

PUBLIC NOTICE

AGENDA

LOCKHART CITY COUNCIL SPECIAL MEETING

TUESDAY, MAY 25, 2021

CLARK LIBRARY ANNEX-COUNCIL CHAMBERS
217 SOUTH MAIN STREET, 3rd FLOOR
LOCKHART, TEXAS

COUNCILMEMBER VIDEO AND AUDIO CONFERENCE PARTICIPATION

Pursuant to Section 551.127 of the Texas Government Code, one or more members of the Lockhart City Council may participate in a meeting remotely, following certain guidelines and notice requirements. The member of the Council presiding over the meeting will be physically present at the above public location. Video and audio conference equipment providing two-way video/audio communication with each member participating remotely will be made available, and each portion of the meeting held by video/audio conference that is required to be open to the public can be heard by the public at the location specified.

CITIZEN AND COUNCILMEMBER VOLUNTARY VIRTUAL CONFERENCE PARTICIPATION

- *Join virtual meetings via Zoom.*
- *Mayor will call upon each citizen registered to address the Council virtually during the agenda item.*
- *Council agenda packets can be reviewed at http://www.lockhart-tx.org/page/gov_agendas_minutes*
- *Individuals may watch the Council meeting online at http://www.lockhart-tx.org/page/gov_meeting_videos*

PUBLIC COMMENT

Persons wishing to have their comment read aloud during the public comment period of a public meeting must submit their written comments to cconstancio@lockhart-tx.org no later than 12 p.m. (noon) on the day of the meeting. Timely submitted comments will be read aloud by the Mayor during the public comment portion of the meeting.

PUBLIC HEARINGS

Persons wishing to virtually participate in any public hearing item listed on the agenda may do so as follows:

- Request a link to virtually join the public hearing portion of the meeting.
Requests to join a public hearing by virtual meeting must be sent to cconstancio@lockhart-tx.org no later than 12 p.m. (Noon) on the day of the hearing. Comments shall have a time limit of three minutes each. Citizens who join the public hearing virtually will be provided a Zoom invite or link to participate remotely.

Comments whether during public hearings or public comment periods, shall have a time limit of three minutes each. Any threatening, defamatory or other similar comments are prohibited.

7:30 P.M.

1. **CALL TO ORDER**
Mayor Lew White

2. **PUBLIC COMMENT**
(The purpose of this item is to allow the public an opportunity to address the City Council on issues that are or are not on the agenda. No discussion can be carried out on the citizen/visitor comment about items not on the agenda. Comments are limited to three minutes per speaker.)

3. **DISCUSSION/ACTION ITEMS**
A. Discussion and Action on awarding or extending a Solid Waste Collection, Recycling, and Disposal Agreement with Central Texas Refuse or to take other action related to solid waste services in the City of Lockhart. 3-79

4. **ADJOURNMENT**

Posted on the bulletin board in the Municipal Building, 308 West San Antonio Street, Lockhart, Texas, on the 21st day of May 2021 at 11:55 a.m.

City of Lockhart, Texas

Council Agenda Item Briefing Data

COUNCIL MEETING DATE: May 25, 2021

AGENDA ITEM CAPTION: Discussion and Action on awarding or extending a Solid Waste Collection, Recycling, and Disposal Agreement with Central Texas Recycling or to take other action related to solid waste services in the City of Lockhart.

ORIGINATING DEPARTMENT AND CONTACT: City Manager

ACTION REQUESTED:

ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT CONSENSUS OTHER

BACKGROUND/SUMMARY/DISCUSSION: SUMMARY OF ITEM

Lockhart has been utilizing Central Texas Refuse (CTR) for solid waste services for a number of years. The current contract was set to expire on September 30, 2020 but has been extended twice in order for a new agreement to be finalized, and will now expire on May 31, 2021. Council voted to direct staff to negotiate a new agreement with CTR and CTR has offered a five-year contract and a ten-year contract. The principal differences between the two are lower rates and greater legal detail regarding various provisions in the ten-year draft. The choice of which draft agreement to approve or whether to pursue other options for solid waste services in the City is the Council's decision.

PROJECT SCHEDULE (if applicable): Action needed before May 31, 2021

AMOUNT & SOURCE OF FUNDING:

Finance Review initials _____

	<u>5 year term</u>	<u>10 year term</u>
Funds Required:	\$790,042	\$773,918
Account Number:	560-5770-202	560-5770-202
Funds Available:	\$806,165	\$806,165
Account Name:	Administration & Operations	Administration & Operations
Funds Required:	\$262,973	\$242,983
Account Number:	560-5772-202	560-5772-202
Funds Available:	\$404,973	\$404,973
Account Name:	Administration & Operations	Administration & Operations

FISCAL NOTE: Funding will be dependent on term of contract awarded.

COMMITTEE/BOARD/COMMISSION ACTION: N/A

STAFF RECOMMENDATION/REQUESTED MOTION:

LIST OF SUPPORTING DOCUMENTS:

Solid Waste Collection, Recycling & Disposal Agreement draft (five year agreement)

Solid Waste Collection, Recycling & Disposal Agreement drafts, (ten year agreement)

Summary of CTR Draft Contract.

Department Head initials: _____

City Manager's Review: _____



Summary of CTR Draft Contracts

Status: Lockhart has contracted with CTR for solid waste services since 1988. The current contract was set to expire on September 30, 2020 but has been extended twice in order for a new agreement to be finalized, and will now expire on May 31, 2021.

CTR is offering a five-year contract or a ten-year contract. The principal differences between the two are in regard to rates and detail regarding various (city-favorable) provisions, the choice of which one or other options being the Council's decision.

<u>Monthly rates:</u>	<u>Current contract</u>	<u>5-year contract</u>	<u>10-year contract</u>
Residential collection*	13.55	13.30	13.00
Senior collection	10.92	10.92	10.92
Recycling	5.64	3.00	3.00
Commercial*	19.18	18.00	17.00

* Rates stated for residential and commercial are representative. Individual accounts vary based on number of collections per week, size of receptacles, and number of receptacles

Significant terms applicable to both contracts:

- “Franchise fee” of 8% of gross receipts paid the city (i.e. withheld from payment to CTR by City)
- Termination of an annual rate adjustment of 2% in addition to a CPI adjustment
- The annual CPA adjustment changed to South Region from All Urban
- No other adjustments without Council approval; total of adjustments not to exceed 5%
- CTR will make an annual donation of \$27,000 to the City for its use for city purposes
- Performance bond of \$1.5 million
- Residential customers may drop off waste at the EPI30 landfill, up to six cu. yd. per visit, at no cost and no limit to number of times
- Two annual City-Wide Clean Ups
- All City of Lockhart facilities trash and recycling serviced at no charge to the City
- Educational Program for class training of faculty, staff, students and residents, K-12
- Annual tours of CTR landfill for the students of Lockhart ISD
- Use of Training/Community Center at EP130 for City and Chamber of Commerce Events
- Annual rate adjustment tied to South US Region CPI, but no other automatic adjustment
- CTR shall annually review and audit rates to identify potential savings from use of the new landfill. If savings can be achieved by commercially reasonable means, the Contractor shall notify the City of a proposed adjustment to the Base Rate to reflect such savings.
- Insurance and Indemnity requirements met
- No automatic renewal (both parties must consent)
- No assignment of contract without City consent

Terms unique to 10-year contract: In 2018, Cedar Park negotiated a detailed agreement with CTR containing numerous city-favorable terms, particularly including penalties for poor performance by CTR, liquidated damages, and dispute resolution, all of which are included in Lockhart's 10-year contract.

**5-YEAR
DRAFT
AGREEMENT**

SOLID WASTE COLLECTION, RECYCLING & DISPOSAL AGREEMENT

This Solid Waste Collection, Recycling, and Disposal Agreement (“Agreement”) is entered into by and between the City of Lockhart, a Home Rule municipality located in Caldwell County, Texas (the “City”), and CENTRAL TEXAS REFUSE, LLC. (the “Contractor”), a Texas Limited Liability Company. Each party described above is referred to herein as a “Party” and, collectively, as the “Parties.”

Recitals

WHEREAS, the City has an exclusive contract with the Contractor for (i) dumpster collection and disposal of commercial and industrial solid waste, (ii) residential and commercial hand collection and disposal of refuse, and (iii) curbside single stream recycling services, with a term expiring in September 2020 that has been extended by agreement of the Parties until May 31, 2021; and

WHEREAS, by execution of this Agreement, the Parties expressly intend the current contract be extended and replaced prior to the expiration of its term and disregarded for all purposes, other than enforcement of obligations incurred thereunder prior to the date of extension, and be fully replaced, superseded, and/or novated by this Agreement from the date of execution of this Agreement; and

WHEREAS, the Parties mutually desire to update the existing contract’s initial term along with any future extension terms for the provision of recycling and solid waste disposal services pursuant to the terms and conditions set forth herein; and

WHEREAS, Contractor has agreed to provide exclusive recycling and solid waste disposal services to all commercial, industrial, and residential customers within the service area of the City, pursuant to the terms and conditions set forth herein; and

WHEREAS, the City has agreed to compensate Contractor for such services, pursuant to the terms and conditions set forth herein; and

WHEREAS, this Agreement is entered into by the City pursuant to the authority granted to the City by Section 30.002 of the Texas Water Code and Section 364.034 of the Texas Health and Safety Code;

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

I. DEFINITIONS

- A. Unless otherwise provided herein, terms used in this Agreement shall have their plain and ordinary meaning. Terms given particular meaning, as used herein, are as follows:

1. Bags – means a non-dissolvable plastic sack with a capacity of up to approximately thirty-five (35) gallons designed or intended to store Municipal Solid Waste with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of the bag and its contents shall not exceed 30 lbs.
2. Bulky Waste – Bulky Waste Municipal Solid Waste composed of materials not easily containerized in a Cart such as, but not limited to, Brush, furniture, and large appliances. Bulk Waste shall include Municipal Solid Waste enclosed in bags. Such items shall not exceed 4 feet in length by 4 feet in Height and /or 40 pounds in weight.
3. Brush– means tree, shrub and brush trimmings securely tied together, forming an easily handled package not exceeding 4 feet in length or 40 pounds in weight.
4. Cart – means a poly waste receptacle or a recycling receptacle provided by Contractor with a capacity of ninety-five (95) gallons.
5. Commercial Unit – means any retail, commercial, industrial, manufacturing, or multifamily use or service. This definition and category includes all units other than a “Residential Unit” as hereinafter defined.
6. Construction and Demolition Debris – means waste building materials resulting from construction remodeling, repair, or demolition operations.
7. Customer – means an occupant of a residential, commercial, or industrial unit or property within the City who generates Refuse and/or Recycling.
8. Disposal Site – means a refuse depository licensed by the State of Texas, including sanitary landfills, transfer stations, incinerators, and waste processing/separation centers licensed by the State of Texas to receive Refuse for processing or final disposal.
9. Force Majeure – – means the following events or circumstances to the extent that they delay the City or Contractor from performing any of its obligations under this Agreement: acts of God, tornadoes, hurricanes, floods, sinkholes, fires, and explosions (except those caused by negligence of Contractor, its agents, and assigns), landslides, earthquakes, epidemics, quarantine, pestilence, and extremely abnormal and excessively inclement weather; acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities; and/or suspension, termination or interruption of utilities necessary to the operation of the recyclable material facility..

10. Hazardous Waste – means any chemical, compound, mixture, substance, or article designated by the United States Environmental Protection Agency or the Texas Commission on Environmental Quality to be "hazardous," as that term is defined by federal or state law.
11. Holiday – means Thanksgiving Day, Christmas Day or New Year's Day or any other dates as mutually agreed upon by City and Contractor.
12. Landfill – means a permitted sanitary landfill of the Contractor's selection.
13. Multi-Family -- means all apartment projects and residential dwellings containing three or more units designed and intended for occupancy by a single family.
14. Prohibited / Excluded Items – means unacceptable items, including but not be limited to rocks, dirt, bricks, concrete, any item longer than 4 feet in length – 4 feet in height – or exceeding 40 lbs. in weight, car batteries, oil, oil filters or hazardous chemicals, which will not be collected during a curbside pickup.
15. Refuse – means all commercial, industrial, or residential municipal solid waste generated by a Customer.
16. Residential Unit – means a single-family dwelling and each unit of a multi-family dwelling within the incorporated limits of the City. A Residential Unit will be considered occupied for purposes of this Agreement if it receives water and wastewater utility services.
17. Recycling – means any process by which solid waste or materials that would otherwise become solid waste are separated, collected, and processed for reuse or returned to use or to market in the form of raw materials or products.
18. Rubbish - Rubbish means non-putrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).
19. Recycling Container – means a ninety-five (95) gallon recycling cart.
20. Single Stream Recycling – shall mean recyclable materials that do not require the generator to subdivide the recyclable materials prior to collection. Eligible recyclable materials include:
 - a. Paper – shall mean kraft paper, corrugated containers that have liners of Kraft, jute, or test liner including dry food boxes, beer, and soda

carriers, show boxes, Old newspaper including slick paper inserts, other mixed paper including but not limited to junk mail, junk mail inserts, residential mixed paper, copier paper, office paper, formed bond, manifold business forms, writing paper, paper envelopes without plastic windows, manila folders, magazines, paperback books, and catalogs.

- b. Plastic – shall mean any #1- #2 rigid plastic bottles, containers, jugs or jars that have been rinsed out. Examples include water and soda bottles, milk jugs and detergent bottles
- c. Aluminum Cans - shall mean beverage containers made of aluminum
- d. Steel and Tin Cans – shall mean food cans or bi-metal containers that have been rinsed out
- e. Glass – will not be included.

II. SERVICES TO BE PERFORMED

A. The services specified in this Section II shall be provided to the City in exchange for the compensation specified in Section III, below.

1. Solid Waste Disposal.

(a) Contractor shall provide curbside collection of garbage (Utilizing One (1) - 95 gallon cart) for Residential Units one time per week plus up to 7 additional items outside of the cart. Items outside of the cart may include Bags, Brush, and Bulky Waste. All items shall be placed at curbside by 7:00 a.m. on the designated collection day.

