in Attachment A, with annual adjustments as allowed in Attachment E; less
 - b. Any liquidated damages assessed by the City as per Section 20.
3. Payment shall be made by the City to the Contractor by the fifteenth day of the following month.

B. Residential Recycling Services

The City and Contractor will continue to operate on an interim basis under the Recyclables processing and recycling revenue sharing arrangement currently in place as of January 1, 2014 on a month-to-month basis until the Parties enter into a separate contract for revenue sharing; provided that, if Parties are unable to reach an agreement on revenue sharing terms, the City may seek proposals and enter into a separate contract for revenue sharing with another recycling processing contractor. This interim arrangement shall not extend beyond the effective date of this Contract, and Parties shall negotiate in good faith to reach an agreement on Recyclables revenue sharing terms.

C. Commercial Services

Contractor shall provide to the City a report detailing the Commercial Refuse Storage Cart, Front Loader Containers, Roll-Off and Compactor Container billings, and forward the appropriate funds to the City. All reports shall be remitted with the monthly payment to the City.

1. Contractor shall provide to the City each month a detailed listing of Commercial Solid Waste Customers, including addresses relating to such billings, listing the services provided to such customers.

2. Contractor shall remit to City the difference between the Contractor's Cost of Service Rates shown in Attachment C and the customer rates charged by Contractor to Commercial Customer pursuant to direction of the City as the Commercial Franchise Fee.
3. Should the City implement mandatory Multi-Family Dwelling Recyclables Collection Services with the Contractor as the franchised service provider, Contractor shall provide a detailed listing of Multi-Family Complex customers, including addresses relating to such billings, listing the services provided to such customers. Contractor shall remit the Commercial Franchise Fee of 17.46 percent on all such billings.

D. Special Collection Services

Contractor shall provide to the City a monthly report detailing all Special Collection Services performed within the month as indicated below to include services provided free of charge and billed services.

1. Any Special Event Material collected detailing the event services provided, the estimated volume or weight of materials collected, and the estimated value of those services.
2. Any storm and disaster debris collected including the estimated volume or weight of materials collected, the equipment used to perform collections and Disposal, and the rates applied to those services according to the Contractor's Disaster Management Plan attached hereto as Attachment F. Charges for these services shall be invoiced separately to the City and shall not be included in invoicing for regular Commercial Solid Waste or Recyclables services. City shall make payment to the Contractor for those services by the fifteenth of the following month.
3. Number of Lewisville residents using free landfill privileges, associated volumes or weight of materials disposed by such residents, and the value of those services.
4. Service locations and estimated volume or weight of materials collected from all City facilities as Solid Waste and Recyclables, including service provided to Old Town, and estimated value of those services.

SECTION 8
UNIT PRICE ADJUSTMENT

Contractor hereby agrees to accept payments, adjusted by the Cost Adjustment Method in the manner as reflected in Attachment E to this Contract and as otherwise set forth herein, as full compensation for services rendered. Contractor will submit documentation of the payment adjustment criteria to the City along with its annual request for rate adjustment.

SECTION 9
SEVERE WEATHER

Solid Waste and Residential Recycling Collection Services shall be provided every scheduled Working Day, including bad weather days, unless the Contractor informs the City of a suspension of service as a result of bad weather. Contractor shall have the right, in its reasonable discretion, to determine if operation of Contractor's equipment will be unsafe due to such inclement weather. Notification to the City must be made by 10 a.m. of the day service is to be suspended.

SECTION 10
LABOR FORCE

Contractor shall provide notice within fifteen (15) Days after a change in key personnel (e.g., Market Area Manager, Operations Manager, Facility Manager and Municipal Marketing Representative) to the City and introduce such new personnel to the appropriate City Contract Administrator (s). Contractor may bring in from outside the City its key personnel. All other workers, including equipment operators, Vehicle drivers and laborers may be imported. Contractor agrees to maintain a work environment free from the use, possession, distribution and influence of controlled substances, alcohol, intoxicants, narcotics or other mind-altering substances (referred to hereinafter as drugs and alcohol) and to prohibit employees from using, possessing, distributing or being under the influence of drugs or alcohol at any time within the course and scope of their employment. Contractor shall keep on file with the City a copy of its most current substance abuse policy. Contractor shall employ only such superintendents, foremen, and workers who are careful, competent and fully qualified to perform the duties or tasks assigned to them and shall take appropriate action against any employees or subcontractors of Contractor who shall behave themselves in such manner as to be actionable or who neglect or refuse to comply with or carry out the directions of Contractor.

SECTION 11
PERSONNEL STANDARDS

- A. Contractor shall furnish such qualified drivers, equipment operators, mechanical, supervisory, clerical and other personnel as may be necessary to provide the services required in a safe, economical and efficient manner. All drivers shall be trained and qualified in the operation of waste collection Vehicles and must have in effect a valid commercial driver's license, of the appropriate class, issued by the Texas Department of Public Safety.
- B. Contractor shall provide suitable operational and safety training for all employees who utilize or operate Vehicles or equipment for collection and disposal of materials under the Contract. Contractor shall train its employees in Solid Waste collection to identify, and use reasonable effort not to collect Hazardous Waste or infectious Medical Waste.

- C. Contractor shall not, nor shall it permit its employees to, demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for services provided under the Contract.
- D. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by the Contract, Contractor shall take all appropriate corrective measures. If City has notified Contractor of a complaint related to discourteous or improper behavior, Contractor will consider reassigning the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process.
- E. Contractor shall designate qualified employees as supervisors of field operations. Supervisors will be in the field inspecting Contractor's work and will be available by radio or phone during the Contractor's hours of operation to handle calls and complaints from the City, or to follow up on problems and inspect Contractor's operations.
- F. All field employees of the Contractor performing work under the Contract shall be uniformed, showing their association with the Contractor while operating in the field. Contractor shall provide a list of current employees, contractors and subcontractors to City upon request.
- G. Contractor will train its employees performing under this Contract as to the City's Solid Waste ordinances and collection rules and regulations, ensuring employees can answer questions from citizens and follow the City's collection rules at the curb and otherwise. This training is to be ongoing and reach new hires. Contractor employees will also leave notices of improper set-out when applicable.

SECTION 12
PERFORMANCE STANDARDS AND RESPONSIBILITIES OF CONTRACTOR
AND COMMERCIAL CUSTOMERS

A. Contractor Responsibilities to Commercial Customers:

- 1. Front Loader Container sizes available: 2, 3, 4, 6, 8 cu. yd.;
Front Loader Compactor sizes available: 2, 3, 4, 6, 8 cu. yd.;
Roll-Off Container sizes available: 12, 20, 30, 40 cu.yd.;
Compactor sizes available: 10, 12, 15, 17, 18, 20, 24, 25, 27, 30, 32, 34, 35, 38, 40, 42 cu. yd.
- 2. Schedules Available: Monday through Sunday. City must be notified by Contractor of Sunday collections.

3. Hours of Operation: Not before 7 a.m. or after 7 p.m. in locations that are within 500 feet of residential dwellings, including Multi-Family Dwellings.
4. Extra Collection: If Contractor is notified by 10 a.m. of Working Day, extra pickup will be performed that day. If request is received after 10 a.m., collection will be made no later than the following Working Day.
5. Blocked Containers: If access to a container is blocked, the driver will radio Contractor's dispatcher. Dispatcher will call and email the Commercial Customer describing the obstruction. The driver will wait until the customer is contacted and the obstruction cleared. However, if obstruction is not cleared within 10 minutes after the time the driver calls the dispatcher, the driver will proceed on route. Contractor will service the Commercial Customer with blocked container on the next regularly scheduled service day. If the Commercial Customer contacts Contractor to request service prior to that regularly scheduled service day, customer must agree to pay a trip charge fee per the customer rates approved by the City.
6. Container Maintenance: Refuse Storage Containers, Front Loader Containers and Roll-Off Containers that have been damaged will be exchanged or repaired within five working days of notification. If the damage is not due to Contractor servicing or a defect in materials and workmanship, a fee will be charged to the Commercial Customer. The amount will depend on the repairs needed. If an unsightly condition develops due to fire, paint or other causes beyond Contractor control, the container will be exchanged upon the request of the customer.
7. Contractor will exchange containers as required to maintain a good appearance considering type of Solid Waste generated, normal wear and weathering.
8. Container Identification: All Contractor-owned Refuse Storage Containers, Front Loader Containers and Roll-Off Containers shall be marked with the Contractor's name and phone number. If containers are used for recycling purposes, units shall be appropriately marked.
9. All service complaints shall be directed to the Contractor and shall be resolved by the end of the next Working Day. The Contractor shall supply the City with a monthly summary, as part of the monthly report with invoice, of all complaints indicating the date and hour of inquiry or complaint receipt, the nature of the complaint or inquiry, and the manner and timing of resolution. This report shall include all complaints and service issues forwarded to the Contractor by City staff.
10. The City shall notify the Contractor of each complaint reported to the City. It shall be the duty of the Contractor to take whatever steps may be necessary to remedy the cause of the complaint and notify the City of its disposition by the end of the next Working Day after receipt of the complaint by the Contractor.

