

Agenda Section	Reading of Ordinance(s)
Section Number	V.B
Subject	Consider, discuss, and act upon Ordinance # O-2016-0927-002 granting a Solid Waste Collection Franchise to Sanitation Solutions
To	Mayor and Council Members
From	Ben White, City Manager
Date	September 27, 2016
Attachment(s)	Ordinance # O-2016-0927-002
Related Link(s)	http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php
Consideration and Discussion	City Council discussion as required.
Action	<ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Approve with Updates <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action

**CITY OF FARMERSVILLE, TEXAS
ORDINANCE # O-2016-0927-002**

AN ORDINANCE OF THE CITY OF FARMERSVILLE, TEXAS, GRANTING AN EXCLUSIVE FRANCHISE TO CONDUCT THE BUSINESS OF PROVIDING SOLID WASTE COLLECTION AND DISPOSAL TO RESIDENTIAL AND COMMERCIAL CUSTOMERS OF THE CITY OF FARMERSVILLE; GRANTING THE RIGHT TO USE THE PUBLIC STREETS, ALLEYS, AND THOROUGHFARES WITHIN THE CORPORATE LIMITS OF THE CITY FOR THE PURPOSE OF ENGAGING IN THE BUSINESS OF SOLID WASTE COLLECTION LOCATED WITHIN THE CITY; AMENDING APPENDIX "A," "MASTER FEE SCHEDULE," OF THE FARMERSVILLE CODE THROUGH THE AMENDMENT OF SECTION 2-6, ENTITLED "REFUSE/GARBAGE FEES," TO AMEND THE FEE SCHEDULE FOR RESIDENTIAL AND COMMERCIAL CUSTOMERS IN ACCORDANCE WITH THE FRANCHISE CONTRACT; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING A PENALTY CLAUSE; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Farmersville, Texas ("City") is a Type A General – Law Municipality located in Collin County having a population of less than 5,000 persons as determined by the most recent federal census, created in accordance with the provisions of Chapter 6 of the Local Government Code, and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, pursuant to Section 54.001 of the Texas Local Government Code, the collection and removal of solid waste and recycling collection within the corporate limits of the City is within the police power of the City; and

WHEREAS, the City Council of the City of Farmersville ("City Council"), has determined that the orderly collection and removal of solid waste is essential to the health, safety and welfare of the residents of the City; and

WHEREAS, the City Council possesses the authority through the Texas Local Government Code and the Texas Health & Safety Code to grant a solid waste collection franchise; and

WHEREAS, the City Council further finds and determines that the granting of the proposed solid waste collection franchise is in the best interest of the health, safety, morals, and general welfare of the City of Farmersville, Texas; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, THAT:

SECTION 1. Findings Incorporated

All the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. Granting of Exclusive Franchise

The City Council hereby grants an exclusive franchise to Sanitation Solutions, Inc. ("Sanitation Solutions") to conduct the business of providing solid waste collection and disposal services to residential and commercial customers of the city. More particularly, Sanitation Solutions has been granted the sole and exclusive franchise, license, and privilege to provide residential and commercial municipal solid waste collection and disposal within the corporate limits of the city and any tracts, territories, and areas hereafter annexed to, or acquired by, the city. This sole and exclusive franchise, license, and privilege also includes the provision of commercial dumpsters and any other form or manner of collecting and disposing of waste from residential, commercial and industrial premises save and except commercial roll-off containers and commercial roll-off containers with compactors.

The exclusive franchise, license and privilege to provide residential and commercial municipal solid waste collection and disposal awarded to Sanitation Solutions hereby and as authorized by the Texas Local Government Code and Texas Health & Safety Code, and any related contract entered into by the City concerning solid waste collection and transportation services, supersedes inside of the City's boundaries any other solid waste franchise granted or contract entered into under the City's Code of Ordinances or otherwise. Every owner, occupant, tenant or lessee using or occupying any building, house or structure in the City and/or possessing a City water meter within the City's corporate limits, as well as all other buildings, houses or structures requiring the collection, hauling and disposal of municipal solid waste within the City's corporate limits, shall be required to utilize and pay for municipal solid waste services provided by the City or its designee, pursuant to the terms of the exclusive franchise agreement, as said franchise agreement may be amended from time to time.

SECTION 3. Exclusions

Sanitation Solutions shall not be obligated to pick up waste, in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate state agency by or pursuant to federal or state law, or waste, in any amount, which is regulated under federal or state law ("Hazardous Waste"). The term Hazardous Waste shall also include, but is not limited to, refrigeration appliances that have not had the chlorofluorocarbons ("CFCs") properly certified as having been removed by a duly licensed individual, motor oil, gasoline, paint and paint cans, tires, automobile/vehicle batteries, petroleum products, and other chemicals and solvents identified as hazardous by the U.S. Environmental Protection Agency. Sanitation Solutions shall, however, have the right of first refusal to provide commercial dumpsters and the collection of dead animals and Hazardous Waste from residential, commercial and industrial premises. Notwithstanding anything to the contrary contained herein, Sanitation Solutions does not have the first right of refusal to provide commercial roll-off containers and and/or commercial roll-off containers with compactors to commercial customers within the City's corporate limits.

SECTION 4. Granting of Right to use Public Streets, Alleys and Thoroughfares

The City Council hereby grants Sanitation Solutions the right to use the public streets, alleys, and thoroughfares within the corporate limits of the City for the purpose of engaging in the business of solid waste collection located within the City.

It shall be unlawful for any person, entity or party other than Sanitation Solutions to conduct or attempt to conduct the business of providing solid waste collection and/or disposal services to any residential and commercial customers of the City, including but not limited to the provision of commercial dumpsters, commercial roll-off containers and any other form or manner of collecting and disposing of waste from residential, commercial and industrial premises, or to use or traverse the streets, alleys, and public ways and places of the City, including any tracts, territories and areas hereafter annexed to, or acquired by, the City, to conduct such business.