(b) The contractor shall provide for the special collection and hauling from Residential Units of Bulky Waste not eligible for curbside collection, for which a minimum charge of \$10.00 per cubic yard as applicable shall be charged (minimum charge of \$30.00 for collection of freezers and refrigerators). Construction Debris will be hauled at a rate to be determined by Contractor based upon Container size. Contractor and the Customer will negotiate total charge for such services prior to collection. Contractor will not provide for the special collection of hazardous waste.

The City shall, at the end of each month, furnish Contractor with a detailed unit count of all Customers located within the service area, along with any other information necessary for Contractor to identify all service locations. Contractor shall collect Refuse from each Customer within the designated service area on mutually agreed upon days each week during the term of this

Agreement. If the regular collection day falls on a Holiday, collection will occur on an alternate day of the week as noted by Contractor (to the City).

All Refuse collected by Contractor will be disposed of at a Disposal Site.

2. Single-Stream Recycling. Contractor shall also provide recycling services to all Customers within the service area utilizing One (1) 95-Gallon Cart. Such recycling services shall occur every other week (EOW) on a mutually agreed upon day or days of the week. Details and terms regarding recycling services and materials collected are included on the attached Exhibit "C" and are incorporated herein for all purposes.
3. The Contractor shall transport all Program Recyclable Material collected pursuant to this Agreement to a proper MRF – Materials Recovery Facility. That facility will receive, sort, process, and market the recyclable materials that are of marketable quality. If contamination is present in the recycling cart, the cart will be tagged to notify the Customer because the materials were not collected.

The MRF – Material Recovery Facility will calculate the per ton value of the "basket of commodities" for Residential Single Stream (RSS) based upon regionally experienced composition studies and subtract a processing fee (currently \$95.00 per ton). The result of this calculation will be either a negative number (a 100% charge to the City of Lockhart) or a positive number which would be divided 50%-50% with the City of Lockhart as a rebate.

The recycling materials taken to Wilco Recycling or other contractor-designated facility that are of marketable quality will be marketed through existing national, regional, and local purchasing agreements arranged through Wilco Recycling or other contractor-designated facility. Due to transporting the collected recycling materials to a third-party facility, Contractor does not control the cost of the materials to be processed or marketed. Contractor does not guarantee the existence of a market for the materials at any time.

4. Receptacles to be Provided. Contractor shall provide one (1) 95-gallon Cart to each Customer for the collection of solid waste and shall also provide one (1) (95) gallon recycling Cart to each Customer that requests one for the collection of recycling materials. Contractor shall additionally provide dumpsters for the collection of multi-family, commercial, and industrial refuse and waste, to multi-family and the larger commercial and industrial units according to the terms and rates set forth herein as outlined in Exhibit "B". All receptacles will be in good condition, new or properly reconditioned, and Contractor shall replace any broken or damaged receptacles promptly upon request by the City. Based upon the information provided by the City pursuant to Section II.A.1, above, Contractor shall provide Carts and recycling containers to all new Customers (and retrieve receptacles from all terminated Customers) no later

than the next regular collection day following receipt of notice from the City. Additionally, Contractor shall notify the City of any Customers who have requested initiation or termination of solid waste or recycling service and are not reflected on the written lists provided by the City.

5. Placement of Receptacles. All Carts and Containers shall be unobstructed and readily accessible to Contractor's crew by 7:00 a.m. on collection day. Unless there are unique circumstances approved by Contractor, Carts and Containers shall be placed at the curbside adjoining that portion of the road or right-of-way for service locations agreed to by the City and Contractor. Additional Bags, Bulky Waste, or Brush shall be placed as close to the roadway as practicable or within five (5) feet of the roadway, without interfering with the Collection of the Cart or endangering the movement of vehicles or pedestrians. Following collection, Contractor shall place all emptied Carts and Containers upright and next to the curbside as close to the original placement as possible.

When construction work is being performed in the right-of-way, Carts, Containers, Bags and Bundles shall be placed as close as practicable to an access point for Contractor's collection vehicle.

Where any Customer is maintaining improper or inadequate refuse containers or is otherwise in violation of rules and requirements with respect to the location or content of refuse containers, Contractor may in its sole discretion refrain from collecting all of a portion of such refuse and shall not be deemed to be in default hereunder as a consequence of such non-collection. In such case, Contractor shall tag Non-compliant set outs and notify the City & the Customer within a reasonable time of the reason for such non-collection. Contractor shall resume collection once Customer eliminates the issue and conforms to all rules and requirements.

6. Large Debris Collection. Contractor shall provide, twice annually, at no additional charge, curbside collection of bulk garbage on a mutually agreed day, preferably on a Saturday. The City's customers will be notified in writing in advance of the bulk garbage collection date. Bulky items must be located at the curb area of each residence. Bulk garbage collection excludes construction or remodeling debris, dirt, rocks, bricks, concrete, tires, batteries, motor oil, cooking oil, waste generated by a private contractor or any materials or items deemed hazardous materials. Exhibit "C" attached hereto, and incorporated herein for all purposes, sets forth the details on all bulk debris collection service provided by Contractor.
7. Use of Automated Equipment. At the Contractor's sole discretion, the Contractor shall have the right to perform any obligations hereunder through the use of semi- or fully automated equipment or a combination of either type of equipment. Should other equipment and/or technology become available, contractor shall have to right to utilize such equipment.

8. Contractor personnel. Contractor shall employ, train, and assign qualified persons to be in charge of its operations within City and at the site for disposal and recycling operations, and shall provide the name, office telephone number, mobile phone number, email address, and fax number of Contractor's representatives and key personnel to the City. Such records shall be updated as personnel or contact information changes.
9. Use of EP130 Landfill. Residential Unit Customers who provide a copy of their Lockhart utility bill shall be permitted to drop off items at EP130 at no additional charge. Such drop-off service will be available to Residential Unit Customers only (no commercial or industrial drop-off shall be permitted) and may be utilized unlimited times per year. Provided, however, Residential Unit Customers shall be limited to a total of 6 cubic yards of refuse per drop-off.

III. COMPENSATION

- A. Billing. Contractor shall bill the City monthly, on or before the last day of each month, for all solid waste disposal and recycling services to be rendered by Contractor during the coming calendar month. The City shall pay Contractor within fifteen (15) days of its receipt of such invoice. Late payments shall bear interest at the rate of five percent (5%) per annum.

Contractor shall calculate the amount due for residential collection services each invoice by multiplying the Base Rate (as defined below for residential Collection and as outlined in Exhibit B for Commercial Units and Roll Off Services) by the number of Residential Units, Additional Carts, Senior Citizen, Disabled, Recycle Carts, and Commercial Units to be serviced. The number of Residential Units and Commercial Units to be serviced is indicated in Exhibit A and shall be amended by supplemental information supplied by the City at the end of each month, as required by Section II.A.1 above. The City and Contractor shall mutually agree on any such revised count, and Contractor's monthly invoices shall utilize the count derived from information supplied in the immediately preceding month.

Contractor shall also bill monthly for any services not included in the Base Rate. Contractor shall be entitled to payment for each invoice within fifteen (15) days of receipt by the City. Contractor shall be entitled to payment for each invoice regardless of whether or not the City collects payment from its Customers for services performed.

- B. Base Rate. For collection, transportation and disposal of Refuse, Recycling Services, and for all other services set forth in this Agreement, other than services for which this Agreement provides an additional charge, the "Base Rate" shall be as set forth in Exhibit "B" – Service Rates. The Base Rate shall include provision of receptacles as described in Section II.A.3, above.
 1. Unless adjusted as provided herein, the Base Rate set forth above shall remain fixed for the First year of the term of this Agreement. Thereafter the Base Rate

shall be adjusted annually by the amount of the Consumer Price Index—South Region United States (“CPI”) change each year through expiration of the Term (each CPI adjustment to be based on the June CPI of the same year).

2. In addition to the above, the Contractor may petition the City for additional rate adjustments at reasonable times based on increases in cost of operations, caused by factors, such as revised laws, ordinances, regulations, and for other similar reasons. The Contractor’s petition will specifically identify the reasons for the requested adjustment, and its impact upon the Contractor’s cost of operations, in unit terms, with an explanation of the methodology used to calculate such impact. The City may request additional information it considers necessary to evaluate the requested adjustment. The City may grant such adjustments through amendments to the Agreement.
3. The total percentage increase for any given year shall not exceed 5% in such year.
4. Contractor shall provide written notice to the City of all such rate adjustments to the Base Rate not later than thirty (30) days prior to the effective date thereof, and all rate adjustments by Contractor shall be implemented effective October 1st of each year that the Agreement remains in effect. Each notice of adjustment shall include the appropriate data to support the proposed adjustment.
5. Contractor certifies that is shall maintain sufficient landfill capacity for the life of the Agreement. In the event, a new landfill belonging to Contractor has or will soon become available within the County of Caldwell for the disposal of solid waste. Following commencement of use of that landfill for disposal of solid waste from City, the Contractor shall annually conduct an internal review and audit of current rates for services to be performed hereunder to identify any potential savings that may be realized by use of the new landfill. If potential savings are identified and such savings can be achieved by commercially reasonable means, the Contractor shall notify the City of a proposed adjustment to the Base Rate to reflect such savings. The City shall have the right to hire a disinterested, third party auditor to review the Contractor’s internal audit, but the details of the Contractor’s internal audit shall not be disclosed directly to the City or any other third parties and shall be deemed confidential and proprietary information belonging to the Contractor.

IV. CONTRACTOR OBLIGATIONS

- A. Fee paid to City. Contractor shall pay a license, permit, or “franchise” fee, together with an administrative fee to the City during the term and any extended term of this Agreement equal to eight percent (8%) of the gross receipts for all collections for all

residences, business, customers, and accounts within the City Service . Such fee shall be deducted by the City from payments paid to Contractor monthly.

- B. In addition to other consideration contained herein, Contractor shall provide the following to City:**
- A. A yearly cash donation of \$27,000.00 for City's discretion to use for City Parks, City Improvements or scholarships for graduating High School Seniors. \$135,000
 - B. Two annual City-Wide Clean Ups
 - C. All City of Lockhart facilities trash and recycling serviced at no charge to the City
 - D. Educational Program for training of faculty, staff, students and residents with K-12 in class curriculum
 - E. Annual tours of CTR landfill for the students of Lockhart ISD
 - F. Use of Training/Community Center at EP130 for City Functions and Chamber of Commerce Events
- C. Vehicle and Property Condition.** Contractor shall keep all vehicles utilized in the performance of its duties under the Agreement in proper operating condition. Contractor shall not operate vehicles that are leaking oil, hydraulic fluid or other substances or that are otherwise unsafe or in substantial disrepair. All vehicles will be properly and adequately covered, and no trash will be permitted to blow out of utilized vehicles.
- D. Safety.** All drivers utilized by Contractor for solid waste and recycling materials collection within the service area of the City shall be required to observe all safety laws, including without limitation, compliance with all speed limit and traffic control signs.
- E. Supervision.** Contractor shall provide adequate supervision to assure that all work will be done in accordance with the specifications and requirements of this Agreement and generally accepted solid waste disposal practices.
- F. Performance Standards.**
- 1. Collection areas shall be free of litter and debris within a ten-foot radius of Carts or Containers provided by Contractor. Provided, however, Contractor shall not be responsible for litter or debris caused or placed by Customers.
 - 2. Contractor will undertake reasonable efforts to collect refuse and recycling materials regardless of barriers (e.g., blocked streets), except when the safety and health of Contractor's employees or the public may otherwise be negatively impacted.

3. Contractor will undertake reasonable efforts to maintain a consistent route schedule.
4. Contractor will avoid leaving loose trash during collection and will take reasonable precautions to prevent litter or debris resulting from its services.
5. Contractor will prohibit its drivers from using emergency brakes to stop a moving vehicle.
6. Contractor will maintain a 24-hour per day, seven day per week voice mail system to handle customer communications beyond regular business hours.
7. In the event of equipment breakdowns, Contractor will notify the City if services will be delayed or rescheduled for an alternate collection day.
8. Contractor shall take all necessary precautions to protect public and private property during the performance of this Agreement. Except for reasonable wear and tear, the Contractor shall repair or replace any private or public property which is damaged by the Contractor. If the Contractor fails to address the repair or replacement of damaged property within ten (10) days of written notification, the City may, but shall not be obligated to, repair or replace such damaged property, and the cost of doing so shall be deducted from payment to be made to the Contractor.
9. Contractor shall clean up any materials including leakage of fluids spilled from Contractor's vehicles by the Contractor, Contractor's vehicles, or Contractor's employees. During transport, all materials shall be contained, covered, and enclosed so that leaking, spilling, and blowing of materials does not occur. Contractor shall be responsible for the cleanup of any spillage or leakage caused by Contractor, Contractor's vehicles, or the Contractor's employees. with this Agreement.
10. The Contractor shall maintain collection equipment that is owned by the Contractor as to prevent the odors. The Contractor shall routinely clean collection equipment.
11. Customer Relations. Customer complaints, such as calls for missed pick-ups, shall be first directed to Contractor for resolution.
12. Penalty for Non-Performance. In the event the Contractor fails to perform a material obligation hereunder and further fails to cure such material default within ten (10) days following receipt of written notice and demand for cure by the City, the City shall have the right to impose a penalty of \$150.00 per day until such time as the Contractor cures the default.

V. COMPLIANCE WITH APPLICABLE LAWS

Contractor will comply with all applicable federal, state, county, and city laws, ordinances, and regulations and any and all policies and guidelines of Contractor. Contractor will also obtain any licenses and permits required in performing all services rendered by Contractor under this Agreement.

VI. PERFORMANCE BOND, INSURANCE, AND INDEMNITY

A. Performance Bond. Contractor agrees that after the execution of this Agreement and one (1) month or more prior to the commencement of the work, Contractor shall make, execute, and deliver to the City a good and sufficient Performance Bond in a form approved by the City, to secure the full, complete, and faithful performance of the terms and conditions herein. Such Performance Bond shall be in the amount of one million five hundred thousand dollars (\$1,500,000.00) and shall be renewed each year thereafter throughout the term of the Contract and any renewal periods. Contractor shall ensure the Performance Bond shall be signed by the President or General Officer of the Contractor, together with the signature of the corporate secretary and the corporate seal. The surety shall be a surety company duly authorized to do business in the State of Texas; having an "A" or better rating by A. M. Best or Standard and Poor's; included on the list of surety companies approved by the Treasurer of the United States of America; and acceptable to the City.