11. The Contractor shall provide the City with a full explanation of the disposition of any complaint involving a customer's claim of damage to private property as a result of actions of Contractor's employees, agents, or subcontractors.
12. The Contractor shall provide written notice to all customers regarding complaint procedures, rules and regulations, and day(s) of collection on an annual basis and whenever there is a change in scheduled service, or procedures. Such notice must be approved by the City prior to distribution. Notwithstanding the foregoing, in the event the City elects a new option of service, then it shall be the City's responsibility for customer education.
13. The Contractor shall notify the City of violations relating to cleanliness and the creation of a nuisance on any property, either public or private.
14. Modification: It is anticipated that the Parties may from time-to-time desire to modify these standards in writing.
15. Contractor shall provide written notice to Commercial Customers of rates for service and all other associated charges as approved by the City on an annual basis.

B. Commercial Customer Responsibilities

1. Customer is responsible for keeping the area around and on top of container clear of obstructions so Contractor can service the container as scheduled. If container is blocked and is not cleared, Contractor will not service container. Customer may call in for an extra pickup, if desired, when access is cleared.
2. Overfilled Containers: The customer shall be responsible for obtaining a container of an appropriate size to hold all Solid Waste generated between scheduled collections. Container will not be emptied if a safety hazard exists. Customer will be contacted by Contractor to remove excess. The pickup will be rescheduled when excess refuse has been removed.
3. Odor and Insect Control: The customer will be responsible for odor and insect control around containers.
4. Commercial Customer is responsible for payment directly to the Contractor for services based on the customer rates approved by the City.

SECTION 13
VEHICLE AND EQUIPMENT STANDARDS

A. General

1. Contractor shall provide a fleet of collection Vehicles sufficient in number and capacity to efficiently perform the work required by the Contract in strict accordance with its terms. Contractor shall not use residential collection equipment that is too large to utilize the City's alleys, or tears up the City's streets. Contractor shall have available on Working Days sufficient back-up Vehicles for each type of collection and Vehicles to use to respond to complaints and emergencies. All Vehicles shall be roadworthy, fit for the purpose of performing the intended services, and otherwise in compliance with this Contract. City representative(s) may inspect all Vehicles to be used in servicing this Contract no later than thirty (30) Days before Contract begins and each year of the Contract. Any Vehicle unfit to perform the services set forth herein shall be taken out of service.
2. Contractor shall furnish and maintain all such equipment as is considered to be necessary for prosecution of the work in an acceptable manner and at a satisfactory rate of progress.

B. Vehicle List

Contractor shall identify annually in writing to the City a listing of:

1. Routes, Vehicles and size of Vehicles to be used in the City by service type;
2. Number of spare Vehicles to be on hand for back-up of front-line Vehicles; and
3. Designated unique Vehicle number, description, age, and legal GVW of each Vehicle.

C. Specifications

1. All Vehicles used by Contractor and Contractor's subcontractor(s) in providing collection of materials under the Contract shall be designed to prevent leakage, spillage or overflow. All such Vehicles shall comply with U.S. Environmental Protection Agency noise emission regulations and other applicable noise control regulations. Contractor shall also ensure that GVW of all vehicles, even when loaded, does not exceed Vehicle license limitations to protect the roads and highways of the City.
2. All equipment, tools, and machinery used for handling materials and executing any part of the Contractor's work in the City shall be subject to reasonable approval by the City and shall be maintained in satisfactory, safe and efficient working condition in accordance with the manufacturer's specifications and/or recommendations. Equipment used by Contractor shall be such that no injury to the workers or property should result from its proper use. Contractor shall be responsible for initiating, maintaining and

supervising all safety precautions and programs, in connection with the work and services performed hereunder. Contractor shall provide reasonable protection to prevent property loss or damage and/or personal injury to persons, including but not limited to employees performing such work and all other persons who may be affected thereby.

D. Vehicle Identification

Contractor's name, local telephone number, and a unique Vehicle identification number designated by Contractor for each Vehicle shall be prominently displayed on all Vehicles. The Contractor's name and local telephone number shall be displayed in letters and numbers no less than four (4) inches high and the identification number shall be displayed in letters and numbers no less than two and one-half (2 ½) inches high. Contractor shall not place the City's logo on its Vehicles.

All equipment used for the collection of recycling materials must display recycling signage clearly identifiable by the public.

E. Vehicle and Equipment Inventory

In addition to the above requested information, Contractor shall furnish the City a written inventory of all Vehicles and equipment used in providing service, and shall update the inventory annually and within fifteen (15) Days of the Day any Vehicle or equipment is added to or removed from the inventory. The inventory shall list all Vehicles by manufacturer, ID number, date of acquisition, type, and capacity.

F. Cleaning and Maintenance

Contractor shall maintain all of its properties, facilities and equipment used in providing service under the Contract in a safe, neat, clean and operable condition at all times. Vehicles used in the collection of materials under the Contract shall be thoroughly washed at least weekly and on a regular basis so as to present a clean appearance. City may inspect Vehicles at any reasonable times to determine compliance with sanitation requirements.

G. Inspection

Contractor shall inspect each Vehicle and each piece of equipment daily to ensure that all equipment is operating properly and complies with Applicable Law. Vehicles which are not operating properly or do not comply with Applicable Law shall be taken out of service until they are repaired and do operate properly and comply with Applicable Law. Contractor shall perform preventive maintenance and all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all Vehicle maintenance, recorded according to date and mileage, and shall make such records available to the City upon request to the extent necessary to ensure compliance with manufacturer's recommended scheduled Vehicle service.

H. Repair

Contractor shall repair, or arrange for the repair of, all of its Vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

I. Storage

Contractor shall arrange to store all vehicles and other equipment in safe and secure location(s), where applicable, in accordance with City's applicable zoning regulations.

**SECTION 14
CONTINGENCY PLAN**

Within ninety (90) Days after the commencement of the services under the terms of this Contract, Contractor shall submit to the City for approval a contingency plan showing the program and procedures Contractor will implement in the event of an emergency, downtime, outage, equipment failure or breakdown, labor dispute, or other situation or condition that would impair Contractor's ability to collect Solid Waste and Recyclables, respectively, and dispose of collected Solid Waste, from the City or otherwise perform the services required under the terms of this Contract.

**SECTION 15
REPORTING REQUIREMENTS**

Contractor shall maintain and submit to the City accurate reports which detail activity related to the above mentioned services in a format approved by the City. These reports shall include data for all materials handled from its services to the City, and the City may request additional information be submitted in monthly and annual reports as the need arises.

- A. Monthly reports shall include the data as described in Section 7, Section 12, and Section 19 of this Contract.
- B. Contractor shall report total estimated volume or weight for commercial Recyclables collected within city limits on a monthly basis.
- C. Should the City implement mandatory recycling for Multi-Family Dwellings, the monthly report data shall include a detailed listing of Multi-Family Complex customer names, addresses, number of containers provided, and total estimated volume or weight of Recyclables collected at each location.

- D. Annual reports shall report all the above data, following the same format as the monthly report.
- E. Records shall be kept on a daily, weekly, cumulative monthly, and cumulative annual basis, and shall be available to the City upon request.
- F. Contractor shall file reports with the City in a timely manner, but on no less than a monthly basis, specifying all complaints, accidents or incidents while performing any duties pursuant to the terms of this Contract, outages or downtime, and inspections by any regulatory agencies during the month of the report.
- G. Reports shall detail the nature and reasons for these occurrences as well as all results, findings and actions taken to resolve such incidents. Contractor shall also notify the City immediately of any fines or penalties levied and any actions that could have an adverse impact on the Contractor or service to the City, or both. Failure to report such data shall subject the Contractor to damages described in Section 20 of this Contract.

SECTION 16
EVENTS OF DEFAULT BY CONTRACTOR

- A. The following shall constitute events of default on the part of the Contractor except to the extent caused by the occurrence of an Uncontrollable Circumstance or City's fault unless otherwise specified herein:
 - 1. Failure by the Contractor to perform any Material Obligation of Contractor under the terms of this Contract, and continuance of such failure after (i) written notice thereof has been provided by the City specifying such failure and requesting that such condition be remedied, and (ii) Contractor's failure to cure the default or immediately initiate and diligently pursue reasonable action and cure such non-performance within twenty (20) Days after receiving notice from the City (provided, if such failure is of a nature that it cannot be cured within such twenty (20) day period, Contractor shall not be in default if Contractor commences the curing of such failure within such twenty (20) day period, and diligently pursues the curing thereof and both City and Contractor agree that the failure cannot be cured in twenty (20) Days); or
 - 2. The Contractor being insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver trustee, or liquidator for a substantial part of its property; or a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by the Contractor, under the laws of any Governmental Body or against the Contractor, if the Contractor does not take the appropriate action to dismiss said proceedings; which proceedings have not been dismissed within ninety (90) Days of the institution of such proceedings; or any action or answer by the Contractor approving, consenting to, or acquiescing in, any such proceedings; or the event of any

distress, execution, or attachment upon the property of the Contractor which shall substantially interfere with its performance hereunder; or

3. The following acts or omissions by the Contractor shall constitute failure to perform a Material Obligation of Contractor under this Contract:
 - a. Failure of Contractor to commence work operations within the time specified in the Contract.
 - b. Failure of Contractor to provide and maintain sufficient labor, Vehicles and equipment or licenses, permits and necessary approvals from City or a third party to properly and legally execute the working operations.
 - c. Evidence that Contractor has abandoned the work.
 - d. Evidence that Contractor has become insolvent or bankrupt, or otherwise financially unable to carry on the work satisfactorily.
 - e. Failure on the part of Contractor to comply with any material requirements of the Contract such as failure to maintain insurance or the Performance Bond or to comply with any of the City's material requirements which are provided for in this Contract.
 - f. Indication that the Contractor has made an unauthorized assignment of the Contract or any funds due thereof for the benefit of any creditor or for any other purpose.
 - g. Failure to supply complete and accurate information as required in this Contract in all material respects.
 - h. Failure to indemnify the City as required herein.
 - i. Falsifying records or reports to the City, State or Federal governments.
 - j. Failure to remedy the cause of a complaint as described in Section 19, subject to the provisions of Section 19.E below.
 - k. Failure to comply with Applicable Law that affects Contractor's ability to perform this Contract as reasonably determined by the City.
- B. City shall, as soon as practical, notify Contractor of any failure on the Contractor's part to comply with the terms of this Contract. After receipt of notice from the City of an event of default set forth in Section 16.A above, Contractor shall acknowledge receipt of such notice by telephone, facsimile, or email within forty-eight (48) hours.