If however, Sanitation Solutions should exercise its right of first refusal as set forth in Section 3, above, it shall notify the City in writing to that effect and the City will issue a license or permit to a qualified contracting party, authorizing that party to collect and dispose of waste from the premises at issue and to use and traverse the streets, alleys, and public ways and places of the City, including any tracts, territories and areas hereafter annexed to, or acquired by, the City, for that purpose. In addition, the City may issue a license or permit to a qualified contracting party that has a contract with a commercial customer situated within the City's corporate limits to provide commercial roll-off containers and and/or commercial roll-off containers with compactors which license or permit authorizes that party to collect and dispose of waste from the premises at issue and to use and traverse the streets, alleys, and public ways and places of the City, including any tracts, territories and areas hereafter annexed to, or acquired by, the City, for that purpose.

The license or permit so granted upon Sanitation Solutions' exercise of its right of first refusal and any other license or permit as aforementioned shall be subject to reconsideration, renewal and issuance by the City on an annual basis, subject to the duration of the franchise awarded Sanitation Solutions and Sanitation Solutions' continued election to exercise its right of first refusal and/or the continuation of any contract for commercial roll-off containers and and/or commercial roll-off containers with compactors; provided, however, that the license or permit shall not be abated or revoked before its one-year duration expires should Sanitation Solutions withdraw or change its election to exercise such right within that one-year time-frame.

SECTION 5. Charges, Regulations and Franchise Fees

The charges for providing solid waste collection and disposal services shall be consistent with and as set forth in the Contract for Citywide Solid Waste Collection by and between Sanitation Solutions and City ("Contract"); as such charges may from time to time be amended upon approval of the city council. The Contract is hereby incorporated herein by reference for all purposes allowed by law. The calculation and payment or retention of franchise fees shall be consistent with and as set forth in the Contract. In addition, the performance of said solid waste collection and disposal services shall be regulated and controlled by the Contract and the City's Code of Ordinances. Notwithstanding the

foregoing, Sanitation Solutions may negotiate a different price structure up to the rates set forth herein for commercial roll-off containers and and/or commercial roll-off containers with compactors.

SECTION 6. Master Fee Schedule Amended

The Master Fee Schedule, Appendix A to the Farmersville Code, is hereby amended by replacing the fee schedule for Residential and Commercial Customers contained in Section 2-6, "Refuse/garbage fees," with the fee schedule for Residential and Commercial Customers attached hereto and incorporated herein for all purposes allowed by law as Exhibit "A," which fee schedule is derived from the fees established in the Contract.

SECTION 7. Term of Exclusive Franchise and License

The granting of the franchise agreement and license shall be in full force and effect for an initial term of five (5) years commencing October 1, 2016 (the "Contract Date"), with an automatic renewal for one (1) additional five (5) year term, unless terminated earlier by either Sanitation Solutions or the City in accordance with the Contract.

SECTION 8. Cumulative Repealer

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated shall continue to be governed by the provisions of such Ordinance and for that purpose the Ordinance shall remain in full force and effect.

SECTION 9. Savings

All rights and remedies of the City of Farmersville are expressly saved as to any and all violations of the provisions of any Ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 10. Severability

It is hereby declared to be the intention of the City Council of the City of Farmersville that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by valid judgment or final decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance, since the same would have been enacted by the City Council without incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 11. Governmental Immunity

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Farmersville in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

SECTION 12. Injunctions

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Farmersville in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Farmersville.

SECTION 13. Engrossment and Enrollment

The City Secretary of the City of Farmersville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date clause in the minutes of the City Council of the City of Farmersville and by filing this Ordinance in the Ordinance records of the City.

SECTION 14. Penalty Clause

Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined a sum not to exceed \$2,000.00 for each offense, and each and every violation or day such violation shall continue or exist shall be deemed a separate offense.

SECTION 15. Effective Date

This Ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

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PASSED on first and only reading on the 27th day of September, 2016, as an ordinance relating to a contractual matter at a properly scheduled meeting of the City Council of the City of Farmersville, Texas, there being a quorum present, and approved by the Mayor on the date set out below.

APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

APPROVED:

BY: _____
Diane C. Piwko, Mayor

ATTEST:

Mary Tate, City Secretary

EXHIBIT "A"

REFUSE/GARBAGE SERVICE	MONTHLY FEE 1X/Week Collection	MONTHLY FEE 2X/Week Collection	MONTHLY FEE 3X/Week Collection	MONTHLY FEE 4X/Week Collection
RESIDENTIAL				
First Polycart:	\$13.40			
Additional Polycart	\$8.00			
COMMERCIAL RATES				
First Polycart:	\$25.51			
Additional Polycart	\$17.75			
2 Yard Dumpster	\$63.98	\$103.80		
3 Yard Dumpster	\$74.44	\$130.19		
4 Yard Dumpster	\$86.56	\$158.18		
6 Yard Dumpster	\$134.38	\$231.79	\$305.51	\$356.86
8 Yard Dumpster	\$160.27	\$266.98	\$346.78	\$398.17
Caster Set	\$5.50	\$5.50	\$5.50	\$5.50
Locks	\$5.50	\$5.50	\$5.50	\$5.50

COMMERCIAL SPECIAL SERVICES	
Extra Pick-up, 2 Yard Dumpster	\$36.90
Extra Pick-up, 3 Yard Dumpster	\$46.00
Extra Pick-up, 4 Yard Dumpster	\$55.10
Extra Pick-up, 6 Yard Dumpster	\$66.70
Extra Pick-up, 8 Yard Dumpster	\$78.30

Note: Roll-off Compactors and Open Top Roll-off Containers will be billed by Refuse Provider but charges shall not exceed current charges shown below.