B. Insurance Requirements. Contractor shall secure and maintain in effect insurance to protect Contractor, its subcontractors, employees, and the City from claims for bodily injuries, death or property damage that may arise out of or result from Contractor's performance of its duties under this Agreement. The following minimum levels of coverage are required:

1. Public liability and property damage (no pollution exclusion endorsement shall be permitted):
 - i. General Liability: \$1,000,000 each occurrence
 - ii. Property Damage: \$1,000,000 each occurrence
 - iii. Employer's Liability: \$1,000,000
 - iv. Bodily Injury: \$1,000,000 each occurrence
 - v. Automobile: \$1,000,000
2. Umbrella Liability: \$5,000,000
3. Workers' Compensation: Statutory Limits

- C. Indemnity. To the fullest extent permitted by law, each Party shall and does hereby mutually indemnify and hold harmless the other Party, as well as its officers, directors, agents and employees, from and against all claims, damages, losses and expenses, including without limitation, attorneys' fees, arising out of or related to this Agreement or the performance thereof, but only to the extent such claims, damages, losses or expenses are attributable to the negligent act or omission or other fault of the indemnifying Party. The indemnification obligations hereunder shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist to any Party or person described in this Section. The indemnification requirements set out herein shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for either Party under any insurance policy, workers' compensation acts, disability benefits acts or other employee benefit acts.

VII. TERM AND TERMINATION

- A. Term. The initial term of this Agreement shall be for five (5) years, commencing on June 1st, 2021 and ending at midnight on the fifth anniversary of that date. Upon expiration of the initial term, the Agreement may be extended for an additional term of five (5) year(s) provided that proper notice is given and both Parties have consented to extension of the term.

For the purposes of this section, proper notice of an intent to extend the term of the Agreement must be delivered in writing by the Party seeking to extend the term and is ineffective unless received by the other Party no later than One Hundred Eighty (180) days prior to expiration of the term to be extended. Once proper notice to extend the term has been received, the receiving Party shall, no later than sixty (60) days from the date of receipt of such notice, inform the other party that it approves the extension, does not approve the extension, or desires to amend the terms of this Agreement. If the receiving party does not respond in writing within such sixty (60) days, the Parties shall be deemed to have consented to the extension, and the term shall be extended as provided herein.

- B. Termination. If, at any time, the City defaults in its obligations under this Agreement, including the obligation to make timely payment for services rendered as provided herein, and the City further fails to cure the default following ten (10) days' written notice from Contractor, Contractor may terminate the Agreement for cause. In the event of such a termination, Contractor shall be entitled to payment for all services performed prior to the date of termination, as well as any additional costs or damages incurred as a result of the termination or available by law.

VIII. FORCE MAJEURE

Force Majeure. If, by reason of Force Majeure, either Party is unable, in whole or in part, to carry out its obligation(s) under this Agreement, the Party whose performance is so affected shall give notice and full details regarding the impact of such Force

Majeure to the other Party within a reasonable time after the occurrence of the instigating event or cause. Provided that proper notice is given, the obligation(s) of the impacted Party hereunder shall, to the extent impacted by the Force Majeure, be suspended for the duration of the impact, but in no event for a period longer than that period reasonably necessary for recovery from or mitigation of the impact caused by the Force Majeure event. To this end, the impacted Party shall take all reasonable measures necessary to overcome, remove or otherwise mitigate the impact of the Force Majeure event. During such period of suspension, any obligations of the non-impacted Party shall continue without interruption, except to the extent such obligations rely upon, or are predicated by, the suspended obligations of the impacted Party.

IX. MISCELLANEOUS

- A. Extra Work. Except as otherwise provided herein, all work outside the express terms of this Agreement must have prior written approval by both Parties. Charges for extra work will be submitted to the City for approval prior to commencement of the work.
- B. Assignment. Except as otherwise provided herein, this Agreement may be assigned by Contractor with the prior, written consent of the City. The use of any subcontractor shall be subject to the prior, written approval of the City, such approval not to be unreasonably withheld. Provided, however, Contractor expressly reserves the right to assign this Agreement, including any and all rights, duties, responsibilities and/or obligations hereunder, as may be necessary or appropriate to affect any internal restructuring or other transfer of ownership between Contractor and any of its affiliates, partners, or subsidiaries.
- C. Venue & Choice of Law. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and the Parties expressly consent to the jurisdiction of the courts therein. All obligations of the Parties hereunder are performable in Caldwell County, Texas, and venue for any claim or action arising hereunder shall lie exclusively in Caldwell County, Texas.
- D. Succession. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns.
- E. Severability. If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, void, or unenforceable in any respect, such provision(s) shall be reformed to the minimum extent necessary to cure the violation and render the clause fully valid and enforceable. In the event such revision is not possible, the Agreement shall be construed as if such invalid, illegal, void, or unenforceable provision(s) had never been contained herein, and the offending provision(s) shall have no impact or effect on the validity or enforceability of the remaining provisions.

- F. Entire Agreement. This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior understandings or written or oral agreements between the Parties with respect to same. The Agreement may not be amended or modified except by a written document signed by both Parties.
- G. No Waiver. One or more waivers of any covenant or condition by either Party shall not be construed as a waiver of a subsequent breach of the same covenant or condition. The waiver or exercise of any legal right hereunder shall not be construed as a waiver of any other action or right either Party may have pursuant to the terms of this Agreement.
- H. Notices. All notices, requests, demands or other communications required or permitted under this Agreement must be in writing and delivered personally or by certified mail, return receipt requested or by overnight courier (such as Federal Express), and addressed to the Parties at the addresses set forth below the signature lines of this Agreement. All notices given in accordance with the terms hereof shall be deemed given upon placement with a carrier for delivery as provided herein and shall be deemed received upon actual receipt by the other Party. Either Party may change the address for receiving notices, demands or other communication by written notice to the other Party sent in accordance with this section.
- I. Counterparts. This Agreement may be executed in one or more counterparts, each of which, when so executed and delivered, shall be deemed to be an original but together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of this ____ day of _____, 2021 (the Effective Date).

CENTRAL TEXAS REFUSE, INC.

By: _____

Name: _____

Title: _____

CITY OF LOCKHART

By: _____

Name: _____

Title: _____

Exhibit "A"
Designation of Service Area

Exhibit "B"

Rates for Solid Waste Collection, Recycling, & Disposal

Collect Residential Refuse at Curbside

Contractor will provide curbside hand collection service of residential refuse and waste to each Residential Unit as follows:

Monthly Rates beginning on the Effective Date:

- (i) Residential Collection (once per week) = **\$13.30**
- (ii) Seniors (once per week) = **\$10.92**
- (iii) Additional 95-gallon cart = **\$5.94**
- (iv) Recycling = **\$3.00**

Collect Commercial Refuse

Contractor will provide collection service of Commercial refuse and waste for multi-family dwellings, apartment projects, commercial and industrial customers as follows:

Monthly Rates:

(1). The rates and charges for customers in this category are as follows:

- \$ **18.00** Monthly Rate for (1) Commercial 95-gallon cart serviced once per week
- \$ **5.94** Monthly Rate for each additional 95-gallon cart serviced once per week

The above rates are subject to change as provided herein.

Commercial Trash Bin and Roll off Dumpster Services

Rates beginning on the Effective Date

	EOW	1X WEEK	2X WEEK	3X WEEK	4X WEEK	5X WEEK	EXTRA P/U
2-YARD	\$44.62	\$59.49	\$101.71	\$123.17			\$20.93
3-YARD	\$53.34	\$69.78	\$118.19	\$153.98			\$23.74
4-YARD	\$63.01	\$84.01	\$133.44	\$184.73			\$31.39
6-YARD	\$74.77	\$99.70	\$158.68	\$250.43			\$41.89
8-YARD	\$94.25	\$125.67	\$206.87	\$283.07			\$52.34
10-YARD	\$119.26	\$152.42	\$239.51	\$326.60	\$435.68	\$544.74	\$62.82

Roll-off Services

The following rates and fees shall be applicable to Commercial Customers and others requiring service at a level in excess of the highest level of each category of customer provided above to be made available with roll off dumpsters. These services will be via roll-off container as follows:

- (i) Delivery fee for all sizes = **Included in price**
- (ii) Daily rental fee for all sizes = **\$3.75**
- (iii) 20 yd. = **\$475.00** per haul
- (iv) 30 yd. = **\$540.00** per haul
- (v) 40 yd. = **\$605.00** per haul

The above rates in this subsection shall be multiplied by 1.08 to result in rates charged by the Contractor sufficient to fund administrative charges and pay the franchise fees. Fees for roll off services shall be invoiced and collected by the Contractor. A fuel surcharge as published on the FuelGauge.com website or other comparable source as approved by the City Manager or designee shall also be applicable for the above rates.

Exhibit "C"

Services to Be Performed by Contractor

Solid Waste Collection

Contractor shall provide curbside collection service for the collection of residential refuse to each residential or commercial unit one (1) time per week, as provided herein.

All will make use of 95-gallon Carts as provided by Contractor. Up to 7 Additional items may be included in weekly collection outside of the contractor provided 95 – gallon Carts. All additional items Bulky Waste, Bags, and Brush shall be no more than 4 feet in length, 4 feet in height, and No More than 40 lbs. in weight. Collection of refuse shall be made between 7:00 A.M. and 6:00 P.M. All acceptable Carts and approved items shall be placed at curbside by 7:00 A.M. on the designated collection day, but no earlier than the evening before the regularly scheduled collection. Exceptions to collection hours shall be effected only upon mutual agreement of the City and Contractor, or when Contractor reasonably determines that an exception is necessary in order to complete collection on an existing collection due to unusual circumstances and notified and received approval from the City.

Brush picked up as part of the Contractor's normal service must be bundled in lengths not greater than (4) four feet in length, and not greater than 40 lbs. in weight. Such bundles will be tied sufficiently so that the bundle can be lifted by the ties into Contractor's vehicle.

Special Annual Clean-up:

For no additional charge Contractor will, 2 days a year, provide curbside collections for a "City-Wide Clean-up" as mutually agreed upon by Contractor and the City. Customers will receive this service during the designated Days as mutually determined. During this event, the following items will be collected at the curbside by the Contractor: all Bulky Waste, construction materials qualifying as Bulky Waste (less than 4 feet in length by 4 feet in height & less than 40 lbs.), bulk items (Compliant white goods), and brush less than 4 feet in length and less than 40 lbs., and bags. Chemicals, oil base paints & cleaners. oil, oil filters, anti-freeze, tires, and batteries will not be accepted for pickup. Material not accepted at the landfill will not be accepted at the cleanup site. During the designated cleanup days, structure or partial demolitions of structures will not be collected if the materials exceed Bulky Waste specifications. The City will provide all public notices for the Annual City-Wide Clean-up days via the City information channel, utility billing inserts and local newspapers/media.

Note: Any Customer who, in the opinion of the Contractor and the City, abuses this privilege, shall pay an additional sum to Contractor, said sum to be agreed upon between the City and the Contractor on a case-by-case basis.

Additional Items below may be included during Special Annual Clean Up Days:

Appliances: Stoves, water tanks, washing machines, dryers, refrigerators, air conditioners, sinks, toilets, and like items. Refrigerators and air conditioners must have their Freon removed by a

certified technician and be tagged. Units that are not certified will have a charge of \$30.00 per unit. This will be billed directly to the Customer. The Contractor is not required to pick-up bathtubs, shower stalls and like items.

Furniture: Couches, beds, mattresses, love seats, tables, chairs, lamps, microwaves, etc.

Tires: Tires shall not be accepted for collection as a bulky item or during the Special Annual Clean up days from residential without special preparation. All tires must be quartered or shredded prior to being accepted for regular collection or they will not be picked-up.

Items Not Collected: Construction debris out of Bulky Waste specifications, dead animals, toxic or hazardous waste, batteries, stable matter, rubbish, rocks, dirt, concrete, ammunition, hot ashes, medical waste, auto parts, tires, special waste, stumps, and any item containing CFCs are included as bulky items Not collected as part of normal residential service. Bulky items, not defined as acceptable bulky items or “white goods” (which are not included in Solid Waste Collection), may be collected and disposed of by the Contractor through separate and independent arrangements at the resident’s additional expense as identified by the Contractor. An example would be a resident’s construction debris from a major renovation of their residence. No TV’s.

Disabled at the Door Services

Upon verification by City, a trash services Customer who has provided acceptable proof of disability can be provided upon request with "Garage Door" trash collections services provided the trash cart is readily visible, easily accessible, and within 75' of the street right of way and is not enclosed in any manner.

Recycling:

Recycling carts shall contain only the items listed below. A cart contaminated by the presence of fifty percent (50%) or more of non-recyclable items will be tagged to notify the Customer as to why the materials were not collected.

PAPER: All newspapers, including inserts such as ads or coupons, are recyclable. No phone book or envelopes are permitted. Cardboard (Excluding Pizza Boxes or any other Wax Coated Containers)

ALUMIMUM CANS: Beverage cans only (beer and soda). Please, no aluminum foil or pie pans.

STEEL AND TIN FOOD CANS ONLY: Please rinse and remove labels.

PLASTIC DRINK BOTTLES: Clear or opaque plastic drink containers with the number “1PETE” or “2 HDPE”, which hold drinks like milk, soda water, etc. are recyclable. Colored plastic containers are recyclable, except containers which held laundry detergent or chemicals.

**10-YEAR
DRAFT
AGREEMENT**

Solid Waste Collection,
Recycling & Disposal Agreement

between

CITY OF LOCKHART, TEXAS

and

CENTRAL TEXAS REFUSE, LLC

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RESIDENTIAL SERVICES AND CITY SERVICES AGREEMENT

between

LOCKHART, TEXAS

and

CENTRAL TEXAS REFUSE, LLC.

This Solid Waste Collection, Recycling, and Disposal Agreement (“Agreement”) is entered into by and between the City of Lockhart, a political subdivision of the State of Texas operating pursuant to Chapters 49 and 54 of the Texas Water Code (the “City”), and CENTRAL TEXAS REFUSE, LLC (the “Contractor”), Each party described above is referred to herein as a “Party” and, collectively, as the “Parties.”