SECTION 17
EVENTS OF DEFAULT BY CITY

- A. The following shall constitute events of default on the part of the City, except to the extent excused by the occurrence of an Uncontrollable Circumstance or Contractor's fault unless otherwise specified herein:
1. A failure by City to timely perform any Material Obligation under the terms of this Contract, and the continuance of such failure for a period of forty-five (45) Days after written notice thereof has been provided by the Contractor specifying such failure and requesting that such condition be remedied if City does not either cure the default or initiate and diligently pursue reasonable actions to cure such non-performance notwithstanding Section 36; or
 2. City being insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property; or a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by City under the laws of any jurisdiction or against City, if City does not take appropriate action to dismiss said proceedings, which proceedings have not been dismissed within ninety (90) Days of the institution of such proceedings; or any action or answer by City, approving of, consenting to, or acquiescing in, any such proceedings; or the levy of any distress, execution or attachment upon the property of City, which shall substantially interfere with its performance hereunder.
 3. The following acts or omissions by the City shall constitute failure to perform a Material Obligation of the City under this Contract:
 - a. Designate City Manager or his designee to provide timely direction to the Contractor and render City decisions.
 - b. Each month, the City shall notify the Contractor in writing of (i) the Residential Service Customers to be added or dropped from the Contractor's Collection Services or a change in service, (ii) the house count (i.e., total number of Residential Service Customers to bill) for the month, (iii) the names/addresses or changes thereto of senior citizen discount Residential Service Customers; (iv) other information the Contractor may require to timely invoice the City, and (v) Multi-Family Dwelling counts should the City approve exclusive franchise for Contractor for Multi-Family Dwelling Recyclables Collection Services in this Contract.
 - c. Make timely payments upon review and approval of invoices with appropriate accompanying reports submitted by the Contractor.

- d. Cooperate with Contractor on educational programs and material to the City's residential customers to educate citizens on the proper way to set out Solid Waste and Recyclables for collection under the terms of this Contract and the City's ordinances.
 - e. Work with Contractor to resolve customer service issues, including customer's failure to abide by the requirements of the City Code of Ordinances.
 - f. Review and approve all route and service delivery dates.
- B. Contractor shall, as soon as practical and in writing, notify City of any failure on the City's part to comply with the terms of this Contract. After receipt of notice from the Contractor, City shall acknowledge receipt of such notice and shall promptly provide the Contractor with notice of what corrective action has or shall be taken by the City, within a reasonable time, in light of the circumstances. Failure to promptly provide acknowledgement of receipt of notice, or notice of planned corrective action, shall constitute an event of default by the City.

SECTION 18
LOCAL OFFICE AND CONTRACT ADMINISTRATION

Contractor shall maintain during the term of this Contract a fully operational business office within the City. Contractor shall charge, assign or delegate to this office full authority to transact all business required in the performance of this Contract. Contractor shall designate a qualified managing agent within the City or its immediately surrounding areas and shall identify same in writing to the City. All notices may be served from the City upon the designated managing agent. Service upon Contractor's managing agent shall always constitute service upon the Contractor.

- A. Contractor's local office shall be open during collection hours so that customers can lodge complaints, requests for information, requests for service, etc. At a minimum, the Contractor's local office shall be open during the hours of 8 a.m. and 5 p.m. Monday through Friday, and 8 a.m. and 3 p.m. on Saturdays, or until completion of tasks, whichever is latest.
- B. Contractor's local office shall have a responsible person in charge during collection hours on Working Days, and shall be equipped with sufficient communications technology and sufficient competent personnel to receive all communications and respond to and/or disseminate communications as necessary. Contractor's communication personnel shall deal with all communications in a courteous and polite manner and record all complaints. Contractor shall resolve (or commence the resolution of) all complaints in an expeditious manner within the time period required by this Contract.

SECTION 19
COMPLAINTS AND NON-PERFORMANCE

- A. All residential and commercial service complaints received by the Contractor's call center shall be documented in a monthly report to a designated City representative. All valid residential and commercial complaints shall be resolved (or resolution initiated) within one (1) Working Day. Request for container swaps by commercial customers shall be completed within seven days. On a monthly basis, Contractor shall supply the City with documentation of all complaints, including complaints forwarded by City staff, indicating the date and hour of inquiry or complaint receipt, the nature of the complaint or inquiry, and the manner and timing of resolution. Complaints received after 3 p.m. on Saturday or a day preceding a holiday must be resolved prior to 9 a.m. on the next Working Day. When a complaint is received on the day preceding a holiday or a weekend, it shall be promptly serviced on the next Working Day.
- B. It shall be the duty of Contractor to take whatever steps may be necessary to remedy the cause of the complaint and notify the City of its disposition within one (1) Working Day, after receipt of the complaint by Contractor.
- C. Contractor shall provide the City with a full explanation of the disposition of any complaint involving a customer's claim of damage to private property or personal injury as the result of actions of Contractor's employees as soon as possible, with additional information provided as requested by the City and shall also include such information in the monthly report to the City.
- D. Contractor shall work with the City to notify all customers about complaint procedures, rules and regulations, and Day(s) of collection on an annual basis and whenever there is a change in service, Day(s) of collection, procedures, etc. commencing in the first month of the Contract and thereafter whenever a change in service is made. Notice is to be in the form as designated by the City and distributed by Contractor to all premises served by Contractor. Such notice methodology and any materials must be approved by the City prior to distribution and conform to all legal requirements for accessibility.
- E. Notwithstanding anything contained herein to the contrary, Contractor's failure to remedy the cause of the complaint, or due to events described in Section 20 below, shall not be considered a material breach of this Contract or breach of a Material Obligation of Contractor, and thereby not considered an event of default, unless Contractor's failure to perform or act in accordance with the terms of this Contract occurs in a consistent, repeated manner as reasonably determined by the City. Notwithstanding anything contained in this Contract to the contrary, if the City reasonably determines that failure has occurred in a consistent, repeated manner and the notification procedures as described in Section 16B have been met, then the Contractor's failure to remedy complaints as described above may be considered a failure to perform a Material Obligation of Contractor.

SECTION 20
LIQUIDATED DAMAGES

For the purpose of computing damages for Contractor's failure to remedy an action or inaction listed below, it is agreed that the City may deduct from payments due to Contractor or to become due to Contractor, the following amounts as liquidated damages:

- A. Failure to clean up spilled Garbage, Refuse, or other Solid Waste resulting from loading and/or transporting within four (4) hours - each incident at the same premises: fifty dollars (\$50.00).
- B. Failure to clean up spilled Recyclables resulting from loading and/or transporting within four (4) hours - each incident at the same premises: fifty dollars (\$50.00).
- C. Failure or neglect to collect Garbage, Refuse or other Solid Waste from any premises at those times as provided by this Contract within twenty-four (24) hours, excluding non-Working Days and hours - each failure or neglect or repeated instance at same premises: fifty dollars (\$50.00).
- D. Failure or neglect to collect Recyclables from any premises at those times as provided by this Contract within twenty-four (24) hours, excluding non-Working Days and hours - each failure or neglect or repeated instance at same premises: fifty dollars (\$50.00).
- E. Failure or neglect to correct chronic problems in any category of service, including failure to meet any of the requirements as listed in the Contract (chronic shall mean three or more similar incidents at the same premises within a 14 day period) - each instance: five hundred dollars (\$500.00).
- F. Failure to clean up hydraulic oil, motor oil, or other spills resulting from equipment breakdowns or leaks: each instance: five hundred dollars (\$500.00).
- G. Chronic use of Vehicles for Solid Waste or Recyclables collection for which the manufacturer's gross allowable vehicle weight exceeds the limits allowable by City ordinance: Two Hundred dollars (\$200.00) per occurrence.
- H. Failure to provide Solid Waste Collection Service at least once a week for residential customers, except in cases of approved holidays or during an Uncontrollable Circumstance: fifty dollars (\$50.00) per occurrence per Residential Service Customer.
- I. Failure to provide Recyclables Collection Service at least once a week: fifty dollars (\$50.00) per occurrence per service unit.
- J. Failure to submit accurate reports, including monthly, quarterly, annual, employment reports in all material respects and others as specified in the Contract and invoices in the specified

format: non-payment of invoices until submission of an accurate and appropriately formatted invoice and complete reporting information.