ROLL OFF COMPACTORS	
28 Cubic Yard Per Haul (up to 4 tons payload)	\$539.50
30 Cubic Yard Per Haul (up to 4 tons payload)	\$541.50
35 Cubic Yard Per Haul (up to 4 tons payload)	\$574.00
40 Cubic Yard Per Haul (up to 4 tons payload)	\$612.00
42 Cubic Yard Per Haul (up to 4 tons payload)	\$614.00
Trip Charge (Dry Run) – weekday	\$99.00
Delivery – Weekday	\$99.00
Compactor Rental Per Day	\$4.40

OPEN TOP ROLL-OFF CONTAINERS	
20 Cubic Yard Per Haul (up to 4 tons payload)	\$416.00
30 Cubic Yard Per Haul (up to 4 tons payload)	\$486.50
40 Cubic Yard Per Haul (up to 4 tons payload)	\$546.00
Trip Charge (Dry Run) – weekday	\$99.00
Delivery – Weekday	\$99.00
Open Top Rental Per Day	\$4.40




BUNDLED SPECIAL HAUL FEE	
2 Cubic Yard	\$29.30
3 Cubic Yard	\$48.00
4 Cubic Yard	\$64.00
5 Cubic Yard	\$84.05
6 Cubic Yard	\$101.40
7 Cubic Yard	\$120.10
8 Cubic Yard	\$137.45
9 Cubic Yard	\$156.15
10 Cubic Yard	\$174.85

VI. Regular Agenda

Agenda Section	Regular Agenda
Section Number	VI.A
Subject	Consider, discuss, and act upon a private lift station at the property of Marshall Furr, owner of Farmersville Physical Therapy
To	Mayor and Council Members
From	Ben White, City Manager
Date	September 27, 2016
Attachment(s)	Map
Related Link(s)	http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php
Consideration and Discussion	City Council discussion as required.
Action	<ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Approve with Updates <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action



Legend

-  1022 TX-78
-  Pole:
-  Untitled Path

1022 TX-78

Sycamore St

78

Clairmont St

700 ft

Google earth

© 2016 Google

Agenda Section	Regular Agenda
Section Number	VI.B
Subject	Consider, discuss, and act upon the continuation of the Community Recycle Service Program
To	Mayor and Council Members
From	Ben White, City Manager
Date	August 23, 2016
Attachment(s)	NA
Related Link(s)	http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php
Consideration and Discussion	City Council discussion as required.
Action	<ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Approve with Updates <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action

Agenda Section	Regular Agenda
Section Number	VI.C
Subject	Consider, discuss, and act upon a contract approving the awarded contract for Citywide Solid Waste Collection Services
To	Mayor and Council Members
From	Ben White, City Manager
Date	September 27, 2016
Attachment(s)	Contract
Related Link(s)	http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php
Consideration and Discussion	City Council discussion as required.
Action	<ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Approve with Updates <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action

CONTRACT FOR CITYWIDE SOLID WASTE COLLECTION

THE STATE OF TEXAS)
)
COUNTY OF COLLIN)

KNOW ALL MEN BY THESE PRESENTS:

This Contract for Citywide Solid Waste Collection (the "Contract") is made by and between Sanitation Solutions, Inc., a Texas corporation, (the "Contractor") and the City of Farmersville, Texas, a Texas municipal corporation (the "City").

For and in consideration of the covenants, agreements and promises contained herein, the City grants to Contractor an exclusive franchise to conduct the business of providing Solid Waste collection to the Customers of the City of Farmersville, Texas, and the right to use the public streets, alleys, and thoroughfares within the corporate limits of the City for the purpose of engaging in the business of Solid Waste collection located within the City. More particularly, Contractor shall have the sole and exclusive franchise, license, and privilege to provide residential and commercial Solid Waste collection and removal within the corporate limits of the City. In addition, Contractor shall at all times have the right of first refusal to provide temporary bins and Containers, save and except commercial open top roll-off containers and commercial roll-off containers with compactors, and the collection of dead animals, offal, and hazardous waste from Residential, Commercial, and Industrial Customers.

The Contractor shall furnish all personnel, labor, equipment, trucks, and all other items necessary and agrees to make such collections of Solid Waste available to all Customers within the City and agrees that such collections shall be performed pursuant to and consistent with the terms of this Contract, as well as all ordinances and regulations of the City governing or relating to the collection of Solid Waste. The parties agree that the Contract Documents shall consist of the following:

Section 1. Contract Documents and Order of Precedence

The Contract Documents shall consist of the following documents:

1. The Contract and the Contract terms and definitions;
2. The Request for Qualifications and Proposals from the City;
3. The Contractor's proposal including all applicable exhibits, as finally agreed;
4. The performance bond; and
5. Any addenda or changes to the foregoing documents agreed to in writing and signed by the parties hereto.

These Contract Documents are incorporated by reference into this Contract as if set out herein in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed herein above.

Section 2. Basis and Method of Payment

Compensation paid to or collected by the Contractor during the initial twenty-four (24) month period of the Contract shall be an amount equal to the "Net Rate to Sanitation Solutions" described in the attached **Exhibit "A"** ("Base Compensation"). Thereafter, the compensation paid to or collected by the Contractor shall be an amount equal to the Base Compensation plus such additional amount(s) as may be authorized by the City pursuant to Section 2.4 ("Modified Compensation"). Base Compensation and Modified Compensation are collectively referred to as hereinafter as "Compensation." A Franchise Fee based on either (1) a percentage of gross receipts multiplied by the Compensation collected as described in **Exhibit "A"** or (2) a flat fee based on the volume a Polycart, bin or container may hold multiplied by the number of Polycarts, bins or containers collected as described in Exhibit "A" shall be charged and collected from (a) Residential Customers and (b) Commercial, Institutional and Industrial Customers in accordance with the provisions set out in the "Master Fee Schedule" (defined below) as a Franchise Fee for the use and benefit of the City. The amount of the Franchise Fee to be collected may be changed from time to time as directed by the City Council of the City of Farmersville, Texas. Any such change in the Franchise Fee shall be communicated to Contractor and both Contractor and City shall thereafter collect the amount of the Applicable Franchise Fee together with any other applicable amounts collected under this Contract.