RECITALS

WHEREAS, the City has an exclusive contract with the Contractor for (i) dumpster collection and disposal of commercial and industrial solid waste, (ii) residential and commercial hand collection and disposal of refuse, and (iii) curbside single stream recycling services, with a term expiring May 31, 2021; and

WHEREAS, by execution of this Agreement, the Parties expressly intend to extend their contractual relationship, but the terms and conditions of the current contract be extended and replaced prior to the expiration of its term and disregarded for all purposes, other than enforcement of obligations incurred thereunder prior to the effective date of Agreement, and be fully replaced, superseded, and/or novated by this Agreement from the date of execution of this Agreement; and

WHEREAS the Parties mutually desire to update the existing contract’s initial term along with any future extension terms for the provision of recycling and solid waste disposal services pursuant to the terms and conditions set forth herein; and

WHEREAS, Contractor has agreed to provide exclusive recycling and solid waste disposal services to all commercial, industrial, and residential customers within the City, pursuant to the terms and conditions set forth herein; and

WHEREAS, the City has agreed to compensate Contractor for such services, pursuant to the terms and conditions set forth herein; and

WHEREAS this Agreement is entered into by the City pursuant to the authority granted to the City by Sections 363.116 or 363.117 of the Texas Health & Safety Code and Section 364.034 of the Texas Health and Safety Code.

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

AGREEMENT

SECTION 1: RECITALS INCORPORATION

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

SECTION 2: DEFINITIONS

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

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

Administrative Charges - Administrative Charges shall mean those charges set forth in Section 27, herein, as amended.

Agreement - Agreement shall mean this document, including any written amendment thereto as agreed upon by City and Contractor.

Bag - Bag shall mean a non-dissolvable plastic sack with a capacity of up to approximately thirty-five (35) gallons designed or intended to store Municipal Solid Waste with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a bag and its contents shall not exceed 30 pounds.

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

Brush - means tree, shrub and brush trimmings securely tied together, forming an easily handled package not exceeding 4 feet in length by 4 inches in diameter or 40 pounds in weight.

Bulk Waste - Bulk Waste shall mean Municipal Solid Waste composed of materials not easily containerized in a Cart such as, but not limited to, Brush, furniture, and large appliances. Bulk Waste shall include Municipal Solid Waste enclosed in bags. Such items shall not exceed 4 feet in length by 4 feet in height and/or 40 pounds in weight.

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

Bundle - Bundle shall mean Yard Trimmings securely tied together forming a package that may be easily handled, not to exceed four (4) feet in length, four (4) inches in diameter or forty (40) lbs. in weight.

Cart - Cart shall mean a receptacle with wheels with a capacity of up to approximately ninety-five (95) gallons designed or intended to be mechanically dumped into a loader-packer type truck and approved for use by the City.

City- City shall mean The City LOCKHART, Texas; and shall include City's elected officials, officers, employees, agents, volunteers, and representatives.

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

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

City Services - City Services shall mean Municipal Solid Waste Services, Bulk Waste Services and Recycling Services for City Facilities pursuant to this Agreement and Municipal Solid Waste Services and Recycling Services for City Events pursuant to this Agreement.

Commercial Unit – means any retail, commercial, industrial, manufacturing, or multi-family use or service. This definition and category include all units other than a “Residential Unit” as hereinafter defined.

Council- Council shall mean the City Council, governing body of the City.

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

Commercial Unit – Commercial unit means any retail, commercial, industrial, manufacturing, or multi-family use of service. This definition and category include all units other than a “Residential Unit” as hereinafter defined.

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

Comply or Compliance-Comply or Compliance shall mean timely, fully and substantially performing or meeting each and every term, requirement, obligation, performance

criteria, duty or condition as stated in this Agreement.

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

Contamination - Contamination shall mean the existence of any other material or substance on or contained in Program Recyclable Materials other than Program Recyclable Materials or the existence of any material or substance on or contained in Yard Trimmings other than Yard Trimmings.

Contract Year - Contract Year shall mean the period beginning June 1st of each year and ending on May 31st, of the subsequent year for the term of the Agreement.

Container - Container shall mean Compactor, Dumpster, and Roll-off.

Contractor - Contractor shall mean Central Texas Refuse, LLC ("CTR"), a corporation authorized to do business in the City and the State, and Contractor's assignees and Contractor's subcontractors.

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

Customer - Customer means an occupant of a residential, commercial, or industrial unit or property within the City who generates refuse and/or recycling.

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

Disposal - Disposal shall mean the deposit of any Municipal Solid Waste at a solid waste facility authorized by the Texas Commission on Environmental Quality to manage such waste and shall meet all local, state, and federal requirements.

Dumpster - Dumpster shall mean any container, excluding compactors, with a tight-fitting lid and a minimum capacity of one (1) cubic yard, a maximum capacity of ten (10) cubic yards, and approved for use by the City.

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

Garage Door - the door to the resident's garage, if applicable, otherwise, the nearest area to the residence most easily accessible from the curbside where service would otherwise be performed.

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

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

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

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

Holiday - Holiday shall mean Thanksgiving Day, Christmas Day or New Year's Day or any other dates as mutually agreed upon City and Contractor

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

Non-Set-out - Non-Set-out shall mean an occurrence when a resident did not set their cart and/or material at the curb by 7:00 AM, CDT for Residential Services and 5:00 AM, CDT for City Services and the address was reported and documented by the contractor as such.

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

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

Missed Collection - Missed Collection shall mean an occurrence when a resident reports that their cart and/or material was set at the curb by 7:00 AM, CDT for Residential Services and 5:00 AM, CDT for City Services and was not collected, if the address was not reported and documented by the Contractor as a Non-Set-out or Unaccepted Set-out.

Multi-family Complex - Multi-family Complex shall mean a continuous dwelling, whether contiguous or multi-level construction, within the City occupied by a person or group of persons utilizing container(s) for the collection of Municipal Solid Waste.

Municipal Solid Waste - Municipal Solid Waste shall mean Solid Waste resulting from or incidental to activities of Residential Service Units, City Facilities, and City Events, including garbage and rubbish. Municipal Solid Waste shall not include Excluded Waste.

Municipal Solid Waste Services - Municipal Solid Waste Services shall mean collection and

disposal of Municipal Solid Waste by the Contractor pursuant to this Agreement.

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

Process, Processed or Processing-Recovery of Recyclable Materials, Treatment into Recovered Materials, and marketing of Recovered Materials to end markets;

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

Program Glass Recyclable Material – Glass will not be included.

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

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

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

Program Recyclable Material - Program Recyclable Material shall mean Program Paper Recyclable Material, Program Plastic Recyclable Material, and Program Aluminum and Steel Program Recyclable Material.

Recovered Material - Recovered Material shall mean Recyclable Materials which have been processed at the Recyclable Material Facility to market specifications.

Recyclable Material- Recyclable Material shall mean approved material that has been recovered or diverted from the Solid Waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable material is not Solid Waste.

Recyclable Material Facility - Recyclable Material Facility shall mean all contiguous land, structures, other appurtenances, and improvements on the land used for processing of Recyclable Materials where the Recyclable Material is received, sorted, processed and stored to be shipped and marketed to end-users and not Disposed. A facility may be publicly or privately owned and may consist of several processing or storage units.

Recycling- Recycling shall mean a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed Municipal Solid Waste composting, that is, composting of the typical mixed Solid Waste, recycling includes the composting process if the compost material is put to beneficial use.

Recycling Services - Recycling Services shall mean the single stream collection, processing, and marketing of Program Recyclable Material by Contractor pursuant to this Agreement.

Resident - Resident shall mean a person whom resides at a Residential Service Unit.

Residential Service Unit - Residential Service Unit shall mean a dwelling, excluding Multi-family Complex(es), within the City occupied by a person or group of persons. A Residential Service Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto.

Residential Services - Residential Services shall mean Municipal Solid Waste Services, Bulk Waste Services, Recycling Services, and Yard Trimmings Services.

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

Rubbish - Rubbish shall mean non-putrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

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

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

Single Stream - Single Stream shall mean Program Recyclable Materials that are commingled and that do not require the generator to subdivide the Program Recyclable

Materials prior to collection.

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

- (A) Solid or dissolved material in domestic sewage or irrigation return flows or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;
- (B) Soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for surface improvement construction.

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

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

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

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

State - State shall mean the State of Texas.

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

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

Will - Will shall mean mandatory and not merely directory.

SECTION 3: REPRESENTATIONS

3.1 Representations by City

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

3.2 Representations by Contractor

The Contractor represents to the City that:

- (i) The Contractor is duly qualified and in good standing to do business in the State and is duly qualified and in good standing to do business wherever necessary to carry on the business and operations contemplated by this Agreement.
- (ii) The Contractor has obtained the necessary disposal capacity for Municipal Solid Waste and Bulk Waste with a Solid Waste Facility for the initial term and renewal terms as defined in Section 5 of this Agreement.
- (iii) The Contractor has obtained the necessary processing and marketing capacity for Program Recyclable Material and Bulk Waste with a Recyclable Material Facility for the initial term and renewal terms as defined in Section 5 of this Agreement.
- (iv) The Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are necessary for collection and disposal of Municipal Solid Waste and Bulk Waste.

- (v) The Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are necessary for collection, processing and marketing of Bulk Waste, Program Recyclable Material.
- (vi) The Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are required under Federal, State, local law, regulation, rule, or ordinance.
- (vii) The Contractor has obtained all required insurance coverages specified in this Agreement.
- (viii) The Contractor has obtained the required performance bond specified in this Agreement.
- (ix) To the best of the Contractor's knowledge, there is no action, suit or proceeding, at law or equity, before or by any court or government authority, pending or threatened against the Contractor, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Contractor of its obligation hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other contract or instrument entered into by the Contractor in connection with the transactions contemplated hereby.

SECTION 4: GRANT OF LICENSE AND ADDITIONAL CONSIDERATION

- 4.1 **License.** City hereby grants Contractor for the term of this Agreement, as defined in Section 5 unless sooner terminated, the right, privilege, and license to have, use and operate Residential Services, Commercial Services and City Services; and to have, use and operate its vehicles on, over, and along, and across the present and future streets and alleys. The City grants the Contractor the exclusive right, privilege, and license to have, use and operate:
- (i) Residential Municipal Solid Waste Services, Bulk Waste Services, Recycling Services
 - (ii) Municipal Solid Waste Services, Bulk Waste Services, and Recycling Services for City Facilities, and
 - (iii) Municipal Solid Waste Services and Recycling Services for City Events.
 - (iv) Commercial Solid Waste Services and Commercial Recycling Services
 - (v) In addition to other consideration contained herein, Contractor shall provide the following to City:
 - A. A yearly cash donation of \$27,000.00 for City's discretion to use for City Parks, City Improvements or scholarships for graduating High School Seniors. \$270,000
 - B. Two annual City-Wide Clean Ups
 - C. All City of Lockhart facilities trash and recycling serviced at no charge to the City
 - D. Educational Program for training of faculty, staff, students and residents with K-12 in class curriculum
 - E. Annual tours of CTR landfill for the students of Lockhart ISD
 - F. Use of Training/Community Center at EP130 for City Functions and Chamber of Commerce Events

SECTION 5: EFFECTIVE DATE AND TERM OF AGREEMENT

5.1 Effective Date

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

5.2 Term of Agreement

5.2.1 Initial Term

Unless sooner terminated in accordance with the provisions in this Agreement, the initial term of this Agreement shall be for a ten (10) year period commencing on June 1, 2021 at 12:00 AM and shall continue in effect until May 31st, 2031 at 11:59 PM.

5.2.2 Optional Renewal Terms

After the initial term as defined in Section 5 of this Agreement, City shall have the option to renew this Agreement for up to one (1) additional five (5) year optional renewal term. Contractor may prohibit the City from exercising an optional renewal term by providing written notice to the City on or before eleven (11) months preceding the scheduled date of expiration of the initial term or the then current optional renewal term of this Agreement. If the Contractor does not provide written notice to the City on or before eleven (11) months preceding the scheduled date of expiration of the initial term or the then current optional renewal term of this Agreement prohibiting the City from exercising the optional renewal term, the City may, upon written notice to Contractor not later than one hundred eighty (180) calendar days preceding the scheduled date of expiration of the initial term or the then current optional renewal term of this Agreement, elect not to exercise the optional renewal term. This provision in no way limits the City's right to terminate this Agreement at any time during the initial term or any optional renewal term thereof pursuant to the provisions in this Agreement.

SECTION 6: RESIDENTIAL, CITY FACILITIES, CITY EVENTS SERVICES: SOLID WASTE SERVICES, BULK MUNICIPAL WASTE SERVICES AND RECYCLING SERVICES

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

6.1.1 Municipal Solid Waste Services for Residential Service Units

Contractor shall collect, once per week on a scheduled day, all Municipal Solid Waste contained in unlimited carts from each Residential Service Unit in the City.

6.1.2 Bulk Waste Services for Residential Service Units

Contractor shall collect, once per week on a scheduled day, up to seven (7) items of Bulk Waste from each Residential Service Unit in the City.

The contractor shall provide for the special collection and hauling from Residential Units

of Bulky Waste not eligible for curbside collection, for which a minimum charge of \$9.50 per cubic yard as applicable shall be charged (minimum charge of \$29.07 for collection of freezers and refrigerators). Construction Debris will be hauled at a rate to be determined by Contractor based upon Container size. Contractor and the Customer will negotiate total charge for such services prior to collection. Contractor will not provide for the special collection of hazardous waste.

6.1.3 Recycling Services for Residential Service Units

Contractor shall collect, every other week on a mutually agreed upon day of the week from all Subscription customers, all Program Recyclable Material contained in unlimited carts from each Residential Service Unit in the City. The MRF – Materials Recovery Facility will calculate the per ton value of the “basket of commodities” for Residential Single Stream (RSS) based upon regionally experienced composition studies and subtract a processing fee (currently \$95.00 per ton). The result of this calculation will be either a negative number (a 100% charge to the City of Lockhart) or a positive number which would be divided 50%-50% with the City of Lockhart as a rebate.

The recycling materials taken to Wilco Recycling or other contractor-designated facility that are of marketable quality will be marketed through existing national, regional, and local purchasing agreements arranged through Wilco Recycling or other contractor-designated facility. Due to transporting the collected recycling materials to a third-party facility, Contractor does not control the cost of the materials to be processed or marketed. Contractor does not guarantee the existence of a market for the materials at any time.