- K. Failure to maintain a staffed office during specified hours: Two Hundred dollars (\$200.00) per occurrence.
- L. Failure to notify the City of changes in key personnel (e.g. Market Area Manager, Operations Manager, Facility Manager, and Municipal Marketing Representative) and/or to introduce such new personnel to the appropriate City staff: fifty dollars (\$50.00) per occurrence.
- M. Failure to maintain availability of the DFW Landfill to receive and Dispose of waste collected in the City for Disposal subject to Uncontrollable Circumstances or DFW Landfill's inability to accept waste: One Thousand Dollars (\$1,000) for first occurrence and Five Thousand (\$5,000) per occurrence thereafter, each occurrence being comprised of the aggregate length of time of unavailability due to such event.
- N. Wrongfully rejecting Solid Waste at DFW Landfill or other Disposal Facility provided by Contractor: One Thousand Dollars (\$1,000) for first occurrence and Five Thousand (\$5,000) per occurrence thereafter.
- O. Failure to properly bill and collect from Commercial Solid Waste Customers and forward such sums to the City, in any material respect, pursuant to this Agreement: sums due the City, plus \$1,500 per occurrence. Per occurrence shall be defined as per billing address for each six month period that is not billed or remitted.

Notwithstanding anything contained herein to the contrary, Contractor shall not be liable for any liquidated damages as set forth above if such failure is due to, or as a result of, actions or inactions of any party, other than Contractor. In addition, prior to Contractor being liable for any such liquidated damages, the action or inaction giving rise to such liquidated damages must have occurred in a consistent, repeated manner (which shall mean three or more similar incidents at the same premises within a fourteen (14) day period).

SECTION 21 **UNCONTROLLABLE CIRCUMSTANCES**

A. Uncontrollable Circumstance Affecting Contractor's Obligations

Contractor shall be excused for the failure to perform its obligations under the terms of this Contract if such failure results from the occurrence of an Uncontrollable Circumstance. Contractor shall seek diligently and in good faith to perform its obligations, notwithstanding the occurrence of an Uncontrollable Circumstance, to mitigate the adverse effects of an Uncontrollable Circumstance, and to overcome an Uncontrollable Circumstance as soon as practicable.

B. Uncontrollable Circumstance Affecting City's Obligations

City shall be excused for the failure to perform its obligations under the terms of this Contract if such failure results from the occurrence of an Uncontrollable Circumstance. City shall seek diligently and in good faith to perform its obligations, notwithstanding the occurrence of an Uncontrollable Circumstance, to mitigate the adverse effects of an Uncontrollable Circumstance, and to overcome an Uncontrollable Circumstance as soon as practicable.

C. Notice of an Uncontrollable Circumstance

Contractor shall provide verbal notice of an Uncontrollable Circumstance to the City within twelve (12) hours of the Contractor's knowledge of such Uncontrollable Circumstance and Contractor shall follow up with written notification within three (3) Days of the Contractor's knowledge of such Uncontrollable Circumstance. Such notice shall, at a minimum, set forth the following (to the extent then known or available, or if not, as soon as practicable thereafter, a separate notice shall provide such information not provided in the first notice):

1. A description of the Uncontrollable Circumstance that has occurred,
2. The effect, if any, of such Uncontrollable Circumstance on Contractor's performance or other obligations under this Contract, and
3. Actions taken or proposed by Contractor to mitigate and/or resolve the effects of such Uncontrollable Circumstance.

D. Reinstatement of Ability to Perform

After the resolution of an Uncontrollable Circumstance and the restoration of Collection and/or Disposal Services, the Contractor shall provide written notice of a reinstatement of Collection and/or Disposal Services. The City shall direct the Contractor to reinstate the Collection and/or Disposal Services (or shall cause reinstatement) unless this Contract shall have been previously terminated as provided herein.

E. Uncontrollable Circumstance

Neither Contractor nor the City shall be liable for the failure to perform their duties or for any resultant damage, or loss, if such failure is caused by Uncontrollable Circumstances. If such Uncontrollable Circumstances persists for more than thirty (30) Days, or if after its [their] cessation, the Contractor is unable to render full or substantial performance for a period of thirty (30) Days, the City may terminate this Contract by giving Contractor ten (10) Days advance written notice.

SECTION 22
TERMINATION

The Contract may be declared terminated or suspended by the City Council for any event of default (as set forth in Section 16 above) by Contractor; provided, (i) the City has provided Contractor written notice of such action or inaction constituting grounds for such suspension or termination, and (ii) Contractor fails to cure such alleged action or inaction within thirty (30) Days of Contractor's receipt of such notice. If such event of default is of a nature that it cannot be cured within such thirty (30) Day period, the City will not take action to suspend or terminate this Contract provided Contractor commences the curing of such action or inaction within the thirty (30) Day period and diligently pursues the curing thereafter, as determined by the City.

If the Contract is terminated, Contractor shall discontinue the work or such part thereof as the City shall designate, whereupon the surety may, at its option, assume the Contract or that portion thereof which the City has ordered Contractor to discontinue, and may perform the same or may, with the written consent of the City, sublet the work or that portion of the work as taken over; provided, however, that the surety shall exercise its option and begin performance of the work, if at all, within five (5) Days after the written notice to discontinue the work has been served upon Contractor and upon the surety or its authorized agent. The surety, in such event, shall assume Contractor's place in all respects and shall be bound by all the terms and conditions of this Contract. Surety shall be paid by the City for all work performed by it in accordance with the terms of the Contract.

In case the surety does not, within the above-specified time, assume the Contract responsibilities, or that portion thereof which the City has ordered Contractor to discontinue, then the City shall have the power to perform and complete, by contract or otherwise, as it may determine, the work herein described or such part thereof as it may deem necessary, and Contractor agrees that the City shall have the right to procure equipment, labor and materials necessary for the completion of the work. The City shall not be required to obtain the lowest bid for the work of completing the Contract, but the expense to the City for same shall be the actual cost to the City of such work.

In case such expenses shall exceed that amount which would have been payable under the Contract if the same had been fully completed by the Contractor, then the Contractor and its surety shall pay the amount of such excess to the City on notice from the City of the excess due. When any particular part of the work is being carried on by the City by contract or otherwise, under the provisions of this section, the Contractor shall continue the remainder of the work in conformity with the terms of the Contract.

In all instances, Contractor and surety shall be liable for all costs incurred by City during the period after notice to discontinue the work has been served upon Contractor and the surety until such time as City either has elected to prosecute the work of this Contract itself or has replacement contractors in place to prosecute the work with or without additional City forces.

SECTION 23
INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the City.

SECTION 24
INDEMNIFICATION

- A. CONTRACTOR SHALL RELEASE, INDEMNIFY, REIMBURSE, DEFEND, AND HOLD HARMLESS, CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, ARISING OUT OF THE WORK AND SERVICES TO BE PERFORMED HEREUNDER BY CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, OR INVITEES, INCLUDING DAMAGES, LOSS, INJURY OR DEATH, TO THE EXTENT CAUSED BY ANY ERROR, OMISSION, DEFECT, OR DEFICIENCY OF CONTRACTOR IN ACCORDANCE WITH THIS CONTRACT.
- B. CONTRACTOR DOES HEREBY RELEASE, INDEMNIFY, REIMBURSE, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, OR CAUSES OF ACTION WHICH MAY ARISE DUE TO ANY LOSS OR DAMAGE TO PERSONAL PROPERTY, OR PERSONAL INJURY, AND/OR DEATH OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS CONTRACT, WHEN SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY THE NEGLIGENCE OF CONTRACTOR, ITS OFFICERS, AGENTS, OR EMPLOYEES, OR SUBCONTRACTORS, OR THE JOINT NEGLIGENCE OF CONTRACTOR, ITS AGENTS, OR EMPLOYEES, OR SUBCONTRACTORS, AND ANY OTHER PERSON OR ENTITY, EXCLUDING ALL PARTIES INDEMNIFIED HEREUNDER, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT OR OMISSION OF CONTRACTOR.
- C. THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION SHALL INCLUDE, BUT NOT BE LIMITED TO, THE BURDEN AND EXPENSE OF

DEFENDING ALL CLAIMS, SUITS, AND ADMINISTRATIVE PROCEEDINGS (WITH COUNSEL REASONABLY APPROVED BY THE INDEMNIFIED PARTIES), EVEN IF SUCH CLAIMS, SUITS OR PROCEEDINGS ARE GROUNDLESS, FALSE, OR FRAUDULENT, AND IN CONDUCTING ALL NEGOTIATIONS OF ANY DESCRIPTION, AND PAYING AND DISCHARGING, WHEN AND AS THE SAME BECOME DUE, ANY AND ALL JUDGMENTS, PENALTIES OR OTHER SUMS DUE AGAINST SUCH INDEMNIFIED PERSONS.