2.1 Billing and Collection:

A. **Residential and Commercial Hand Collect Customers:** On a monthly basis, City shall bill and process payments from all Residential and Commercial Hand Collect Customers an amount at least equal to the then effective rate of Compensation for said services as provided for in Exhibit A for Municipal Solid Waste collection services. It is understood and agreed that the City may collect from Residential and Commercial Hand Collect Customers in addition to the Contractor's Compensation and Applicable Franchise Fees such additional amounts as may be determined necessary by the City to cover the costs of billing and collection services, disposal fees, and other associated Solid Waste collection and disposal costs per Residential and Commercial Hand Collect Customers per month. Contractor shall not bill any Residential and Commercial Hand-Collect Customers within the City for any Solid Waste collection or disposal services. Any amounts collected in excess of the Compensation due to Contractor that is paid by each Residential or Commercial Hand Collect Customer shall be retained by the City to offset such additional costs of administering this program.

B. Commercial, Institutional, Industrial and Temporary Container Customers: On a monthly basis, the Contractor shall bill and process payments in an amount equal to the then effective rate of Compensation for said services plus the Applicable Franchise Fee to be remitted to the City from all Commercial and Industrial Customers (including bins and Containers but excluding Commercial Hand Collect Customers) (the "Commercial Billings). Contractor agrees to pay to City the Applicable Franchise Fee, as agreed upon between the City and Contractor, on or before the last day of each month. Such fee will be based on the gross amount collected from the Commercial Billings for all services rendered during the preceding month, excluding any sales taxes. Contractor shall quote rates for Commercial and Industrial Customers services in compliance with the rate structure set forth in Exhibit A. Contractor shall bill Commercial and Industrial Customers directly, and the City shall not be entitled to any compensation relating to such billing, other than the aforementioned Applicable Franchise Fee. Contractor shall have the right to suspend services to any Commercial and Industrial Customer that does not timely pay for the services after providing at least seven (7) days advance written notice to said Customer at the Customer's business and mailing addresses. If Contractor suspends service to a Commercial and Industrial Customer for failure to timely pay said invoices, Contractor has the right to charge a service reactivation fee and/or finance charges or late payment fees in such amounts as may be mutually agreed by City and Contractor if such service to the Commercial and Industrial Customer is reinstated. Notwithstanding the foregoing, Contractor may negotiate a different price structure up to the rates set forth herein for commercial open top roll-off containers and and/or commercial roll-off containers with compactors.

C. Collection of Past Due Accounts: City and Contractor shall each prepare a list of delinquent accounts on a monthly basis. City shall provide to Contractor and Contractor shall provide to City their respective lists of delinquent accounts each month. Contractor shall have all rights and remedies available to it under Texas law to collect delinquent payment of fees by the City and/or Commercial and Industrial Customers. The City agrees to take all steps necessary and permitted by law to require Customers to comply with the terms of this Contract. If Contractor desires to pursue the collection of delinquent payments owed by one or more Residential Customers or Commercial Hand Collect Customers, Contractor shall notify City of such intent and City shall allow Contractor to collect such delinquent accounts so that both City and Contractor are not attempting to collect the same delinquent accounts.

Contractor shall remit to City with Contractor's monthly payment the Applicable Franchise Fee on any and all amounts paid to or collected by Contractor on delinquent accounts including service reactivation fees and/or late payment fees but excluding attorney's fees and costs of court during the immediately preceding month. For any delinquent accounts that are paid to or collected by City, City shall remit to Contractor with City's monthly payment the Compensation

due to Contractor on any delinquent accounts paid to or collected by the City during the immediately preceding month.

2.2 Regular Service for Municipally Owned or Operated Facilities: Contractor shall not charge the City to collect and dispose of Municipal Solid Waste accumulated by the City at City-owned or operated office buildings, facilities and sites, City Parks and other City-designated sites identified as follows (including the type and number of containers per location).

Best Center	One Polycart emptied once per week
City Hall	One Polycart emptied once per week
Farmersville Downtown Park	Four Polycarts emptied once per week
Farmersville Library/Civic Center	Two Polycarts emptied once per week
Farmersville Onion Shed*	One 2-yard Container emptied twice per week
Farmersville Police/Fire	Five Polycarts emptied once per week
Farmersville Public Works	Three 30-yard Roll-Offs emptied as needed with a maximum of thirteen empties per container per year
Farmersville Public Works Annex	One Polycart emptied once per week
Farmersville Senior Center	One 6-yard Container emptied once per week
I.O.O.F. Cemetery*	One 2-yard Container emptied twice per week
Spain Athletic Complex*	Six Polycarts emptied once per week
Farmersville South Lake Park*	Future use to be determined

*The number of collections may vary by season.

Contractor shall work with the City Manager and the City's Director of Public Works to add any other City-owned or operated office buildings, facilities and sites, City Parks and other City-designated sites that may have been omitted from the foregoing list or which may hereafter come online. Service to any such new or omitted City-owned or operated office buildings, facilities and sites, including City parks and other City-owned and designated sites, shall be provided by Contractor at no charge to the extent only that such service is limited to Polycarts and/or Bins (not including Roll-offs) emptied no more than two times per week unless otherwise agreed by the parties in writing.

2.3 Contractor's Compensation and Franchise Fees: The City shall, on or before the 10th day of each month, remit to the Contractor, for the services provided to Residential and Commercial Hand Collect Customers accounts serviced per City billing records during the preceding month, the Compensation due and payable to Contractor plus the amount of the Applicable Franchise Fee. The City shall only be required to remit Compensation and the Applicable Franchise Fee to the Contractor based on the number of Customer accounts actually collected by the City. If a Customer fails to pay the City for Solid Waste services provided by Contractor, the City will notify Contractor of such failure to pay and authorize Contractor to discontinue providing Solid Waste service to such

Customer. To the extent that City has previously obtained a deposit for Solid Waste services from a Customer ("Customer's Deposit Account") that thereafter fails to pay for such service in any given billing period, City will deduct from the Customer's Deposit Account such amount as is due and owing for Compensation first followed by the City's fees and expenses and Applicable Franchise Fees and forward Compensation for that month's services rendered by Contractor to such Customer, but not collected by City, to Contractor. City's responsibility to forward Compensation from a Customer's Deposit Account to Contractor shall be limited to the amount of money in such Customer's Deposit Account and not previously reduced by non-payment. Contractor shall approve or deny all Residential and Commercial Hand Collect Customer adjustment request forms sent by the City to the Contractor within twenty-four (24) hours of receipt thereof. All denied requests shall immediately include a detailed explanation by the Contractor.