6.1.4 City Large Debris Collection for Residential Service Units

Contractor shall provide, twice annually, at no additional charge, curbside collection of bulk garbage on a mutually agreed day, preferably on a Saturday. Bulky items must be located at the curb area of each residence. Bulk garbage collection excludes construction or remodeling debris, ammunition, hot ashes, medical waste, auto parts, special waste, dirt, rocks, bricks, concrete, tires, batteries, motor oil, cooking oil, waste generated by a private contractor or any materials or items deemed hazardous materials. Chemicals, oil base paints & cleaners, oil, oil filters, anti-freeze, tires, and batteries will not be accepted for pickup. Material not accepted at the landfill will not be accepted at the cleanup site. During the designated cleanup days, structure or partial demolitions of structures will not be collected if the materials exceed Bulky Waste specifications. The City will provide all public notices for the Annual City-Wide Clean-up days via the City information channel, utility billing inserts and local newspapers/media.

6.1.5 Use of EP130 Landfill

Residential Unit Customers who provide a copy of their water bill shall be permitted to drop off items at EP130 at no additional charge. Such drop-off service will be available to Residential Unit Customers only (no commercial or industrial drop-off shall be permitted) and may be utilized unlimited times per year. Provided, however, Residential Unit Customers shall be limited to a total of 6 cubic yards of refuse per drop-off.

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

and Municipal Solid Waste Services and Recycling Services for City Events

6.2.1 City Facilities

Contractor shall collect Municipal Solid Waste, Bulk Waste, and Recycling from each City Facility at the same frequency and the same manner as provided for Residential Service Units pursuant to Section 6.1, herein.

6.2.2 City Events

Contractor shall collect Municipal Solid Waste, Bulk Waste, and Recyclable Materials from City Events. Contractor and City shall mutually decide on the number and size of carts and containers. In addition, Contractor and City shall mutually decide on the frequency and scheduled days. If a dispute arises concerning City Services for a City Facility and/or City Event, City shall at its sole discretion determine resolution of the disputed issue.

6.2.3 Fee paid to City. Contractor shall pay a license, permit, or “franchise” fee, together with an administrative fee to the City during the term and any extended term of this Agreement equal to eight percent (8%) of the gross receipts for all collections for all residences, business, customers, and accounts within the City. Such fee shall be deducted by the City from payments paid to Contractor monthly.

6.3 Commercial Solid Waste Services and Recycling Services for Commercial Service Units

6.3.1 Municipal Solid Waste Services for Residential Service Units

Contractor shall collect, on a mutually agreed upon days of the week, all Commercial Solid Waste contained in containers or carts from each Commercial Service Unit in the City.

6.3.2 Recycling Services for Commercial Service Units

Contractor shall collect, on a mutually agreed upon days of the week from all Commercial Unit customers, all Program Recyclable Material contained in containers or carts from each Commercial Service Unit in the City.

SECTION 7: COLLECTION, DISPOSAL, AND PROCESSING LOCATION

7.1 Collection Location

7.1.1 Residential Services

If the City deems all Residents of a Residential Service Unit are handicapped or due to age or verified physical limitations cannot safely move a cart to the curbside, the Contractor shall collect Municipal Solid Waste and Program Recyclable Material at the garage door and Bulk Waste at the curbside for such Residential Service Units. For Municipal Solid Waste Services and Recycling Service for Residential Service Units not deemed approved for garage door Residential Services by the City, the Contractor shall collect Municipal Solid Waste, Bulk Waste, Program Recyclable Material, at the curbside.

7.1.2 City Services

The City and the Contractor shall mutually decide on an on-site location for collection of Municipal Solid Waste, Bulk Waste, and Recyclable Material from each City Facility and the location for collection of Municipal Solid Waste and Recyclable Material from City Events. The City reserves the right to designate the location for collection of Municipal Solid Waste, Bulk Waste, and Recyclable Material generated by City Facilities and the location for collection of Solid Waste and Recyclable Material for City Events if the City and the contractor cannot agree on an acceptable location.

7.1.3 Commercial Services

The Commercial Business Unit and the Contractor shall mutually decide on an on-site location for collection of Solid Waste and Recyclable Material from each business unit and the location for collection of Solid Waste and Recyclable Material from Commercial Services. The City reserves the right to designate the location for collection of Solid Waste and Recyclable Material generated by Commercial Business unit and the location for collection of Solid Waste and Recyclable Material for Commercial Services if the Commercial Business Unit and the contractor cannot agree on an acceptable location.

7.2 Disposal Location

Contractor shall dispose of all Solid Waste collected in connection with this Agreement at a Solid Waste Facility. For Bulk Waste collected in connection with this Agreement that shall be disposed, Contractor shall dispose of such Bulk Waste at a Solid Waste Facility.

7.3 Processing Location

Contractor shall deliver all Recyclable Materials Collected in connection with this Agreement at a Processing Facility as follows:

- (i) Program Recyclable Materials Collected to a Recycling Processing Facility for Program Recyclable Materials

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

8.1 Commingling of Residential Services Materials Prohibited

The Contractor shall not commingle Municipal Solid Waste, Bulk Waste from Residential Services with materials from outside the City except when approved in writing by the City.

The Contractor shall transport all Program Recyclable Material collected pursuant to this Agreement to a Recyclable Material Facility, except when approved in writing by the City.

SECTION 9: PROGRAM RECYCLABLE MATERIAL PROCESSING REQUIREMENTS

9.1 Residential Program Recyclable Materials Processing Requirements

The Contractor shall utilize processing subsystems at the Recyclable Material Facility

capable of complying with product specifications of secondary materials buyers including, but not limited to, product form, size, weight, density, and degree of contamination. In addition, the Contractor shall utilize processing subsystems at the processing facility capable of processing a minimum of ninety-five percent (95.0%) by weight of Program Recyclable Materials into Recovered Materials monthly.

9.2 Residential Recyclable Materials Audit

The Contactor shall conduct a Recyclable Materials Audit of Residential Recyclable Materials at the Contractor's sole expense not more than once per year, at the request of the City. If requested by the City, the Contractor shall conduct Recyclable Materials Audits in accordance with the protocol in Exhibit A.

The Contractor and the City agree that composition information derived from Recyclable Materials Audits is for public education and outreach purposes.

Upon request by the City, Contractor shall provide information identifying where Program Recyclable Material is marketed, including location of such markets and whether markets are domestic or international.

9.3 Addition and Deletion of Program Recyclable Materials

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

SECTION 10: INSPECTION OF SET-OUTS AND UNACCEPTED SET-OUTS

10.1 Contractor's Right to Inspect Set-Outs

The Contractor may inspect each set-out prior to collection for consistency with the requirements of this Agreement.

10.2 Unacceptable Set-outs

10.2.1 Reasons for Unaccepted Set-outs

Prior to collection of the set-out, Contractor may designate a set-out as an Unaccepted Set-out for the following reasons:

- (i) A set-out exceeds the set-out limits as established in this Agreement;
- (ii) A set-out presents a substantial endangerment, such as disease or death, to the public or employee health or safety; or
- (iii) A set-out contains Hazardous Waste.

Contractor may not designate a set-out as an Unaccepted Set-out for any reason other than those identified in this section.

10.2.2 Procedure for Unaccepted Set-outs

If the Contractor designates a set-out or a portion of a set-out as an Unaccepted Set-

out for the reasons set forth in Section 10.2.1, Contractor shall:

- (i) Take a photograph of the entire set-out;
- (ii) Collect the portion of the set-out that is properly set-out; and
- (iii) Immediately provide an Unaccepted Set-out Notice to the Generator stating the reason the set-out or portion of the set-out was designated an Unaccepted Set-out;

For Bulk Waste set-outs that are Unaccepted Set-outs due to exceeding the set-out limits, Contractor shall collect the seven (7) largest Bulk Waste items.

As for all Unaccepted Setouts, Contractor shall provide a list of the Unaccepted Set-outs including the address, reason set-out was an Unaccepted Set-out, and other information as requested by City to the City by 10:00 AM the next business day. If Contractor fails to provide notice in accordance with this section, Contractor shall be subject to Administrative Charges.

SECTION 11: COLLECTION AND PROCESSING EQUIPMENT

11.1 Collection Equipment

11.1.1 Collection Vehicles

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

11.1.1.1 Appearance of Collection Vehicles

Contractor shall paint all collection vehicles uniformly as approved by the City and with the name of Contractor, customer service office telephone number and the unique identification number of the vehicle in letters not less than six (6) inches high on each side and the rear of the vehicle. All collection vehicles shall be uniquely numbered, and a record kept of the vehicle to which each number is assigned.

Contractor shall maintain all collection vehicles in a clean manner. Upon the request of the City, Contractor shall wash collection vehicles as to maintain collection vehicles in a clean manner.

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

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

11.1.1.2 Age of Collection Vehicles

Upon commencement of the Agreement, contractor shall provide collection with collection vehicles having an average age not exceeding seven (7) years. Contractor shall provide collection with collection vehicles of less than seven (7) years of age during the initial term of the Agreement and any subsequent renewal terms.

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

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

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

11.1.2 Carts

11.1.2.1 Receptacles to be provided

Contractor shall provide one (1) 95-gallon Cart to each Customer for the collection of solid waste and shall also provide one (1) (95) gallon recycling Cart to each Subscription Customer that requests one for the collection of recycling materials. Contractor shall additionally provide dumpsters for the collection of multi-family, commercial, and industrial refuse, and waste, to multi-family and the larger commercial and industrial units according to the terms and rates set forth herein as outlined in Exhibit "B". All receptacles will be in good condition, new or properly reconditioned, and Contractor shall replace any broken or damaged receptacles promptly upon request by the City up to the agreed upon amount. Based upon the information provided by the City, Contractor shall provide Carts and recycling containers to all new Customers (and retrieve receptacles from all terminated Customers) no later than the next regular collection day following receipt of notice from the City. Additionally, Contractor shall notify the City of any Customers who have requested initiation or termination of solid waste or recycling service and are not reflected on the written lists provided by the City.

11.1.2.3 Maintenance, Repair and Replacement of Carts

Upon notification to Contractor by the Resident or City that a cart has been lost, destroyed, stolen or that it has been damaged beyond repair, Contractor shall deliver a replacement cart to such customer by or on the next service date.

11.1.3 Other Collection Equipment

11.1.3.1 Appearance of Other Collection Equipment

Contractor shall paint all containers uniformly as approved by the City and with the name of Contractor and customer service office telephone number in letters not fewer than six (6) inches in height on the front of the container. No advertising shall be permitted on vehicles for persons or entities other than the Contractor or the City. Contractor shall maintain all containers in a clean manner. Upon the request of the City, Contractor shall wash containers as to maintain containers in a clean manner. Contractor shall be solely responsible to ensure the appearance of other collection equipment is consistent with the collection vehicles and carts.

11.1.3.2 Purchase, Operation, and Maintenance of Other Collection Equipment

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

City, at its sole discretion, shall determine whether the Contractor is or is not properly maintaining the collection equipment. If the City determines the Contractor is not properly maintaining the collection equipment, Contractor shall replace such equipment in accordance with this Agreement and City may assess Administrative Charges in accordance with this Agreement.

11.1.3.3 Replacement of Collection Equipment

Unless otherwise stated in this Agreement, Contractor, at its sole cost, shall replace collection equipment if such equipment is lost, stolen or damaged beyond normalwear and tear. If Contractor or City determines that collection equipment requiresreplacement, Contractor shall replace such equipment within fourteen (14) calendar days with comparable equipment. Contractor shall be responsible to make the appearance of the replacement equipment in adherence with the requirements of this Agreement.

11.1.4 Ownership of Collection Equipment

11.1.4.1 Ownership Collection Equipment

Ownership of collection equipment shall rest with Contractor.

11.1.4.2 Ownership of Carts

Title to and ownership of all solid waste and recycling carts is, at all times, with Contractor regardless of whether such carts are in the possession of Contractor, Residential Service Units, Business Service Units, City Facilities or any other entity or individual.

11.2 Disposal Facility, Recyclable Material Facility, and Processing Facility Equipment

11.2.1 Scales

The Contractor shall be solely responsible for ensuring the Disposal Facility and Recyclable Material Facility are equipped with adequately sized truck scales and computerized record-keeping systems for weighing and recording all incoming vehicles transporting Municipal Solid Waste and Recyclable Materials. Contractor shall separately weigh, record, and tabulate each load from the City.

Contractor shall have each scale annual certified with the State. Upon request of the City, the Contractor shall provide proof of certification to the City.

11.2.2 Capacity and Other Facility Equipment

The Contractor shall be solely responsible for ensuring the Disposal Facility, RecyclableMaterial Facility have the capacity and equipment to dispose of the quantity and type of materials collected by the Contractor in connection with this Agreement in accordance with industry standards.

SECTION 12: PERSONNEL

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

- (i) Contractor shall hire and maintain qualified personnel to provide service under this Agreement. As for personnel operating commercial vehicles, Contractor shall ensure such personnel have a valid commercial driver's license while operating commercial vehicles in the City or in connection with this Agreement. If deemed qualified, the Contractor is encouraged to hire City residents to fill vacant positions at all levels.
- (ii) Contractor shall furnish each employee involved in the performance of this Agreement with a uniform that includes a safety vest and shirt or jacket which clearly displays the name of Contractor. Such uniforms shall make the employee readily visible to other motorists. Contractor's employees shall wear complete uniforms, always including the safety vest and shirt or jacket.
- (iii) Contractor shall provide regularly scheduled, on-going operating and safety training for all employees. In addition, Contractor's employees shall be trained to perform their duties to maximize the City's recycling rate, minimize contamination, and always promote recycling. Such meetings shall be mandatory for all collection and supervisory personnel and held not less than once per month. All temporary and newly hired permanent collection personnel shall receive comprehensive safety and operational training prior to working on the collection vehicles. Training manuals and schedules shall be maintained at the local office of Contractor and available for review at any time by City.
- (iv) All employees involved in the performance of this Agreement including office and all collection personnel shall be provided adequate training before and during their employment with the Contractor. Employees shall know and fully understand the required duties and standards of performance, the specific requirements on routes to which they will be assigned, and the route layouts previously established and approved, and shall possess the necessary knowledge to eliminate delays and missed collections. All supervisory and collection employees shall be provided comprehensive safety training, equipment, and supplies prior to and during the performance of their duties. All collection, administrative, supervisory and customer service personnel shall receive customer service training prior to and during the time they are employed by the Contractor.
- (v) Contractor's employees shall treat all customers, co-workers, City employees and any person with whom they come in contact in the performance of their duties in a polite and courteous manner. Rudeness, belligerence, and the use of profanity are strictly prohibited. The City reserves the right to direct Contractor to remove any employee who violates this policy from providing services to the City.
- (vi) In performance of collection, disposal, processing, and marketing services, Contractor's employees shall adhere to local, state, and federal laws.