- D. UPON LEARNING OF A CLAIM, LAWSUIT, OR OTHER LIABILITY WHICH CONTRACTOR IS REQUIRED HEREUNDER TO INDEMNIFY, THE CITY SHALL PROVIDE CONTRACTOR WITH REASONABLY TIMELY NOTICE OF SAME.
- E. THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OF THIS CONTRACT AND THE DISCHARGE OF ALL OTHER OBLIGATIONS OWED BY THE PARTIES TO EACH OTHER HEREUNDER.
- F. IN ALL OF ITS CONTRACTS WITH SUBCONTRACTORS FOR THE PERFORMANCE OF ANY WORK UNDER THIS CONTRACT, CONTRACTOR SHALL REQUIRE THE SUBCONTRACTORS TO INDEMNIFY THE CITY IN A MANNER CONSISTENT WITH THIS SECTION.

SECTION 25
INSURANCE

Contractor shall not commence work under this Contract until it has obtained all the insurance required under the Contract, and such insurance has been approved by the City. Contractor shall keep the required insurance in force throughout the term of this Contract.

A. WORKERS' COMPENSATION INSURANCE:

Contractor shall maintain, during the term of this Contract, Workers' Compensation Insurance at statutory limits on all of its employees to be engaged in work under this Contract, and for all subcontractors. Employer's Liability (EL) Insurance shall also be maintained, at minimum limits as follows: \$500,000 each accident/\$500,000 disease each employee/\$500,000 disease policy limit.

B. GENERAL LIABILITY INSURANCE (CGL):

Contractor shall procure and shall maintain during the term of this Contract a Commercial General Liability Insurance Policy at a minimum limits of Five Million Dollars (\$5,000,000) per occurrence with an aggregate of Five Million (\$5,000,000) Dollars combined single limit, including property damage and personal injury coverage, during effective dates of the

Contract, or any renewal thereof, in order to protect and save the City harmless against any and all claims for damage to person, persons, or property arising from the Collection and Disposal Services as described in this Contract. Contractor shall also provide excess Commercial General Liability in the amount of Five Million Dollars (\$5,000,000). The City of Lewisville shall be named an Additional Insured on said policy. The combined limits of \$10 million may be satisfied by a combination of primary and excess commercial general liability insurance policies.

C. AUTOMOBILE INSURANCE:

Contractor shall procure and maintain during the term of this Contract Comprehensive Automobile Liability Insurance covering all Vehicles involved with Contractor's operations under this Contract. The minimum limits of liability coverage shall be in the amount of Two Million Dollars (\$2,000,000) per occurrence combined single limit, during the effective dates of Contract and any renewal period. The named insured and employees of Contractor shall be covered under this policy. The City of Lewisville shall be named an Additional insured on Endorsement TE 9901 or equivalent, as its interests may appear.

D. ENVIRONMENTAL IMPAIRMENT LIABILITY (EIL) AND/OR POLLUTION LIABILITY - \$5,000,000 PER OCCURRENCE.

EIL coverage(s) must be included in policies listed in items above; or, such insurance shall be provided under separate policies. Liability for damage occurring while loading, unloading and transporting materials collected under the Contract shall be included under the Automobile Liability insurance or other policy(s). The City of Lewisville shall be named an Additional Insured on said policy.

NOTE: BETWEEN A AND D ABOVE, ANY POLLUTION EXPOSURE, INCLUDING ENVIRONMENTAL IMPAIRMENT LIABILITY, ASSOCIATED WITH THE SERVICES AND OPERATIONS PERFORMED UNDER THIS CONTRACT SHALL BE COVERED; IN ADDITION TO SUDDEN AND ACCIDENTAL CONTAMINATION AND/OR POLLUTION LIABILITY COVERAGE, THERE MUST BE NON-SUDDEN AND NON-ACCIDENTAL CONTAMINATION AND/OR LIABILITY COVERAGE FOR GRADUAL EMISSIONS AND CLEAN-UP COSTS.

The following shall pertain to policies of insurance (B through D) listed above:

Additional Insured Clause: "The City of Lewisville, its officers, agents, employees, and representatives are added as additional insureds as respects operations and activities of, or on behalf of the named insured, performed under Contract with the City of Lewisville." An equivalent clause may be acceptable in the discretion of the City.

The following shall pertain to all applicable policies of insurance (A through D) listed above:

1. Subcontractors shall be covered under the Contractor's insurance policies or they shall provide their own insurance coverage; and, in the latter case, documentation of coverage shall be submitted to the Contractor prior to the commencement of work and the Contractor shall deliver such to the City.
2. Prior to commencing work under this Contract, the Contractor shall deliver to the City of Lewisville insurance certificate(s) documenting the insurance required and terms and clauses required.
3. Each insurance policy required by this Contract shall contain the following clauses:
"This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) Days prior written notice has been given to the City Manager, City of Lewisville, P.O. Box 299002, Lewisville, Texas 75029-9002." Note: Written notice can be by Contractor or insurance company.
4. The insurers for all policies must be approved to do business in the State of Texas and be currently rated in terms of financial strength and solvency to the satisfaction of the Risk Consultant for the City of Lewisville
5. The deductible or self-insured retention (SIR) affecting the coverage required shall be acceptable to the Risk Consultant of the City of Lewisville; and, in lieu of traditional insurance, alternative coverage maintained through insurance pools or risk relations groups must be also approved.

E. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY COVERAGE

The insurer shall agree to provide a waiver of subrogation in favor of the City, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor for the City under this Contract.

SECTION 26
PERFORMANCE BOND

Contractor agrees that upon the execution of this Contract and before beginning work, it shall make, execute and deliver to the City of Lewisville a good and sufficient Performance Bond in a form furnished by the City, to secure the faithful performance of the terms and conditions herein. Each year, such Performance Bond shall be in the amount of 100 percent of the proposed value of performing the Collection Services and Disposal Services for the first six months of the year of the then current Contract Year. The Performance Bond shall be renewed each year thereafter throughout the term of the Contract and any renewal periods in an amount not less than the estimated value of six months of the Collection Services and Disposal Services for the then current year, taking into consideration Contractor's adjusted prices then in effect. Same shall be signed by the President or General Officer of the Contractor, together with the signature of the

corporate secretary. The surety shall be a surety company duly authorized to do business in the State of Texas, and acceptable to the City Council of the City.

In lieu of the Performance Bond, Contractor may submit an irrevocable, direct pay Letter of Credit, issued by a local banking institution, in the amount listed above, made out in favor of the City of Lewisville.

All performance security, whether Performance Bond or Letter of Credit, must be in form and content acceptable to the City Attorney and annual documentation is required in the form of written certification from the surety company or banking institution that the said Performance Bond or Letter of Credit remains in effect each year of the Contract. In the event that the Performance Bond or Letter of Credit will cease to be in effect, the surety company or banking institution and Contractor shall notify the City at least 30 Days in advance of lapse, and Contractor shall make, execute and deliver to the City a good and sufficient Performance Bond or replacement Letter of Credit as described above and in the amount named above no less than five (5) Days in advance of lapse of coverage. Surety shall be rated "A" or better by A.M. Best and demonstrate adequate resources to make good on any claims. Contractor shall submit appropriate financial data at least annually, or more frequently if requested by the City, to City's Risk Manager so the City may make determination of Contractor's surety's acceptability.

SECTION 27
EFFECT OF CHANGE IN LAW

In the event that a Change in Law has the effect of materially altering the terms of this Contract, or preventing or precluding compliance with one or more provisions of this Contract, or preventing or precluding the benefit(s) bargained for under this Contract, such provisions of this Contract and others may be modified or suspended by the mutual agreement of the Parties as may be necessary to comply with, ameliorate, or prevent the detrimental effects on the Contract of such Change in Law. A Party detrimentally affected by a Change in Law shall so notify the other Party and request amendment to the Contract accordingly, and the City and the Contractor shall engage in good faith negotiations regarding such amendments of this Contract that reflect the extent to which the provisions hereof have been, or should be, so modified or suspended. If the Parties are unable or unwilling to agree on an amendment to the Contract within sixty (60) days of the notice of Change in Law, the Party detrimentally affected by the Change in Law may terminate the Contract on thirty (30) days notice.

SECTION 28
LICENSES, PERMITS AND FEES

Contractor agrees to obtain and pay for all licenses, permits, certificates, inspections and all Governmental Approvals and other fees required by Applicable Law or otherwise necessary to perform the services prescribed hereunder. Contractor shall also pay, at its own expense, all fees

necessary to the collection and removal of Garbage, Refuse, Bulky Waste, Yard Waste, and Recyclables and their residuals.

SECTION 29
UNACCEPTABLE WASTE

Contractor shall **NOT** knowingly accept, nor be required to accept for Collection and/or Disposal, Unacceptable Waste. Contractor shall leave Unacceptable Waste at its original location and notify the City immediately of the location and provide the City with a description of such Unacceptable Waste. Contractor reserves the right to reject or revoke acceptance of any Unacceptable Waste. Upon notification from the Contractor, the City shall determine whether the waste is Unacceptable Waste or acceptable under the terms of this Contract. Contractor shall immediately return to the site to pick up the suspected waste upon notification from the City that the waste is not Unacceptable Waste.