The Contractor, on or before the twenty-fifth (25th) day of each month shall remit to the City the detailed billing of all Commercial and Industrial Customers and temporary Roll-Off Customers in a format approved by the City. The Applicable Franchise Fee on such gross receipts shall be collected by the Contractor and paid to the City on a monthly basis contemporaneously with the submission of such detailed billing report. The Contractor shall also pay the full amount of the Applicable Franchise Fee collected by City and turned over to Contractor for Residential Customers to City on a monthly basis contemporaneously with the submission of the detailed billing report on or before the twenty-fifth (25th) day of each month. Contractor must abide by policies set forth by City for Commercial and Industrial Customer collection services. The Contractor shall only be required to remit to the City based on what is collected from the Customers.

In the event that any Commercial and Industrial Customers are in default, the Contractor reserves the right to stop service to those Commercial and Industrial Customers until they have paid their balance in full. The Contractor shall notify the City's Public Works Director at least twenty-four (24) hours prior to initiating any stoppage in service to any Commercial and Industrial Customer.

2.4 Modification of Contractor Compensation: The collection rates shall not be adjusted during the first twenty-four (24) months of the Contract, through September 30, 2018. Beginning on October 1, 2018 and on each October 1 thereafter, the Contractor will be entitled to an annual rate review. At such time, the "Net Rate to Sanitation Solutions" listed in Exhibit A may be adjusted up or down in accordance with the formula below for the next Agreement Year, effective October 1 of each year through the term of this Contract (the "Annual Adjustment"). The Annual Adjustment will be applicable to all charges for the services contained in the Contract Documents. Rates and fees will be adjusted by the Contractor for the third and subsequent years of the Contract based on the indices and methodology described herein-below. The amount of the Applicable Franchise Fee to be collected and retained by or remitted to the City shall increase proportionately with any Annual Adjustment.

A. Operating Cost Adjustment in excess of the CPI: Beginning on June 1, 2018 and on every June 1st thereafter, the Contractor may petition the City for

an increase or decrease in the rates based on Contractor's ability to cover increases or decreases in documented costs resulting from (1) changes in any laws, ordinances, regulatory requirements or guidelines (including changes in construction or interpretation thereof or changes in the manner or method of enforcement thereof); (2) documented increased or decreased costs due to changes in location of disposal facilities and/or documented increases or decreases in disposal costs; or (3) documented increased or decreased direct costs of operations, over and above the CPI, including but not limited to changes in fuel costs. The Contractor shall provide the City with appropriate documentation outlining the need for such increase or decrease in the rates. The City shall approve or deny such petition before October 1 of the year in which the petition was received. All increases or decreases to the rates shall become effective October 1 of the year in which the petition was granted. Only one such petition shall be considered for any Agreement Year. In the event the City fails or refuses to consent to any such requested rate increase and the Contractor can demonstrate that such rate increase is necessary to offset the Contractor's increased costs in connection with performing the services under this Contract not otherwise offset by any previous rate adjustments hereunder, the Contractor may, in its sole discretion, terminate this Contract upon two hundred seventy (270) days written notice to the City.

B. CPI Adjustments. Beginning on June 1, 2018 and on every June 1st thereafter, the Contractor may petition the City for an increase or decrease in the rates based on fluctuations in the Price Wage Earners and Clerical Workers (CPI-U, All Items) published by the U.S. Department of Labor, Bureau of Labor Statistics, Dallas-Fort Worth area, in the "March - April" report (the "DFW CPI-U, All Items"). If the index specified above is discontinued, the parties hereto shall agree by June 1 of the then current year to substitute another equally authoritative measure of change in the purchasing power of the U. S. dollar for CPI as may then be available so as to carry out the intent of this provision. If the Bureau of Labor Statistics designates an index with a new title or code number or table number as being the continuation of the index cited herein, the new index shall be used. Otherwise, a substitute shall be agreed upon by the parties. The amount of the increase or decrease under this Section 2.4.B. may be adjusted up or down by a percentage not to exceed eighty percent (80%) of what the DFW CPI-U, All Items has increased or decreased over the previous twelve (12) month period as stated in the March-April report. In the event the City fails or refuses to consent to any such requested rate increase or decrease in accordance with DFW CPI-U, All Items, the Contractor may, in its sole discretion, terminate this Contract upon two hundred seventy (270) days written notice to the City.

C. Additional Services. If a Customer requests Solid Waste collection or disposal services that are not described on Exhibit "A", Contractor shall so advise City and propose a reasonable fee for such services. The City Manager, or designee, shall authorize such services at a reasonable fee, as approved by the City Manager, for a time not to exceed forty-five (45) calendar days, or other time

reasonably necessary to obtain City Council approval of and an amendment to the Farmersville Customer Rate provided for in Exhibit "A".

D. City Approval. All changes in the Contractor's Compensation, which the Contractor may request or petition to receive, under this Contract shall require approval by the City Council. City Council approval will not be unreasonably withheld or denied.

E. Base Compensation as Floor. Notwithstanding anything to the contrary contained herein, in no event shall the Compensation payable to Contractor pursuant to this Contract be decreased pursuant to this Section 2.4, to an amount that is less than the Base Compensation described as the "Net Rate to Sanitation Solutions" in the attached Exhibit "A" save and except that the Contractor may negotiate rates less than the rates set out in Exhibit "A" for commercial open top roll-off containers and and/or commercial roll-off containers with compactors.

Section 3. Definitions

Unless otherwise specified herein the following terms shall have the following meanings

3.1 Agreement Year: A twelve (12) month period of time commencing upon the Contract Date hereof and, thereafter, a twelve (12) month period of time commencing upon the anniversary of the Contract Date.