City reserves the right to make a complaint regarding any employee of the Contractor who violates

any provision herein, or who is wanton, negligent, or discourteous in the performance of his/her duties. The City may require the Contractor to remove any unacceptable employee, as determined by the City, from service to the City. The City reserves the right to have the Contractor remove employees who fail to meet these criteria from performing services related to this Agreement.

SECTION 13: HOURS OF OPERATION

13.1 Collection Hours of Operation

Except for specified holidays, Contractor's hours of operation within the LOCKHART, Texas are set forth below. However, due to events Beyond the Contractor's Control, which prevent Contractor from completing its collection services by 6:00 p.m., Contractor shall call the City no later than 4:45 p.m. that day and request extended collection hours not to exceed 8:00 p.m. and state the reason for the extended hours. If the extended hours request is approved by the City, Administrative Charges will apply. Contractor hereby acknowledges that Contractor's services are not exempt from The City of Lockhart Code of Ordinances.

13.1.1 Residential Services

Contractor's regular collection hours shall be from 7:00 a.m. until 6:00 p.m., Monday through Friday.

Contractor is prohibited from operating its vehicles on City streets prior to 7:00 a.m. or after 8:00 p.m.

13.1.2 City Services

Contractor's regular collection hours for City Services within 300 feet of a residential area shall be from 7:00 a.m. until 6:00 p.m., Monday through Sunday. Contractor is prohibited from operating its vehicles on City streets for this designated area prior to 7:00 a.m. or after 8:00p.m.

Contractor's regular collection hours for City Services beyond 300 feet of a residential area shall be from 2:00 a.m. until 6:00 p.m., Monday through Sunday. Contractor is prohibited from operating its vehicles on City Streets for this designated area prior to 2:00 a.m. or after 8:00 p.m.

13.1.3 Commercial Services

Contractor's regular collection hours for Commercial Services within 300 feet of a residential area shall be from 7:00 a.m. until 6:00 p.m., Monday through Sunday. Contractor is prohibited from operating its vehicles on City streets for this designated area prior to 7:00 a.m. or after 8:00p.m.

Contractor's regular collection hours for Commercial Services beyond 300 feet of a residential area shall be from 2:00 a.m. until 6:00 p.m., Monday through Sunday. Contractor is prohibited from operating its vehicles on City Streets for this designated area prior to 2:00 a.m. or after 8:00 p.m.

13.2 Facility Hours of Operation

Contractor shall be solely responsible to ensure the Disposal Facility and Recyclable

Material Facility, hours of operation are sufficient to support the requirements as set forth in this Agreement.

13.3 Contractor Representative Hours of Operation

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

SECTION 14: HOLIDAYS

For purposes of this Agreement, holidays shall solely include the following:

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

The City, at its sole discretion, may add or delete holidays. If the City elects to add or delete holidays, the City will provide the Contractor notice in accordance with the provisions of this Agreement. If a holiday occurs on a scheduled collection for Residential Services, Contractor shall perform the scheduled collection for the holiday, and the remainder of the week ending on Friday, on the next calendar day after the scheduled collection day. If a holiday occurs on a scheduled collection for City Services, the Contractor shall perform the scheduled collection for such generator at the sole discretion of each City Facility and City Event on the holiday or the next calendar day after the holiday.

SECTION 15: CUSTOMER SERVICE

Contractor shall maintain a customer service office at a location approved by the City. The customer service office shall be staffed by the Contractor with personnel during all times of regular collection hours of operations as set forth in this Agreement and extending one hour later than regular collection hours of operation.

All customer service complaints for Residential Services, and City Services shall be directed to the Contractor. The City and City staff shall not be designated as points of contact for customer complaints, and will not handle, respond to, or resolve customer complaints. If the City receives a complaint directly, the City shall direct the complainant to contact the Contractor or shall contact the Contractor Representative and provide the following information to the Contractor's Representative:

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

For all residential complaints, whether received by the City or the Contractor, the Contractor shall resolve each complaint as described below.

- (i) If the complaint is a missed collection, Contractor shall pick up the missed collection on that same day if the complaint is delivered to the Contractor prior to 1:00 PM.

- (ii) If the complaint is a missed collection, Contractor shall pick up the missed collection before 5:00 PM on the next calendar day if the complaint is delivered to the Contractor after 1:00 PM.
- (iii) If the complaint is property damage, Contractor shall immediately leave notice for the customer (resident) and notify the City within forty-eight (48) hours. Contractor shall resolve the complaint within seven (7) days, consistent with the damage to property requirements as set forth in Section 17 of this Agreement. If resolution is not completed within seven (7) days or is not completed to the City's standard, the City may perform or contract with a third party to perform resolution and subsequently bill Contractor for the cost to resolve the complaint.
- (iv) If the complaint other than a missed collection or property damage, Contractor shall resolve the complaint within twenty-four (24) hours of notice of such complaint to Contractor.

For each residential customer complaint, Contractor shall record, on a daily basis, the complaint including:

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

Contractor shall submit the complaint report, in a format approved by the City, to the City prior to 10:00 AM each business day.

Contractor and Contractor's employees understand, acknowledge, and agree that customer service is of high importance to the City. Contractor and his employees will work diligently to provide high customer services to the City and all customers.

SECTION 16. [INTENTIONALLY DELETED]

SECTION 17: DAMAGE TO PROPERTY

The Contractor shall take all necessary precautions to protect public and private property during the performance of this Agreement. Except for reasonable wear and tear, the Contractor shall repair or replace any private or public property which is damaged by the Contractor. Such property damages shall be addressed for repair or replacement, at no charge to the property owner or the City, within seven (7) days with property of the same or equivalent value at the time of the damage.

If the Contractor fails to address the repair or replacement of damaged property within seven (7) days, the City may, but shall not be obligated to, repair or replace such damaged property, and the cost of doing so shall be deducted from payment to be made to the Contractor pursuant to Section 21.4, herein.

SECTION 18: SPILLAGE AND LEAKAGE, LITTER, AND ODOR

18.1 Spillage and Leakage

Contractor shall clean up any materials including leakage of fluids spilled from Contractor's vehicles by the Contractor, Contractor's vehicles, or Contractor's employees. During transport, all materials shall be contained, covered, and enclosed so that leaking, spilling, and blowing of materials does not occur. Contractor shall be responsible for the cleanup of any spillage or leakage caused by Contractor, Contractor's vehicles, or the Contractor's employees. Contractor shall perform all clean-ups within two (2) hours of the earliest of either the (i) notification of spillage or leakage, or (ii) knowledge of spillage or leakage by Contractor or Contractor's employees.

18.2 Litter

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

18.3 Odor

The Contractor shall routinely clean collection equipment and shall maintain collection equipment that is owned by the Contractor in a manner so as to prevent the odors.

SECTION 19: RECORDKEEPING, REPORTING, AUDITED FINANCIAL STATEMENTS, AND REPORTING FORMAT

19.1 Recordkeeping

The Contractor shall maintain at the local customer service office adequate records relating to the performance of their respective duties under this agreement. Such records shall be made available at any time during reasonable business hours for inspection by the City and for a period of five (5) years after last or final payment. At a minimum, the Contractor shall create, maintain, and make available records as defined herein and/or required by applicable law, and any reports as are reasonably necessary to:

- (i) Document services provided by type of service, container type, container size, collection frequency, fees charged, and other information as requested by the City.
- (ii) Document deliveries of materials by type of material, time delivered to facility, tonnage of material delivered, source of material, route, and other information as requested by the City.
- (iii) Document missed collections and unaccepted set-outs on a daily basis by address, time and date for each and the reason and notice for unaccepted set-outs.
- (iv) Document complaints by address, date, and time of receipt of complaint, date, and time of resolution of complaint, description of complaint resolution, and other information as requested by the City.
- (v) Document inactive accounts by address and other information as requested by the City.

- (vi) Document spills and property damage by date and time of incident, description of incident, date and time of resolution, description of resolution, and other information as requested by the City.
- (vii) Such other documents and reports as City may reasonably require verifying compliance with the Agreement or to meet City's reporting requirements.

19.2 Reporting

19.2.1 Initial Reports

19.2.1.1 Transition Plan

The Contractor shall submit to the City for approval a transition plan, consistent with the transition support requirements as set forth in this Agreement, prior to execution of this Agreement. In the transition plan, Contractor shall detail:

- (i) The transition from the Contractor to subsequent person(s) or the City providing Residential Services and City Services upon expiration of the initial term or optional renewal term; and,
- (ii) The transition from the Contractor to subsequent person(s) or the City providing Residential Services and City Services upon termination of the Agreement.

19.2.2 Regular Report Delivery and Frequency

The Contractor shall submit all reports in an electronic format approved by the City to the Office of the City Manager. The successful Offeror shall provide the City with a monthly report within seven (7) calendar days following the end of the month and an annual report within thirty (30) calendar days following the end of the calendar year summarizing the information described in Section 19.1 of the Agreement.

19.2.3 Report Format

Within fourteen (14) calendar days of the effective date of this Agreement, the Contractor shall submit to the City for its approval the format and sample contents of the records to be maintained and the reports to be generated in fulfillment of the requirements of the Agreement. Contractor shall submit all reports in an electronic format approved by the City.

SECTION 20: CITY INSPECTION RIGHTS

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

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

20.2 City's Rights to Inspect Facilities and Equipment

The City or any of its duly authorized representatives shall have access, within twenty-four (24) hours of notification, to inspect Contractor's facilities, including the Disposal Facility and Recyclable Material Facility, and equipment and perform such inspections, as City deems reasonably necessary, to determine whether the services required to be provided by

Contractor under this Agreement conform to the terms hereof and/or the terms of the solicitation documents, if applicable. City shall conduct the inspection of facilities and equipment during regular hours of operation. Contractor shall make available to City all reasonable facilities and assistance to facilitate the performance of inspections by City's representatives.

SECTION 21: CUSTOMER LIST, BILLING, PAYMENT, AND ANNUAL ADJUSTMENTS

21.1 Customer List

On or prior to the 1st of each month, City shall provide Contractor with a Customer List for Residential Services, Commercial Services and City Services. Contractor will report in writing to the City any Cart(s) or Bulk Waste placed at the curbside of a Residential Waste Service Unit or City Facility that is not on the then current Customer List, and City will thereafter update the Customer List as applicable. Regardless of the Customer List, Contractor shall provide services to all Residential Services Units, Commercial Service Units and City Facilities in accordance with this Agreement.

The City will provide Contractor with an updated Customer List for Residential, Commercial and City Services on a monthly basis by 1st of each month.

21.2 Billing

21.2.1 Base Residential Services

The City shall bill Residential Service Units as identified on the Customer List for Residential Services excluding additional Bulk Waste Services in accordance with the rate structure established in Exhibit A and as may subsequently be adjusted as set forth in this Agreement.

21.2.2 Additional Residential Bulk Waste Services

The contractor shall provide for the special collection and hauling from Residential Units of Bulky Waste not eligible for curbside collection, for which a minimum charge of \$10.00 per cubic yard as applicable shall be charged (minimum charge of \$30.00 for collection of freezers and refrigerators). Construction Debris will be hauled at a rate to be determined by Contractor based upon Container size. Contractor and the Customer will negotiate total charge for such services prior to collection. Contractor will not provide for the special collection of hazardous waste.

Contractor shall bill Residential Service Units for additional Bulk Waste Services in accordance with the mutually agreed upon rate established in writing and signed by the Contractor and the Residential Service Unit. Contractor shall be required to receive customer approval, in writing, prior to providing additional Bulk Waste Services.

If Contractor fails to follow proper billing procedures, Contractor shall be subject to administrative charges in accordance with this Agreement.

21.2.3 City Services

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

21.3 Direct-haul Disposal and Processing by City at Contractor's Disposal and Processing Facilities

The Contractor shall make arrangements for Municipal Solid Waste, Bulk Waste, and Recyclable Materials generated by City Facilities to be transported and delivered directly by City Facilities staff for disposal or processing at the Contractor's Disposal Facility and Processing Facility at a per-ton cost equal to the per-ton cost rate by the Contractor for Disposal and Processing of all material types in the event the City ever wishes to dispose of the Municipal Solid Waste, Bulk Waste or Recyclable Materials itself.

21.4 Payment to Contractor

On or prior to 15th of each calendar month, the City shall pay Contractor for Residential and Commercial Services billed by the City for an amount equal to the accounts receivable from Residential and Commercial Services billed less

- (i) any disputed amounts,
- (ii) Administrative Charges,
- (iii) authorized withholding of payments,
- (iv) payment determined necessary to protect the City's interest pursuant to Section 29, and

21.5 Annual Rate Adjustment Subject to Council Approval

For collection, transportation and disposal of Refuse, Recycling Services, and for all other services set forth in this Agreement, other than services for which this Agreement provides an additional charge, the "Base Rate" shall be as set forth in Exhibit "B" – Service Rates. The Base Rate shall include provision of receptacles as described in Section 11.1.2.1, above.

- i. Unless adjusted as provided herein, the Base Rate set forth above shall remain fixed for the First year of the term of this Agreement. Thereafter the Base Rate shall be adjusted annually by the amount of the Consumer Price Index—South Region - United States ("CPI") change each year through expiration of the Term (each CPI adjustment to be based on the June CPI of the same year).

The total percentage increase for any given year shall not exceed 5% in such year.

Contractor shall provide written notice to the City of all such rate adjustments to the Base Rate not later than thirty (30) days prior to the effective date thereof, and all rate adjustments by Contractor shall be implemented effective June 1st of each year that the Agreement remains in effect. Each notice of adjustment shall include the appropriate data to support the proposed adjustment.