SECTION 30
HEALTH AND SANITATION

Contractor shall establish and enforce in its operations and among its employees such regulations in regard to cleanliness and sanitation in the collection and transport of Garbage, Refuse and Solid Waste and the collection, transport and handling of Recyclables, Yard Waste, and Bulky Waste, as will tend to prevent the inception and spread of disease and to effectively prevent the creation of a nuisance on any property either public or private. Residents generating hypodermic needles must dispose of such needles in OSHA approved containers. No unprotected hypodermic needles shall be disposed of by such customers.

SECTION 31
CUMULATIVE REMEDIES

The rights and remedies granted in this Contract are cumulative, and the exercise of such rights shall be without prejudice to the enforcement of any other right or remedy authorized by law or this Contract. No waiver of any violation shall be deemed or construed by a court of law or an arbitrator to constitute a waiver of any other violation or other breach of any of the terms, provisions, and covenants contained herein.

SECTION 32
REMEDIES FOR BREACH

The Parties agree that, except as otherwise provided in Sections 20 and 22 with respect to termination, in the event that either Party breaches this Contract, the other Party may exercise any legal rights it has under this Contract under the security instruments and under Applicable

Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither Party shall have the right to terminate this Contract for cause except upon the occurrence of an event of default, subject to applicable notice and cure periods, unless otherwise stated herein.

SECTION 33
NO WAIVER OF RIGHTS

No failure by the City or by the Contractor to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Contract or to exercise any right or remedy hereunder, and no acceptance by the City of full or partial payment during the continuance of any such breach, shall constitute a waiver of any such breach or of such term, covenant, agreement, provision, condition or limitation. No term, covenant, agreement, provision, condition or limitation of this Contract to be kept, observed or performed by the City or by the Contractor, and no breach thereof, may be waived, altered or modified except by a written instrument executed and acknowledged by and delivered to the City and the Contractor. No waiver of any breach shall affect or alter this Contract, but each and every term, covenant, agreement, provision, condition and limitation of this Contract shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. This Contract may be terminated only by a written instrument of termination executed by the appropriate party and delivered to the non-terminating party (except by expiration of the term of this Contract)

SECTION 34
SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION

All representations and warranties of the Parties contained in this Contract, the Contractor's indemnity obligations in this Contract with respect to events that occurred prior to the termination, the rights and obligations of the Parties hereto pursuant to Sections 16, 17, 20, 24, 25, 26, 27, 31, 32 and all other provisions of this Contract that so provide shall survive the termination of this Contract. No termination of this Contract shall (1) limit or otherwise affect the respective rights and obligations of the Parties hereto accrued prior to the date of such termination, or (2) preclude either party from impeding the other party in any legal proceeding originated by a third-party as to any matter occurring during the term of this Contract.

SECTION 35
RIGHT TO AUDIT

Until the expiration of three (3) years after the final payment under this Contract, the City, or its designate, shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor and Guarantor involving transactions relating to this Contract, and including, but not limited to documents pertaining to Contractor's or Guarantor's financial

condition and creditworthiness, regulatory compliance, insurance and bonding status, contingent liabilities, traffic safety record, Vehicle inspection records and Litigation status. Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the City, or its designate, shall, until the expiration of three (3) years after final payment under the subcontract, have access to papers and records of such subcontractor involving transactions relating to the subcontract. The term "subcontract" as used herein includes purchase orders.

**SECTION 36
RIGHT TO INSPECT**

Contractor shall permit City and its authorized representatives to enter the DFW Landfill, Contractor's Vehicles and equipment storage and maintenance facilities, Contractor's offices, and such other facilities of Contractor that are used in whole or in part for, or associated with, Contractor's services under the Contract at reasonable times for inspection and other reasonable purposes. Nothing contained in this section is intended to limit City's right to enter these premises at anytime without notice to exercise any of its governmental functions.

**SECTION 37
GOVERNMENTAL POWERS AND IMMUNITIES**

It is understood and agreed that, by execution of this Contract, City does not waive or surrender any of its governmental powers or immunities. Contractor acknowledges that the City is a Governmental Body and as such has certain rights, powers and duties that may affect the Contractor's rights or obligations under the Contract.

**SECTION 38
COMPLIANCE WITH LAWS**

Contractor, its officers, agents, employees, contractors and subcontractors, shall abide by and comply with all Applicable Law, federal, state and local, including the City's charter and all ordinances, rules and regulations of the City of Lewisville. It is agreed and understood that, if City calls the attention of Contractor to any such violations on the part of Contractor, its officers, agents, employees, contractors or subcontractors, then Contractor shall immediately desist from and correct such violation.

**SECTION 39
DISCRIMINATION PROHIBITED**

Contractor, in the execution, performance or attempted performance of this Contract, shall not discriminate against any person or persons on any unlawful basis. This Contract is made and entered into pursuant to the Lewisville City Code, as amended, an ordinance prohibiting

discrimination, and Contractor hereby covenants and agrees that it has fully complied with all provisions of same and that no employee or employee-applicant has been discriminated against or will be discriminated against by Contractor in violation of said ordinance. Contractor warrants that it is an equal opportunity employer.

In addition, Contractor, in the execution, performance or attempted performance of this Contract, shall not discriminate on any prohibited basis and shall fully comply with all other applicable federal, state and local laws concerning discrimination.

SECTION 40
NON-ASSIGNMENT

Contractor shall not assign, transfer, sublet, convey, or otherwise dispose of the Contract or the rights, title, or interest in or to the same or any part thereof without the previous consent of the City Council with concurrence of the surety, which consent shall not be unreasonably withheld. In the event Contractor does, without such previous consent, assign, transfer, sublet, convey or otherwise dispose of the Contract or of the right, title or interest therein or any part thereof, City may, at its discretion, terminate the Contract in accordance with Section 22 hereof. Consent will not be withheld unreasonably in the case of a proposed assignment to an Affiliate of Contractor, but may be withheld for any reason or for no reason in the case of a proposed assignment by Contractor to a non-Affiliate, provided that Contractor, Guarantor and surety shall not be released from their respective obligations hereunder. In the event of an assignment of any duty required under this Contract, Contractor and Guarantor shall assume responsibility for performance of that duty including all liabilities pursuant to this Contract. The City may not assign its rights and privileges under this Contract without the prior written consent of the Contractor which shall not be unreasonably withheld.

SECTION 41
SUCCESSORS AND ASSIGNS

All of the terms, covenants, and agreements contained herein shall be binding upon and shall inure to the benefit of successors and assigns of the respective Parties hereto.

SECTION 42
NOTICES

Any notices (unless otherwise specified herein), bills, invoices or reports required by this Contract shall be sufficient if sent by the Parties in the United States mail, postage paid, to the address noted below:

If to the City:

City Manager
City of Lewisville
P.O. Box 299002
151 West Church Street
Lewisville, Texas 75057

If to the Contractor:

Waste Management of Texas, Inc.
c/o Public Sector Manager
520 E. Corporate, Suite 100
Lewisville, Texas 75067

With a copy to:

CT Corporation
350 North St. Paul Street
Dallas, Texas 75201

SECTION 43
VENUE

Should any action, whether real or asserted, at law or in equity, arise out of the terms and conditions of this Contract, venue for said action shall be in Denton County, Texas.

SECTION 44
SAVINGS CLAUSE

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

SECTION 45
ATTACHMENTS

All Attachments to this Contract are incorporated as part of this Contract for the purposes set forth herein as follows:

- Attachment A – Schedule of Residential Services and Rates
- Attachment B – Options for Additional Residential Services and Rates
- Attachment C – Schedule of Cost of Service Commercial Services and Rates
- Attachment D – Multi-Family Dwelling Recycling Services and Rates
- Attachment E – Cost of Service Cost Adjustment Method
- Attachment F – Disaster Management Plan
- Attachment G – Residential Recyclables

IN WITNESS WHEREOF, the Parties hereto have executed this Contract this ____ day of ____ A.D. 2014, in Lewisville, Denton County, Texas.

CITY OF LEWISVILLE, TEXAS


WASTE MANAGEMENT OF TEXAS, INC.



Dean Ueckert

Mayor

Date Signed: April 7, 2014




Donald J. Smith

President

Date Signed: 4-17-14

ATTEST:



Julie Heinze

City Secretary

WITNESS:



APPROVED AS TO FORM
AND LEGALITY:



Lizbeth Plaster

City Attorney

DULY PASSED AND APPROVED ON THE FIRST READING BY THE CITY
COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF 4 TO 1 ON
THIS THE 3RD DAY OF MARCH, 2014.

SECOND AND FINAL READING BY THE CITY COUNCIL OF THE CITY OF
LEWISVILLE, TEXAS, ON SECOND READING ON THIS THE 7TH DAY OF
APRIL, 2014.

ACCEPTANCE

WHEREAS, the City Council of the City of Lewisville, Texas did on the 7th day of April, 2014 enact an Ordinance entitled:


CONTRACT AND EXCLUSIVE FRANCHISE FOR COLLECTION OF RESIDENTIAL GARBAGE, REFUSE, YARD WASTE, BULKY WASTE, RECYCLABLES, CONTAINERIZED COMMERCIAL SOLID WASTE AND MULTI-FAMILY RECYCLING WITHIN THE CITY OF LEWISVILLE, TEXAS

WHEREAS, said Ordinance was on the 7th day of April, 2014 duly approved by the Mayor of said City and the seal of said City was thereto affixed and attested by the City Secretary;

NOW, THEREFORE, in compliance with the terms of said Ordinance as enacted, approved and attested, **Waste Management of Texas, Inc.**, hereby accepts said Ordinance and filed its written acceptance with the City Secretary of the City of Lewisville, Texas.