3.2 Applicable Franchise Fee: The Applicable Franchise Fee is a fee based on either (1) a percentage of gross receipts multiplied by the Compensation collected as described in Exhibit "A" or (2) a flat fee based on the volume a Polycart, bin or container may hold multiplied by the number of Polycarts, bins or containers collected as described in Exhibit "A" shall be charged and collected from (a) Residential Customers and (b) Commercial, Institutional and Industrial Customers in accordance with the provisions set out in the Master Fee Schedule for the use and benefit of the City. The amount of the Applicable Franchise Fee to be collected may be changed from time to time as directed by the City Council of the City of Farmersville, Texas. Any such change in the amount of the Applicable Franchise Fee shall be communicated to Contractor and both Contractor and City shall thereafter collect the amount of the Applicable Franchise Fee together with any other applicable amounts collected under this Contract.

3.3 Backdoor Service: All handicapped or disabled customers, or elderly [over the age of sixty-five (65)], who have provided verification to the Contractor from a physician as to their inability to carry containers to the curbside, may place containers at their front doorstep to be visible from the street, or at a location as may be determined by the Contractor. Contractor cannot enter or be responsible for entering garages or behind enclosed fences to collect residential solid waste.

3.4 Bin (Commercial/Industrial): Metal receptacle designed to be lifted and emptied mechanically for use only at Commercial, Institutional, and Industrial Units including, but not limited to roll-off containers, compactors and front-load containers.

3.4 Brush: Plants or grass clippings, leaves or tree trimmings, branches, landscaping or wood.

3.5 Bulky Wastes: Stoves, water tanks, hot water heaters, washing machines, furniture, refrigerators (with verification that all CFC [chlorofluorocarbons] components have been removed by a certified technician), Construction Debris (generated by the Residential Customer only) and weights more than 50 (fifty) pounds, and other waste materials other than dead animals, hazardous waste, or stable matter with weights or volumes greater than those allowed for Bins or Polycarts, as the case may be.

3.6 Bundle(s): Tree, shrub and brush trimmings or newspapers and magazines securely tied together forming an easily handled package not exceeding four feet in length or fifty (50) pounds in weight. No single limb shall be greater than eight inches (8") in diameter.

3.7 City: The City of Farmersville, Texas.

3.8 Collect, Collected, and Collection: The picking up and transporting, storage, delivery to the appropriate Disposal Site for proper disposal of Solid Waste from Customers and delivery to a recycling processing center for recyclables from Customers that choose to participate in Contractor's Recycling programs.

3.9 Commercial and Industrial Customer: An occupant, owner or tenant of a Commercial and Industrial Unit.

3.10 Commercial and Industrial Refuse: All Bulky Waste, Construction Debris, Garbage, Rubbish and Stable Matter generated by a Customer at a Commercial and Industrial Unit.

3.11 Commercial and Industrial Unit: All premises, locations or entities, public or private, that generate and accumulate Municipal Solid Waste during, or as a result of, its operations located within the corporate limits of the City, other than one to four family residential units, including hotels, motels, structures containing more than four (4) dwellings, and residential care facilities.

3.12 Commercial Hand Collect Unit: A retail or light commercial type of business that generates no more than one (1) cubic yard of refuse per week.

3.13 Compactable Waste: Items that can be crushed under the weight of compaction equipment.

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

3.15 Container or Commercial Container: Containers commonly used by commercial garbage collectors for the storage and transportation of solid waste including, but not limited to, roll-off containers, compactors and front-load containers. Such containers shall be equipped with suitable covers to prevent blowing or scattering of waste and shall be maintained in a first class, sanitary, safe, clean, and efficient working condition. Such containers shall be clearly marked with the Contractor's name, telephone, and an identifying number and/or letters not less than two (2) inches in height. Such containers shall be maintained in the City approved single color or color scheme. The Contractor shall be the sole provider of all commercial containers, permanent or temporary within the City.

3.16 Contract Documents: The Request for Qualifications and Proposals, Instruction to Contractors, Contractor's Proposal, General Specifications, Performance Bond, the executed Contract resulting from negotiations, and any addenda or changes to the foregoing documents agreed to and executed by the City and Contractor.

3.17 Contractor: Sanitation Solutions, Inc.

3.18 CPI: Price Wage Earners and Clerical Workers (CPI-U, All Items) published by the U.S. Department of Labor, Bureau of Labor Statistics, Dallas-Fort Worth area, in the "March - April" report (the "DFW CPI-U, All Items").

3.19 Customer: A residential user, commercial hand collection user, and/or and industrial, institutional or commercial user who generates refuse.

3.20 Dead Animals: Animals or portions thereof equal to or greater than ten (10) pounds in weight that have expired from any cause except those slaughtered or killed for human use.

3.21 Disposal Site: A refuse depository including, but not limited to, sanitary landfills, transfer stations, incinerators and waste processing/separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals to receive for processing or final disposal of Refuse and Dead Animals.

3.22 Environmental Laws: Any and all state, federal, and local statutes, rules, regulations, and ordinances relating to the protection of human health or the environment including, without limitation, the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901, et seq., the Comprehensive Environmental

Response Compensation, and Liability Action of 1980, 42 U.S.C. § 9601, et seq., as amended by the Transportation Act, 49 U.S.C. § 6901, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j, the United States Environmental Protection Agency's rules concerning Underground Storage Tanks, 53 Fed. Reg. 37082 (9/23/88), the Texas Solid Waste Disposal Act, the Texas Water Code and the Texas Clean Air Act, all as amended now and in the future, and any similar federal, state, and local environmental statutes and ordinances and the rules and regulations, orders and decrees now or hereafter promulgated thereunder.

3.23 Equipment: All vehicles, containers, machinery, tools, and equipment, as well as related supplies and materials reasonably necessary for the Contractor's performance.

3.24 Garbage: Any and all dead animals of less than ten (10) lbs. in weight, except those slaughtered for human consumption; every accumulation of waste (animal, vegetable and/or other matter) that results from the preparation, processing, consumption, dealing in, handling, packing, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter (including, but not by way of limitation, used tin cans and other food containers; and all putrescible or easily decomposable waste animal or vegetable matter which is likely to attract flies or rodents); except (in all cases) any matter included in the definition of Bulky Waste, Construction Debris, Dead Animals, Hazardous Waste, Rubbish or Stable Matter.