- ii. Contractor certifies that is shall maintain sufficient landfill capacity for the life of the Agreement. In the event a new landfill becomes available within the County of Caldwell for the disposal of solid waste, the Contractor shall conduct an internal review and audit of current rates for services to be performed hereunder to identify any potential savings that may be realized by use of the new landfill. If potential savings are identified and such savings can be achieved by commercially reasonable means, the Contractor shall notify the City of a proposed adjustment to the Base Rate to reflect such savings. The City shall have

the right to hire a disinterested, third party auditor to review the Contractor's internal audit, but the details of the Contractor's internal audit shall not be disclosed directly to the City or any other third parties and shall be deemed confidential and proprietary information belonging to the Contractor.

If the Contractor does not request a rate increase by June 1st of a year, the City reserves the right to evaluate Residential rates in accordance with the rate adjustment criteria as defined in this section. If evaluation of Residential rates would result in a decrease in rates, the City may request approval of a rate decrease by City Council, to take effect June 1 of each year.

21.6 Other Rate Adjustments Subject to Council Approval

In addition to the above, the Contractor may petition the City for additional rate adjustments at reasonable times based on increases in cost of operations that are completely beyond the control of the Contractor. Changing landfill locations shall not be considered beyond the control of the Contractor. The Contractor's petition will specifically identify the reasons for the requested adjustment, and its impact upon the Contractor's cost of operations, in unit terms, with an explanation of the methodology used to calculate such impact. The City may request additional information it considers necessary to evaluate the requested adjustment. The City may grant such adjustments through amendments to the Agreement.

21.7 Potential Audit of Rates. In the event a new landfill becomes available within the County of Caldwell for the disposal of solid waste, the Contractor shall conduct an internal review and audit of current rates for services to be performed hereunder to identify any potential savings that may be realized by use of the new landfill. If potential savings are identified and such savings can be achieved, in the Contractor's sole discretion, by commercially reasonable means, the Contractor shall notify the City of a proposed adjustment to the Base Rate to reflect such savings. The City shall have the right to hire a disinterested, third party auditor to review the Contractor's internal audit, but the details of the Contractor's internal audit shall not be disclosed directly to the City or any other third parties and shall be deemed confidential and proprietary information belonging to the Contractor.

SECTION 22: COMPLIANCE WITH LAWS AND REGULATIONS

Contractor, its officers, agents, employees, contractors, and subcontractors, shall abide by and comply with all existing laws and laws which may be enacted by the federal, state, and local governments. It is expressly agreed that nothing in this Agreement shall be construed in any manner to abridge the right of the City to pass or enforce necessary police and health regulations for the protection of its residents. It is further agreed and understood that, if the 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 such activity and correct such violation, and/or City shall have the right to immediately terminate this Agreement if the City determines Contractor has violated any law.

SECTION 23: PUBLIC EDUCATION NOTICES

Contractor shall provide the following services associated with public education notices at no

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

(i) Development, Printing and Distribution of New Services Notice

Contractor shall develop, print, and distribute to all Residential Service Units and at Contractor's own expense, a New Services Notice. The New Services Notice shall be approved by the City and shall include: (a) a list of both existing and new services provided; (b) a description of each of the services provided; and (c) the frequencies that Contractor will perform each service.

(ii) Development, Printing and Distribution of Unaccepted Set-out Notice

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

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

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

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

SECTION 24: OWNERSHIP OF SOLID WASTE, BULK WASTE AND PROGRAM RECYCLABLE MATERIALS

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

SECTION 25: INDEMNIFICATION

To the fullest extent permitted by law, each Party shall and does hereby mutually indemnify and hold

harmless the other Party, as well as its officers, directors, agents and employees, from and against all claims, damages, losses and expenses, including without limitation, attorneys' fees, arising out of or related to this Agreement or the performance thereof, but only to the extent such claims, damages, losses or expenses are attributable to the negligent act or omission or other fault of the indemnifying Party. The indemnification obligations hereunder shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist to any Party or person described in this Section. The indemnification requirements set out herein shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for either Party under any insurance policy, workers' compensation acts, disability benefits acts or other employee benefit acts.

SECTION 26: INSURANCE REQUIREMENTS

The following insurance requirement applies.

26.1 General Requirements

- (i) The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Agreement term and during any optional renewal terms, as set forth in Section 5.2 of the Agreement.
- (ii) The Contractor shall provide to the City a certificate of insurance with respect to each required insurance policy as verification of coverages required below prior to contract execution and within fourteen (14) calendar days after any future written request from the City. In addition, the Contractor shall promptly obtain and provide to the City new certificates of insurance (i) annually, (ii) within ten (10) days after the renewal date for any policy, and (iii) within ten (10) days after any replacement or supplemental policy is obtained.
- (iii) All certificates of insurance must be originals, duly endorsed by an authorized representative of the carrier, and be in such form as the City shall reasonably require.
- (iv) The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- (v) The Contractor must submit certificates of insurance to the City for each subcontractor prior to the subcontractor commencing work on the project.
- (vi) The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best Financial Strength Rating of B+ or better, and A.M. Best Financial Size Category of VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund and other carriers approved by the City.
- (vii) All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Lockhart
City Attorney's Office
308 W. San Antonio Street
P.O. Box 239
Lockhart, TX 78644

- (viii) The "*other*" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- (ix) If insurance policies are not written for amounts specified in Section (iv), Supplemental Purchase Provisions, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- (x) The City reserves the right to review the insurance requirements set forth during the effective period of the Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor. The City shall reimburse Contractor for any additional cost incurred due to changes in the City's insurance requirements from those set forth in this Agreement.
- (xi) The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement and any optional renewal terms, as set forth in Section 5.2 of the Agreement, or as required in the Agreement.
- (xii) The Contractor shall be responsible for premiums, deductibles, and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- (xiii) The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

26.2 Specific Coverage Requirements

The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement, including extension options and hold over periods. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- (i) Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$1,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

- (ii) Blanket contractual liability coverage for liability assumed under the Agreement and all other Contracts related to the project.
- (iii) Independent Contractor's Coverage.
- (iv) Products/Completed Operations Liability for the duration of the warranty period.
- (v) Products/Completed Operations Liability for the duration of the warranty period.
- (vi) Thirty (30) calendar days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.
- (vii) The City of Lockhart listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

26.3 Business Automobile Liability Insurance

The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$500,000 bodily injury per person, \$1,000,000 bodily injury per occurrence and at least \$250,000 property damage liability per accident. The policy shall contain the following endorsements:

- (i) Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage.
- (ii) Thirty (30) calendar days' Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage.
- (iii) The City of Lockhart listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.

26.4 Workers Compensation and Employers' Liability Insurance

Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

- (i) The Contractor's policy shall apply to the State of Texas.
- (ii) Waiver of Subrogation, Form WC 420304, or equivalent coverage.
- (iii) Thirty (30) calendar days' Notice of Cancellation, Form WC 420601, or equivalent coverage.

26.5 Endorsements

The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval which will not be unreasonably withheld.

- (i) Certificate. The following statement must be shown on the Certificate of Insurance.
The City of Lockhart is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Lockhart

for general liability, auto liability and workers compensation policies.

SECTION 27: ADMINISTRATIVE CHARGES

Contractor understands that if Contractor does not timely perform its obligations pursuant to the terms of this Agreement, City will suffer damages which are difficult to determine and adequately specify. The Contractor agrees, in addition to any other remedies available to the City, that the City may withhold payment from the Contractor in the amounts specified below as administrative charges for failure of the Contractor to fulfill the following obligations:

- (i) **Missed Collection**
\$50 for each missed collection above two (2) misses per collection day, to be assessed at the end of each collection month. A missed collection occurs when a resident reports that their material was set at the curb by 7:00 AM, CDT for Residential Services and 5:00 AM, CDT for City Services and was not collected if the address was not reported by the Contractor as a Non-Set-out and Unaccepted Set-out.
- (ii) **Missed Residential Service Unit Block**
\$500 for each incident of the Contractor failing to pick up material on a block containing Residential Service Units. A missed block is defined as one side of a street between cross streets or an entire cul de sac where residents from at least three households on that street report that they had their material out before 7:00 AM, CDT the material was not picked up, the material was properly sorted, and the address was not reported by the Contractor as a Non-Set-out and Unaccepted Set-out.
- (iii) **Failure to Provide Residential Services or City Services During Regular Hours of Operation**
\$250 for each Contractor vehicle providing Residential Services or City Services operating on City streets after 6:00 PM and ending before 8:00 PM.
\$500 for each for each Contractor vehicle providing Residential Services or City Services on City streets in the City after 8:00 PM.
- (iv) **Failure to perform proper billing procedures and/or receive customer approval prior to performing and billing for additional Bulk Waste Services**
\$250 each incident
- (v) **Failure to Complete a Majority (50%) of the collections on a given day**
\$2,500 each incident
- (vi) **Failure to clean up material spilled or littered by Contractor within two (2) hours of verbal or written notification**
\$250 each incident
- (vii) **Failure to maintain vehicle in manner which prevents nuisances such as leaky seals or hydraulics**
\$100 each incident
- (viii) **Failure to address, as required by this Agreement, Damage to Property within forty-eight (48) hours**

- \$250 each incident
- (ix) Failure or neglect to collect materials from a missed pickup location within the amount of time specified in the Contract
\$250 each incident
- (x) Failure to maintain Cart or Container in proper working order ten (10) calendar days after notice has been provided by the City
\$100 each incident
- (xi) Failure to provide a timely or complete monthly or annual report
\$250 each incident
- (xii) Failure to return Cart or Container to approximately original location.
\$50 each incident
- (xiii) Placing Recyclable Material in Solid Waste containers or vehicles
\$1,000 each incident
- (xiv) Failure to provide updated route maps to City after change in routing
\$50 per day each day beyond thirty (30) calendar days after change in routing
- (xv) Failure to leave an education tag when material that is inappropriately prepared is not collected
\$100 each incident
- (xvi) Distributing Carts without labels that include text and graphics depicting what materials may be placed in the containers
\$100 each incident
- (xvii) Failure to respond to any customer complaint received by the close of the following business day
\$100 per business day thereafter per incident
- (xviii) Failure to provide the City with the required resolved customer complaint documentation
\$50 per business day thereafter per incident
- (xix) Failure to be able to accept materials on any day after the date upon which service begins on which materials are to be collected
\$3,000 each day
- (xx) Failure to process a minimum of ninety-five percent (95.0%) by weight of Program Recyclable Materials into Recovered Materials monthly.
\$250 each day

The City shall notify the Contractor in writing or electronically of each act or omission in this Agreement reported to or discovered by the City. It shall be the duty of the Contractor to take whatever steps or action may be necessary to remedy the cause of the complaint.

Exceptions: For the purposes of this Contract, the Contractor shall not be deemed to be liable for penalties where its inability to perform collection service is the result of conditions of Force Majeure as set forth in this Agreement, inclement weather severe enough that trucks cannot safely take collections.

SECTION 28: LIQUIDATED DAMAGES

Should the Contractor, without good cause, be unable, refuse or fail to:

- (i) Collect and dispose of at least 95% of the Municipal Solid Waste from Residential Service Units;
- (ii) Collect and dispose of at least 95% of the Municipal Solid Waste from City Facilities;
- (iii) Collect and dispose of at least 95% of the Bulk Waste from Residential Service Units;
- (iv) Collect and dispose of at least 95% of the Bulk Waste from City Facilities;
- (v) Collect and process of at least 95% of the Program Recyclable materials from Residential Service Units; and/or
- (vi) Collect and process of at least 95% of the Program Recyclable Materials from City Facilities.

And to the extent such failure is attributable to the fault of Contractor and not attributable to circumstances beyond Contractor's control, including but not limited to strikes, work stoppages, sickouts, and force majeure, for three (3) consecutive calendar days, Contractor agrees to pay to the City as liquidated damages the sum of \$50,000 as a one-time penalty and \$15,000 per calendar day from the inception of such failure to perform for as long as such failure to perform continues regardless of the volume of Municipal Solid Waste, Bulk Waste, and/or Program Recyclable material that remains uncollected, hauled away and properly disposed of. This provision of liquidated damages is intended to fully compensate the City for damages it might suffer as a result of such failure and shall preclude the City's right to seek additional damages or recovery of any kind. Force majeure shall mean weather related events, civil disturbances, and any other causes beyond Contractor's control. This provision and liquidated damages is mutually agreed upon due to the difficulty in determining the City's actual damages to find, secure and fund immediate assistance to prevent public health and safety hazards.

SECTION 29: PAYMENT WITHHELD

In addition to express provisions elsewhere contained in this Agreement, City may withhold from any payment otherwise due the Contractor such amount as determined necessary to protect the City's interests on account of:

- (i) Unsatisfactory progress of the work not caused by condition beyond Contractor's control;
- (ii) Defective work not corrected following written notice and reasonable opportunity to cure;
- (iii) Contractor's failure to carry out material instructions or orders of the City or

its representative;

- (iv) Execution of work not in substantial accordance with the Agreement;
- (v) Claim filed against City by resident or third party due, in part, to Contractor's fault, as determined by the City.
- (vi) Failure of Contractor to properly make payments to any subcontractor for material or labor following receipt of payment for same from the City;
- (vii) Damage to another contractor caused by Contractor;
- (viii) Unsafe working conditions allowed to persist by Contractor following written notice and reasonable opportunity to cure;
- (ix) Failure of Contractor to provide required reports and other reports as required by City; and
- (x) Use of any subcontractors without the City's prior written approval.

When the above grounds are removed, payment shall be made for amounts withheld because of them and the City shall never be liable for interest on the withheld payment. The City's right to withhold payments under this section will be reasonable in light of the nature of the claim, amount of available insurance and performance bond pursuant to this Agreement.

SECTION 30: PERFORMANCE BOND

Contractor agrees that after the execution of this Agreement and one (1) month or more prior to the commencement of the work, Contractor shall make, execute, and deliver to the City a good and sufficient Performance Bond in a form approved by the City, to secure the full, complete and faithful performance of the terms and conditions herein. Such Performance Bond shall be in the amount of one million dollar five hundred thousand (\$1,500,000) and shall be renewed each year thereafter throughout the term of the Contract and any renewal periods. Contractor shall ensure the Performance Bond shall be signed by the President or General Officer of the Contractor, together with the signature of the corporate secretary and the corporate seal. The surety shall be a surety company duly authorized to do business in the State of Texas; having an "A" or better rating by A. M. Best or Standard and Poor's; included on the list of surety companies approved by the Treasurer of the United States of America; and acceptable to the City.