Dated this 17 day of April, 2014.

Waste Management of Texas, Inc.,

By: 
Name: DONALD J. SMITH
Title: PRESIDENT

Acceptance filed in the office of the office of the City Secretary of Lewisville, Texas as of the 21st day of April, 2014.


Julie Heinze, CITY SECRETARY

ATTACHMENT A

SCHEDULE OF RESIDENTIAL SERVICES AND RATES

Contractor will remove City-owned recycling carts from residential customer locations and deliver those carts to a City facility to be determined by the City.

ONCE A WEEK SERVICE		
Service	Container	Rate Per Month
Once a week trash collection; two 39-gallon bags allowed outside cart	WM 96-gallon cart *	\$11.46
Once a week recycling collection; nothing allowed outside cart	WM 96-gallon cart *	Included
Once a week Bulky Waste collection	Resident container/bundled or large item set-out; maximum 3 CY	Included
Once a week Yard Waste collection	Resident bundle, compostable bag, Residential Solid Waste Container set out; maximum 3 CY	Included
Senior citizen, same service as above	Same set-out containers; can request smaller cart but will pay same rate	\$9.17
Disabled carry-out trash/recycling service (does not include Bulky Waste and Yard Waste)	Same set-out containers; can request smaller cart but will pay same rate	\$11.46
Second trash or recycling cart	WM 96-gallon cart	\$5.00
Replacement of damaged cart	WM 96-gallon cart	Free
Replacement of missing/stolen cart (1-time charge)	WM 96-gallon cart	\$65.00

ATTACHMENT B**OPTIONS FOR ADDITIONAL RESIDENTIAL SERVICES AND RATES**

These services shall only be provided if specifically approved by the City Council. Rates below are per Residential Service Customer. The rates for the services listed in this Attachment B shall be subject to the annual rate adjustments set forth in Attachment E and other adjustments, if any, described in Section 2 of the Contract, regardless of whether the service has been approved by Council. The Contractor's offer to provide the services set forth in this Attachment B shall be available to the City during the first five (5) years of the Contract. If the City has not selected any of these services at the end of the fifth year of the Initial Term, then Contractor no longer has any obligation to offer or perform these services. If any of the services listed in this Attachment B become commercially unreasonable to perform or unavailable, Contractor shall provide the City with notice of said matter.

Service Enhancement Option	Rate
Once a week Yard Waste Collection Program (delivery of Yard Waste to reuse, composting, or other non-disposal facility)	\$2.56 per month
At Your Door HHW collection (unlimited)	\$1.20 per month
Once a month unlimited Yard Waste and Bulky Waste collection	\$2.05 per month
Recyclebank incentive program	\$0.66 per month

ATTACHMENT C

CONTRACTOR COST OF SERVICE

SCHEDULE OF COMMERCIAL SERVICES AND RATES

Prices reflect Contractor's Cost of Service to the City of Lewisville including disposal, but do not include the City's Commercial Franchise Fee.

COMMERCIAL REFUSE STORAGE CART RATES:

Container	Rate:
96-Gallon Cart, Collected 1 x week:	\$21.56 per cart/month
Additional 96-Gallon Cart, Collected 1 x week:	\$5.00 per cart/month (4 cart maximum)
Redelivery rate for nonpayment:	\$52.77 per occurrence
Replace stolen/missing Cart (one time fee)	\$65.00

FRONT LOADER CONTAINER RATES:

Bin Size	1xWeek	2xWeek	3xWeek	4xWeek	5xWeek	6xWeek	7xWeek	Extra Pickup
2 cy	\$62.65	109.80	156.98	204.15	251.32	298.50	345.65	24.97
3 cy	\$71.36	124.15	176.92	229.74	282.52	335.32	388.10	29.41
4 cy	\$79.84	138.25	196.66	255.08	313.48	371.90	430.32	35.86
6 cy	\$95.83	165.50	235.16	304.81	374.47	444.13	513.79	42.27
8 cy	\$110.65	191.55	272.46	353.34	434.26	515.15	596.06	54.34
Casters & Locks	\$10.55 each per month							

ROLL-OFF CONTAINER RATES:

<u>Size</u>	<u>Haul Rate per Pull</u>	<u>Disposal Rate per ton after the first four tons</u>	<u>Delivery Rate</u>	<u>Rental Rate</u>
NON-COMPACTORS				
10 cy container	\$150.37	20.57	92.33	158.29
12 cy container	\$150.37	20.57	92.33	158.29
18 cy container	\$150.37	20.57	92.33	158.29
20 cy container	\$150.37	20.57	92.33	158.29
24 cy container	\$150.37	20.57	92.33	158.29
30 cy container	\$150.37	20.57	92.33	158.29
40 cy container	\$150.37	20.57	92.33	158.29
COMPACTORS				
10 cy compactor	\$150.37	20.57	92.33	158.29
12 cy compactor	\$150.37	20.57	92.33	158.29
15 cy compactor	\$150.37	20.57	92.33	158.29
17 cy compactor	\$150.37	20.57	92.33	158.29
18 cy compactor	\$150.37	20.57	92.33	158.29
20 cy compactor	\$150.37	20.57	92.33	158.29
24 cy compactor	\$150.37	20.57	92.33	158.29
25 cy compactor	\$150.37	20.57	92.33	158.29
27 cy compactor	\$150.37	20.57	92.33	158.29
30 cy compactor	\$150.37	20.57	92.33	158.29
34 cy compactor	\$150.37	20.57	92.33	158.29
35 cy compactor	\$150.37	20.57	92.33	158.29
38 cy compactor	\$150.37	20.57	92.33	158.29
40 cy compactor	\$150.37	20.57	92.33	158.29
42 cy compactor	\$150.37	20.57	92.33	158.29

COMPACTOR RENTAL RATES:

	Rate:
Box Only	\$169.87
Self-contained unit	\$386.20
Compactor head and box	\$386.20

MISCELLANEOUS RATES:

	Rate:
Compactor Cleaning Fee	\$197.86
Trip Charge	\$92.33
Compactor Removal	\$92.33
Container Relocation	\$92.33
Exchange of Compactors	\$92.33
Liners for Roll-Off Containers	\$52.77
Service Reinstatement Fee	\$45.00
Any special services, negotiated services or other services not specifically stated within the fee ordinance	Quoted cost plus 17.46%

FRONT LOAD COMPACTOR RENTAL:

	Rate:
4 cy compactor	\$240.43 per month
6 cy compactor	\$259.92 per month

VERTICAL COMPACTORS RATES:

Size	1xWeek	2xWeek	3xWeek	4xWeek	5xWeek	6xWeek	7xweek	Extra PU
2 cy compactor	\$152.33	304.65	456.98	609.30	761.62	913.94	1066.66	39.33
3 cy compactor	\$174.61	349.20	523.81	698.39	872.96	1047.57	1222.18	42.43
4 cy compactor	\$196.98	393.73	590.61	787.48	984.35	1181.20	1378.08	48.28
6 cy compactor	\$241.42	482.82	724.25	965.66	1207.06	1448.47	1689.89	59.97
8 cy compactor	\$306.48	612.99	919.47	1225.95	1532.44	1838.93	2145.41	76.42

ATTACHMENT D**MULTI-FAMILY DWELLING RECYCLING SERVICES AND RATES**

All rates in Attachment D are contingent upon the City making these services mandatory for all Multi-Family Dwellings and on Contractor having the exclusive right to perform these services. Prices are per apartment unit per month charged to Multi-Family Complex owner/operator. Contractor shall bill Multi-Family Complex customers directly and the Multi-Family Dwelling customer shall make payment directly to the Contractor. The Commercial Franchise Fee shall apply to Contractor billings for these services. The Multi-Family Complex will be obligated to pay for the Recyclables services even if such Complex refuses to allow Contractor to place its Recyclables container(s) on the premises or provide 18 gallon bins to tenants. If the Multi-Family Complex fails to pay for the invoiced Recyclables services, then Contractor shall have the right, upon notice to the City and customer, to suspend its provision of Solid Waste services to that Multi-Family Complex.

The option to franchise Multi-Family Dwelling Recycling exclusively to the Contractor at the rates shown in this Attachment shall be available to the City for the first five (5) years of the Contract Term. If not implemented in the initial year of the Contract, the rates for the services listed in this Attachment shall be subject to the annual rate adjustments set forth in Attachment E and other adjustments, if any, described in Section 2 of the Contract, regardless of whether the service has been approved by Council. If the City has not selected these services at the end of the fifth year of the Initial Term, then Contractor no longer has any obligation to offer or perform these services. If any of the services listed in this Attachment become commercially unreasonable to perform or unavailable, Contractor shall provide the City with notice of said matter. The City and Contractor may by mutual agreement cease the program at any time during the term of this Contract.