3.25 Hazardous Waste: Waste, in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate state agency by or pursuant to Federal or State law, or waste, in any amount, which is regulated under Federal or State law. For purposes of this Contract, the term Hazardous Waste shall also include tires, motor oil, gasoline, paint and paint cans.

3.26 Landfill: A lawfully permitted facility used by the Contractor where solid waste is disposed of between layers of earth.

3.27 Lease Container (Compactors): The Contractor may lease containers for waste storage to the owner or occupant of the Contractor's commercial, institutional, and industrial customers. Such containers shall be equipped with suitable covers to prevent blowing or scattering of waste and shall be maintained in a sanitary and safe condition. Such containers shall be clearly marked with the Contractor's name and telephone number in letters not less than two inches (2") in height. Such containers shall be maintained in the City approved single color or color scheme

3.28 Master Fee Schedule: Comprising Appendix A of the City's Code Of Ordinances, the various fees charged by the City to provide services required by and through the Code of Ordinances have been consolidated into a Master Fee Schedule for ease of use.

3.29 Municipal Solid Waste: Solid Waste, including Garbage and Refuse, resulting from or incidental to municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Construction Debris or Hazardous Waste.

3.30 Non-compactable Waste: Brick, concrete, dirt, composition shingles, ceramic tile and related like items that cannot be crushed under the weight of compaction equipment.

3.31 Overflow: All Municipal Solid Waste generated by a Commercial and Industrial or Residential Customer that does not fit inside the Customer's Polycart(s) with the lid(s) closed, or that does not fit inside the Bin or Polycart of a Commercial and Industrial Customer.

3.32 Polycart: A wheeled receptacle with a maximum capacity of approximately 90 to 96 gallons constructed of plastic, metal and/or fiberglass, designed for automated or semi-automated solid waste collection systems, and having a tight fitting lid capable of preventing entrance into the container by small animals. The weight of a Polycart and its contents shall not exceed 175 lbs. Polycarts will be provided to each Residential Unit and Commercial Hand Collect Unit, with ownership retained by Contractor.

3.33 Premises: All public and private establishments, including individual residences, all multi-family dwellings, residential care facilities, hospitals, schools, businesses, other buildings, and all vacant lots.

3.34 Producer: An occupant of a residential premise or commercial premise who generates refuse.

3.35 Refuse: Residential and commercial Bulky Waste, Construction Debris and Stable Matter generated at a Residential Premises, unless the context requires otherwise, and Commercial and Industrial Refuse.

3.36 Residential Customer: An occupant, owner or tenant of a Residential Unit located within the corporate limits of the City.

3.37 Residential Garbage: All garbage, refuse, and rubbish generated by a customer at a residential premise.

3.38 Residential Premise: A private residence or multi-family dwelling of not more than four (4) units located within the corporate limits of the City. A Residential Unit shall be deemed occupied when either water or domestic electric and power services are being supplied thereto. Each separate single-family unit in a multi-unit residential dwelling, whether of single or multi-level construction, shall be billed separately as a Residential Premise or Residential Customer.

3.39 Roll-Off: An open top container, which may have a cover or lid attached to the top to avoid spillage, with twenty (20) cubic yards to forty (40) cubic yards of capacity. Front load and side load containers are not considered roll-off containers for purposes of this Contract.

3.40 Solid Waste: All non-hazardous (as defined by the Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA] and other applicable laws) including unwanted or discarded waste material in a solid or semi-solid waste, including but not limited to: waste wood, wood products, tree trimmings, grass cuttings, dead plants, weeds, leaves, stumps, dead trees or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded mattresses, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp and other products such as are used for packaging, or wrapping crockery and glass, ashes, cinders, floor sweeping, glass, mineral or metallic substances, and any and all other waste materials not included in the definition of Bulky Waste, Dead Animals, Garbage, Hazardous Waste or Stable Matter.

3.41 Special Needs Residential Customer: Any Residential Customer that generates Municipal Solid Waste and is inhabited by any persons who are physically unable to place Municipal Solid Waste at the curbside for collection by the Contractor. The designation of a Special Needs Residential Customer shall be certified by the City Manager upon written request by the resident(s) of said Residential Customer supported by documentation acceptable to the City Manager or his designee.

3.42 Stable Matter: All manure and other waste matter normally accumulated in or about a stable; or any animal, livestock, or poultry enclosure; and resulting from the keeping of animals, poultry, or livestock.

3.43 Storm Event Debris: Solid Waste and other debris and waste materials that result from a hurricane, tornado, wind storm, flood, natural disaster, or other act of God the collection of which falls outside the normal collection services set forth in this Contract.

3.44 Yard Waste: Decomposable plant materials, including brush, leaves, grass, weeds and other vegetation.

3.45 White Good: Any item not measuring in excess of either three (3) cubic feet in size or two hundred (200) pounds in weight and that is manufactured primarily from metal, including, but not limited to, a bath tub, heater, hot water heater, refrigerator, sink or washer and dryer.

Section 4. Scope and Nature of Operation

4.1 Residential Collection: Contractor shall undertake curbside collection service for the collection of Municipal Solid Waste from each Residential Unit one (1) time per week; provided, that (i) such Municipal Solid Waste is placed in Polycarts provided by the Contractor, and (ii) such Polycarts are placed within five (5) feet of the curbside or

right-of-way adjacent to the Residential Unit no later than 7:00 a.m. on the designated collection day. The Contractor shall only be responsible for collecting, hauling, and disposing of Municipal Solid Waste placed inside the Polycarts provided by the Contractor plus Bulky Waste placed adjacent to the Polycart(s). Municipal Solid Waste in excess of the Polycarts' limits and/or the two cubic yards or one hundred seventy-five pounds of Bulky Waste allowed or permitted to be placed outside or adjacent to the Polycarts ("Excess or Misplaced Municipal Solid Waste"), will not be collected by the Contractor. However, any such Excess or Misplaced Municipal Solid Waste may be collected on occasion and within reason due to holidays or other extraordinary circumstances as determined by the Contractor, in its sole discretion. If the Excess or Misplaced Municipal Solid Waste continues, the Contractor shall notify the City of such recurrent violation and the City will take action(s) as the City deems reasonable, prudent and necessary to address such condition. Further, Contractor shall provide City a copy of maps indicating the routes used in the collection of waste from all residential customers. The City has the right to reject and request reasonable route modifications.