SECTION 31: ASSIGNMENT AND/OR SUBCONTRACTING

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

SECTION 32: TAXES

Contractor shall be responsible for and shall pay all sales, consumer, use, and other taxes. When equipment, materials or supplies generally taxable to the Contractor are eligible for a tax exemption due to the nature of the item and services performed as part of this Agreement, Contractor shall assist City in applying for and obtaining such tax credits and exemptions which shall be paid or credited to City.

SECTION 33: FORCE MAJEURE

Except for any payment obligation by either party, if the City or Contractor is unable to perform, or is delayed in its performance of any of its obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the City or Contractor to correct the adverse effect of such event of force majeure. An event of "Force Majeure" shall mean the following events or circumstances to the extent that they delay the City or Contractor from performing any of its obligations under this Agreement:

- (i) Acts of God, tornadoes, hurricanes, floods, sinkholes, fires, and explosions (except those caused by negligence of Contractor, its agents, and assigns), landslides, earthquakes, epidemics, quarantine, pestilence, and extremely abnormal and excessively inclement weather;
- (ii) Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities;
- (iii) Suspension, termination, or interruption of utilities necessary to the operation of the Recyclable Material Facility; and
- (iv) Other causes or circumstances beyond the reasonable control of the affected party that could not reasonably be anticipated by such party.

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

SECTION 34: TERMINATION

Following ten (10) days' written notice and opportunity to cure or commence curing, the City may terminate this Agreement without liability to Contractor and pursue all of its legal and equitable remedies against Contractor in the event Contractor materially breaches its obligations hereunder.

Additionally, this Agreement shall terminate upon:

- (i) The written agreement of the Parties.
- (ii) The expiring terms of this Agreement.

SECTION 35: INTENTIONALLY DELETED

SECTION 36: DISPUTE RESOLUTION

36.1 Interpretation of Agreement

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

36.2 Definition of Claim

As used herein "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of the Agreement terms, or other relief, arising under or relating to this Agreement. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, where the submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim for the purpose of this clause. A claim by either party shall be made in writing and submitted to the other party.

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

36.3 Process for Dispute Resolution

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

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

Upon the written decision of the City Council, the Contractor and the City agree that the Contractor and the City shall, as a condition precedent to the institution of any action regarding claims arising under this Agreement, first submit any claims to mediation before a professional mediator selected by the Contractor and the City, at a mutually agreed time and place, and with the mediator's fees split equally between the Contractor and the City. If mediation is unsuccessful within forty-five (45) calendar

days of the date of the initial mediation, the Contractor and the City agree that if the Contractor and/or the City elect to institute any action regarding claims arising under this Agreement such claims shall be submitted to the exclusive jurisdiction pursuant to Subsection 38.14, herein.

36.4 Operations during Dispute

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

The Contractor expressly recognizes the paramount right and duty of City to provide adequate services to its residents and further agrees, in consideration of the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court without first negotiating with City in good faith for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute in accordance with Subsection 36.3, herein.

SECTION 37: DESIGNATED REPRESENTATIVE

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

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

If to the City: City Manager's Office
ATTN: Steve Lewis
308 W. San Antonio Street
P.O. Box 239
Lockhart, TX 78644

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

SECTION 38: MISCELLANEOUS

38.1 Succession of Agreement

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

38.2 Survival

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

38.3 Joint Preparation

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

38.4 Relationship

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

38.5 Further Assurance

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

38.6 Time of the Essence

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

38.7 Captions and Section Headings

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

38.8 No Waiver

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

38.9 Entire Agreement and Modification

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

38.10 Severability

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

full force and effect.

38.11 Appendices

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

38.12 Governing Law

This Agreement shall be construed and interpreted according to the laws of the State of Texas and venue for legal actions involving this Agreement shall be in Williamson County, Texas with respect to state court, and the United States District Court for the Western District of Texas with respect to federal court.

38.13 Attorney Fees

In the event of arbitration or litigation between the parties regarding this Agreement, the prevailing party shall be entitled to recovery of its attorney's fees and costs.

38.14 No Waiver of Immunities

The City does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity to suit under the laws of the State of Texas and the United States.

38.15 Authorization

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

[SIGNATURES TO FOLLOW ON THE NEXT PAGE]

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

City of Lockhart

By: _____

Printed Name: _____

City Name: _____

Attest: _____

Contractor

By: _____

Printed Name: _____

Contractor Name: _____

Attest: _____

EXHIBIT A
RATES FOR SERVICES

Collect Residential Refuse at Curbside

Contractor will provide curbside hand collection service of residential refuse and waste to each Residential Unit as follows:

Monthly Rates:

1. Residential Collection (once per week) = **\$13.00**
2. Seniors (once per week) = **\$10.92**
3. Additional 95-gallon cart trash = **\$5.94**
4. Recycling (every other week) = **\$3.00**

The above rates are subject to change as provided herein. The prices include curbside collection one (1) time per week for refuse and one (1) every other week for recycling, as set forth herein. Curbside collection service shall be provided by use of Contractor-owned Carts unless otherwise specified herein.

Collect Commercial Refuse

Contractor will provide collection service of Commercial refuse and waste for multi-family dwellings, apartment projects, commercial and industrial customers as follows:

Monthly Rates:

(1) Commercial customers with refuse volumes equal to or less than 285 gallons per pickup may be hand collected unless it is determined that sharing a dumpster would be more productive. The same curb side policy and bulk items policy will also apply to this category. The rates and charges for customers in this category are as follows:

- \$ 17.00 Monthly Rate for Commercial 95-gallon cart serviced once per week
- \$ 15.00 Monthly Rate for additional 95-gallon cart

The above rates are subject to change as provided herein.

Commercial Trash Bin and Roll off Dumpster Services

Commercial customers producing a volume of refuse, garbage, and waste in excess of an average of 285 gallons per week will be served with trash bins at below rates:

CURRENT RATES

	EOW	1X WEEK	2X WEEK	3X WEEK	4X WEEK	5X WEEK	EXTRA P/U
2-YARD	\$41.70	\$55.60	\$101.71	\$125.63			\$20.93
3-YARD	\$49.85	\$66.46	\$112.56	\$157.06			\$23.74
4-YARD	\$60.01	\$80.01	\$130.21	\$188.73			\$31.39
6-YARD	\$71.21	\$94.95	\$158.68	\$250.43			\$41.89
8-YARD	\$94.25	\$125.67	\$206.87	\$283.07			\$52.34
10-YARD	\$119.26	\$152.42	\$239.51	\$326.60	\$435.68	\$544.74	\$62.82

Excessive Volume Services

The following rates and fees shall be applicable to Commercial Customers and others requiring service at a level in excess of the highest level of each category of customer provided above to be made available with roll off dumpsters. These services will be via roll-off container as follows:

- (i) Delivery fee for all sizes = **Included in price**
- (ii) Daily rental fee for all sizes = **\$3.75**
- (iii) 20 yd. = **\$475.00** per haul
- (iv) 30 yd. = **\$540.00** per haul
- (v) 40 yd. = **\$605.00** per haul

The above rates in this subsection shall be multiplied by 1.08 to result in rates charged by the Contractor sufficient to fund administrative charges and pay the franchise fees. Fees for roll off services shall be invoiced and collected by the Contractor. A fuel surcharge as published on the FuelGauge.com website or other comparable source as approved by the City Manager or designee shall also be applicable for the above rates.

END OF EXHIBIT A: RATES FOR SERVICES

EXHIBIT B: RECYCLABLE MATERIALS AUDIT PROTOCOL

The Contractor, at the Contractor's sole expense, shall conduct a Recyclable Materials Audit of Residential Recyclable Materials upon request by the City, but not more often than once per year. Recyclable Materials Audits shall be conducted in accordance with the following:

General Protocol

1. Each audit will be monitored by the Contractor and the City if City desires.
2. Unless agreed to via email or other writing by the City, the City and the Contractor shall agree on an audit date a minimum of thirty (30) calendar days in advance.
3. The City and the Contractor will agree to the description of each commodity in advance of the Recyclable Materials Audit in written form.
4. The audit will be conducted based on a minimum of two hundred (200) pound samples per each scheduled collection day for a calendar week for a total of 1,000 pounds. Samples/loads shall be from different routes. Samples/loads shall be material collected from Residential Service Units.
5. The following procedure will be used for route selection: The City and the Contractor will agree upon a day to randomly draw routes from each collection day at least two (2) weeks in advance of the audit.

Manual Audit Protocol

The Contractor may elect to manually sort the designated samples utilizing a sorting crew. The Contractor, at the Contractor's sole expense, shall conduct manual audits in accordance with the following.

1. The City and the Contractor shall randomly select addresses from each day's route (for one week- (5) collection days) and retrieve carts totaling 200 pounds of recyclables per scheduled collection day. These carts will be transported to the MRF where they will be stored until the manual audit is conducted. Since a randomly selected address may not have a set out on the day of audit collection, enough addresses will be randomly selected to ensure that 200 pounds of recyclables are collected each day.
2. The Contractor shall store the carts containing audit recyclables in a segregated area. The segregated area will keep audit materials separated from any other Residential Single Stream materials that are delivered to the delivery facility.
3. During the audit, the Contractor will classify the materials into the proposed material categories; cardboard, mixed paper, PET, HDPE-Natural, HDPE-Color, #3-7 plastic, aluminum cans, tin/steel cans, and trash.
4. The Contractor will assign bins/cans to each material category and weigh to the nearest pound and record the weight of each bin/can empty. All weights shall be documented with City representatives present,
5. Once all the materials from the samples have been sorted into their designated bins/cans, the Contractor will check all bins/cans to confirm materials are placed in the appropriate bin/can. After the Contractor has performed a quality control check, the

City shall check all bins/cans to confirm materials are placed in the appropriate bin/can. The City shall communicate any issues immediately to the Contractor.

6. Each commodity and contamination shall be weighed to the nearest pound. All weights shall be documented with City representatives present.
7. At the end of the audit day, tally sheets of all weights for each sample shall be provided to City.

Analysis and Reporting Protocol

1. Following the audit, the City and Central Texas Refuse, LLC will calculate the estimated composition by material category and contamination based on the audit. The City will provide the Contractor a report detailing the audit results.
2. The City may reject the audit results if more than five percent (5.00%) of incoming weight of the audited material is not accounted for in the results. If the City rejects an audit, the City may request anew audit to be completed at the Contractor's sole cost within thirty (30) business days after receiving the audit report.
3. The City may take pictures prior to and during the audit.

**END OF EXHIBIT B: RECYCLABLE MATERIALS AUDIT
PROTOCOL**

Exhibit "C"
SERVICES TO BE PERFORMED BY CONTRACTOR

Solid Waste Collection

Contractor shall provide curbside collection service for the collection of residential refuse to each residential or commercial unit one (1) time per week, as provided herein.

All will make use of 95-gallon Carts as provided by Contractor. Up to 7 Additional items may be included in weekly collection outside of the contractor provided 95 – gallon Carts. All additional items Bulky Waste, Bags, and Brush shall be no more than 4 feet in length, 4 feet in height, and No More than 40 lbs in weight. Collection of refuse shall be made between 7:00 A.M. and 6:00 P.M. All acceptable Carts and approved items shall be placed at curbside by 7:00 A.M. on the designated collection day, but no earlier than the evening before the regularly scheduled collection. Exceptions to collection hours shall be effected only upon mutual agreement of the City and Contractor, or when Contractor reasonably determines that an exception is necessary in order to complete collection on an existing collection due to unusual circumstances and notified and received approval from the City.

Brush picked up as part of the Contractor's normal service must be bundled in lengths not greater than (4) four feet in length with a diameter of 4 inches or less, and not greater than 40 lbs in weight. Such bundles will be tied sufficiently so that the bundle can be lifted by the ties into Contractor's vehicle.

Special Annual Clean-up:

For no additional charge Contractor will, 2 days a year, provide curbside collections for a "City-Wide Clean-up" as mutually agreed upon by Contractor and the City. Customers will receive this service during the designated Days as mutually determined. During this event, the following items will be collected at the curbside by the Contractor: all Bulky Waste, construction materials qualifying as Bulky Waste (less than 4 feet in length by 4 feet in height & less than 40 lbs), bulk items (Compliant white goods), and brush less than 4 feet in length – 4 inches in diameter and less than 40 lbs, and bags. Chemicals, oil base paints & cleaners. oil, oil filters, anti-freeze, tires, and batteries will not be accepted for pickup. Material not accepted at the landfill will not be accepted at the cleanup site. During the designated cleanup days, structure or partial demolitions of structures will not be collected if the materials exceed Bulky Waste specifications. The City will provide all public notices for the Annual City-Wide Clean-up days via the City information channel, utility billing inserts and local newspapers/media.

Note: Any Customer who, in the opinion of the Contractor and the City, abuses this privilege, shall pay an additional sum to Contractor, said sum to be agreed upon between the City and the Contractor on a case-by-case basis.

Additional Items below may be included during Special Annual Clean Up Days:

Appliances: Stoves, water tanks, washing machines, dryers, refrigerators, air conditioners, sinks, toilets, and like items. Refrigerators and air conditioners must have their Freon removed by a certified technician and be tagged. Units that are not certified will have a charge of \$30.00 per unit. This will be billed directly to the Customer. The Contractor is not required to pick-up bathtubs, shower stalls and like items.

Furniture: Couches, beds, mattresses, love seats, tables, chairs, lamps, microwaves, etc.

Tires: Tires shall not be accepted for collection as a bulky item or during the Special Annual Clean up days from residential without special preparation. All tires must be quartered or shredded prior to being accepted for regular collection or they will not be picked-up.

Items Not Collected: Construction debris out of Bulky Waste specifications, dead animals, toxic or hazardous waste, batteries, stable matter, rubbish, rocks, dirt, concrete, ammunition, hot ashes, medical waste, auto parts, tires, special waste, stumps, and any item containing CFCs are included as bulky items Not collected as part of normal residential service. Bulky items, not defined as acceptable bulky items or “white goods” (which are not included in Solid Waste). No TV’s.