Contractor shall provide all equipment necessary to perform Multi-Family Complex recycling services and is responsible for distribution of such equipment to the Multi-Family Complexes located within the City limits. Contractor shall develop a service plan for collection of Recyclables from Multi-Family Complexes. The service plan shall include at a minimum (1) the timeline and process for notifying Multi-Family property managers of recycling services, (2) development of appropriate advertisement and education to Multi-Family Dwelling residents, (3) distribution of equipment necessary for implementation, and (4) identification of program launch date. All steps of the implementation shall be coordinated with the City. Implementation shall be completed within twelve (12) months of the date the mandatory program is approved by City Council and incorporated into the franchised services.

All reporting requirements for other Contractor-provided Commercial Service shall apply to reporting for Multi-Family Dwelling Recycling.

Service	Rate:
2 cubic yard front loader	\$0.85
4 cubic yard front loader	\$0.85
6 cubic yard front loader	\$0.85
8 cubic yard front loader (up to three containers)	\$0.85
18-gallon bin for each apartment unit	\$0.15
Replacement bin	\$10.00

ATTACHMENT E

COST OF SERVICE

COST ADJUSTMENT METHOD

Subject to the express limitations of rate increases set forth in the Contract, annual adjustments of Cost of Service Rates set forth in this Contract shall be made at the end of each Contract year by the percentage of increase for the preceding twelve (12) month period in the Consumer Price Index (CPI) for the Dallas/Fort Worth area as published by the U.S. Department of Labor, Bureau of Labor Statistics. The percent of change in the index shall be calculated based on the most current available information at the time of the adjustment. If the CPI index specified above is discontinued, the Parties shall agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available to carry out the intent of this provision.

Cost adjustments shall not exceed five (5) percent in any Contract Year and fifteen (15) percent in any four consecutive years.

Calculation of the annual CPI adjustment shall be determined by utilizing twelve (12) months prior CPI utilizing the previous year's September determination and effective January 1. City shall provide CPI adjustment to Cost of Services prior to December 20 of each year. City shall also provide City's Commercial Solid Waste Customer rates and Multi-Family Dwelling Recycling rates to Contractor for implementation on January 1 of each year no later than December 20 of the previous year.

Cost adjustments for service rates included in Attachments A, B, C, and D in this Contract shall be handled in the following manner for 2014:

- Attachment A, Schedule of Residential Services and Rates – No adjustment to rates as shown until January 2016
- Attachment B, Options for Additional Residential Services and Rates – No adjustment to rates as shown until January 2015
- Attachment C, Schedule of Commercial Services and Rates – No adjustment to rates as shown until January 2015
- Attachment D, Multi-Family Dwelling Recycling Services and Rates – No adjustment to rates as shown until January 2016 if franchised in initial year of the Contract. If not franchised in the initial year, annual adjustments shall be made as indicated above.

ATTACHMENT F**WASTE MANAGEMENT OF TEXAS, INC.'S (CONTRACTOR)
DISASTER MANAGEMENT PLAN
FOR THE CITY OF LEWISVILLE, TEXAS (CITY)**

The City and CONTRACTOR agree that the City has the right to contract with any contractor or entity of its choice or as may be required by the Federal Emergency Management Association to provide Disaster or Storm Debris services within the City after a Disaster or Storm Event. For purposes of the Contract and this Attachment, "**Disaster or Storm Event**" shall mean an event, such as a tornado, hurricane, wildfire, ice or hail storm, war, riot, act of terrorism, or other Act of God that results in the generation of higher than normal volumes of Yard Waste, Bulky Waste, or Solid Waste by Residential Units, Commercial Units, or Industrial Units and that requires additional equipment, manpower, or resources beyond that which is included within this Agreement to collect and manage. "**Disaster or Storm Debris**" shall mean debris, such as Yard Waste, Bulky Waste, or Solid Waste, generated by Residential Units, Commercial Units, or Industrial Units as a direct result of a Disaster or Storm Event and that require collection and disposal and/or handling.

The City has requested that Contractor prepare a Disaster Management Plan that sets forth the activities and rates that Contractor would undertake should the City select Contractor to perform and should Contractor have the ability to provide such Disaster or Storm Event services:

1. CONTRACTOR would designate a local CONTRACTOR employee as its Disaster or Storm Event ("Event") representative to act as the lead contact and liaison with the City in responding to the Event. CONTRACTOR would request that this employee be designated as a member of the City's office of emergency management team to ensure seamless communication in coordinating CONTRACTOR's response. CONTRACTOR's designated representative would coordinate with both CONTRACTOR operations personnel and the City in responding to the Event.
2. Once the City declares it safe, CONTRACTOR operational personnel will, with the assistance of City staff, perform an assessment of the scope and impact of the Event and will begin putting together a plan and/or recommendations to perform clean-up services. CONTRACTOR's ability to assimilate the necessary equipment and labor in order to respond to the Event will be driven, in large part, by the size of the Event, the extent of the damage caused by the Event, weather factors, citizen reaction, and the accessibility of streets. The type, size, and number of vehicle(s) needed to perform the clean-up services will be influenced by the amount of debris generated, the size of the debris, Special Waste mixed into the debris, and access to the areas needing clean-up. As such, each Event may require the use of a different type of collection vehicle to perform removal services and the costs will vary based on the type of vehicle actually deployed.

3. Once CONTRACTOR's initial assessment has been completed, CONTRACTOR will provide a letter or report to the City's designated representatives regarding the scope of the Disaster or Storm Debris clean-up that CONTRACTOR believes is necessary. Typically, the full scope and extent of such a clean-up cannot be reasonably determined until at least seventy-two (72) hours after the Event has occurred. With regard to the length of time an Event clean-up may take, CONTRACTOR's experience has shown that the duration of a clean-up effort is greatly influenced by the residents' behavior. CONTRACTOR has found that after an initial clean-up collection has occurred in a specific area, within days of the initial clean-up, residents bring more debris to the curb, which requires another collection effort.
4. CONTRACTOR has the ability to bring in specialized disaster clean-up companies to assist with the effort if requested by the City. CONTRACTOR can act as the contractor for the City, if requested, and take responsibility for managing these subcontractors and their activities.

Contract Year 1 Rates for CONTRACTOR to Provide Disaster or Storm Debris Event Services:

Collection Truck Rate:

- a. Rear-end loader - \$125.00/per hour
- b. Grapple truck - \$150.00/per hour

Disposal Cost: To be negotiated with the disposal facility that will be used to receive the Event debris. The disposal rate will be passed through to the City.

Container Rates: The container rates will be the same price as listed in the Attachments to the Contract.

The hourly Collection Truck Rate will be adjusted annually by the same percentage that the base rates for Commercial Solid Waste Services are adjusted pursuant to Attachment E of the Contract. This Plan does not obligate Contractor to provide the Disaster or Storm Debris services set forth herein for Disaster or Storm Events. The City's Commercial Franchise Fee does not apply to Disaster Management Plan services.

ATTACHMENT G

RESIDENTIAL RECYCLABLES

Contractor shall collect Recyclables from Residential Service Customers as a requirement of this Contract. Should City Council elect to franchise Multi-Family Dwelling Recyclables collection exclusively to the Contractor, Contractor shall collect Recyclables from Multi-Family Complexes as well.

Recyclables

The following list of materials will be considered Recyclables that may be placed in Recyclables Storage Carts at Residential Service Customers, and if included in franchised services to Contractor, in recycling Front Loader Containers for Multi-Family Complexes:

- Aluminum food and beverage containers
- Ferrous (iron/steel/tin) cans
- Glass food and beverage containers of any color
- PET plastic containers with the symbol #1
- HDPE plastic containers (natural and pigmented) with the symbol #2
- Mixed plastics with symbols #3, #4, #5, #6, and #7 (excluding Styrofoam)
- Rigid plastics (unnumbered) such as milk/soda crates, plastic buckets, plastic laundry baskets, plastic flower pots, plastic drinking cups/glasses, plastic water bottles, etc. that are generally collected from residential recycling programs, which fit easily into the recycling cart with the lid closed, and which are no more than 30 inches long and no more than 10 pounds each
- Aseptic gable-top milk and juice cartons
- Newsprint and associated inserts
- Old corrugated cardboard boxes/sheets
- Mixed paper which shall include magazines, catalogs, telephone books, paperboard/boxboard containers, paperback books, printer paper, copy paper, mail, and all other office/school paper without wax liners or plastic coatings
- Household metal cooking pots, pans, and utensils which are no more than 30 inches long and not more than 50 pounds each

Discontinuance of a material or addition of a material to the acceptable Recyclables list must be a joint decision made by the Contractor and City. All cans, containers, and glass jars should be rinsed and reasonably free of food debris or other contents. Aerosol cans should be empty. All fiber must be dry and free of food debris and other contaminants.

Non-Recyclables

Any materials not listed as Recyclables shall be considered Non-Recyclables. Non-Recyclables include, but are not limited to, the following materials:

- Microwave trays
- Mirrors
- Window or auto glass
- Light bulbs
- Ceramics
- Porcelain
- Plastic bags
- Wire/metal hangers
- Glass cookware/bakeware
- Household appliances such as coffee pots, toasters, etc.
- Tissues, paper towels or similar paper products that have been in contact with food or other contaminants
- Batteries
- Tires
- Medical waste/sharps
- Flammables
- Explosives
- Hazardous materials
- Materials that will impair the durability of the Recycling Facility's equipment
- Materials that will endanger the Contractor's personnel or property