A. Special Needs Residential Customers: Notwithstanding anything to the contrary contained herein, the Contractor agrees to adequately assist Special Needs Residential Customers with house-side collection of their Polycarts and Bulky Waste during regular solid waste collection hours; provided, that the Contractor receives prior written notice from the City regarding the requirement of special assistance needs for such Special Needs Residential Customer.

4.2 Commercial and Industrial Collection: Contractor shall collect and remove acceptable Municipal Solid Waste from the premises of Commercial, Institutional and Industrial Customers at such frequency as shall be reasonably requested by the owner, owner's agent, or tenant of the property, but no more than two times per week, as provided for in Exhibit "A", hereto, save and except for such Additional Service as may be approved by the City upon request of the Contractor and Customer. The Contractor shall only be responsible for collecting, hauling, and disposing of Municipal Solid Waste placed inside the Bins and Bulky Waste placed adjacent to the Bins provided by the Contractor. However, the Contractor shall be obligated to offer and provide sufficient service to Commercial, Institutional and Industrial Customers and to increase or decrease the frequency of the collection and the size or number of the Bin(s). Collection service shall be a minimum of once per week or more to maintain Commercial and Industrial Customers' premises free of accumulation of Municipal Solid Waste. If collection is from a Container, the Container should be located on a concrete pad to accommodate Contractor's Equipment. The City shall be the sole determinant regarding acceptable Container pads, locations and screening; provided that the Contractor is able to access the Bin using reasonable Equipment. To the extent not in conflict with the City's Code of Ordinances and the zoning or site plan on the Customer's Premises, City will upon Contractor's request work with the Contractor to relocate existing Container pad sites to a more suitable location on the Customer's Premises.

4.3. Commercial Hand Collection Customers: Contractor shall provide curbside collection service for the collection of Municipal Solid Waste from Commercial Hand

Collection Customers one (1) time per week; provided, that (i) such Municipal Solid Waste is placed in Polycarts provided by the Contractor, and (ii) such Polycarts are placed within five (5) feet of the curbside or right-of-way adjacent to the Commercial Hand Collection Unit no later than 7:00 a.m. on the designated collection day. The Contractor shall only be responsible for collecting, hauling, and disposing of Municipal Solid Waste placed inside the Polycarts provided by the Contractor plus Bulky Waste placed adjacent to the Polycart(s). Municipal Solid Waste in excess of the Polycarts' limits, or placed outside or adjacent to the Polycarts and/or the two cubic yards or two hundred pounds of Bulky Waste allowed or permitted to be placed outside or adjacent to the Polycarts, will not be collected by the Contractor. However, any such Excess or Misplaced Municipal Solid Waste may be collected on occasion and within reason due to holidays or other extraordinary circumstances as determined by the Contractor, in its sole discretion. If the Excess or Misplaced Municipal Solid Waste continues, the Contractor shall notify the City of such recurrent violation and the City will take action(s) as the City deems reasonable prudent and necessary to address such condition. Further, Contractor shall provide City a copy of maps indicating the routes used in the collection of waste from all Commercial Hand Collection Customers. The City has the right to reject and request reasonable route modifications.

4.4 Brush, Bulky Wastes and White Goods Collection: Contractor shall provide a collection service for Brush, Bulky Wastes, White Goods and/or Bundles one (1) time per week to all Residential Customers, unless otherwise specified. Contractor agrees to collect such large objects and quantities of waste as described in definitions for Brush, Bundle and Bulky Wastes; provided, that the Bulky Waste or Brush, or Bundles (A) are placed at the curbside no later than 7:00 a.m. on the scheduled collection day, (B) are reasonably contained, and (C) do not exceed two (2) cubic yards. Contractor shall only be responsible for collecting, hauling and disposing Bulky Waste, White Goods, Brush and Bundles in accordance with this Contract from Residential Units. White Goods containing refrigerants will not be collected by the Contractor unless such White Goods have been certified in writing by a professional technician to have had all such refrigerants removed.

4.5 Additional Services:

A. Dead Animals: Contractor may provide for the special collection of Dead Animals at Residential, Commercial, Institutional and Industrial Units upon such terms and conditions as are mutually agreed upon by Contractor and the City. Contractor has no obligation to pick up Dead Animals.

B. Storm Event Debris: Contractor and City understand and agree that, in the event of hurricane, tornado, war, terrorism, major storm, or other natural disaster, the storm debris resulting from such event is outside the scope of this Contract and Sanitation Solutions shall have no obligation to collect such storm debris. Sanitation Solutions agrees, in such an event, to provide the City with a cost estimate to perform such clean-up and disposal of debris resulting from said disaster, if requested by the City. Attached hereto as Exhibit "B" is a Storm

Management Plan that explains the priority that Contractor places on its ability to provide services under this Agreement and the potential resources and proposed rates therefore which Contractor might be able to provide upon the request of the City in the event of a storm event.

C. Christmas Tree Recycling/Mulching Program: The Contractor shall provide annual Christmas tree mulching services during the second weekend in January, at no cost to the City. The City will market and advertise the event. The residents of the City can dispose of Christmas trees at a designated site(s) up to the second weekend in January. During the second week of January of each Agreement Year the designated site(s) will be closed to the Customers of the City and the Contractor will mulch all trees. The Contractor will provide the mulching equipment, and mulched trees will be available to regular Customers at no charge, or may be used by the City.

D. Street Sweeping Program: The Contractor shall provide an annual "one-pass" street sweeping service during the ____ week of _____, at no cost to the City. Contractor shall make one pass with a street sweeper upon, over and across all concrete and asphalt streets within the City's corporate limits. Contractor shall not sweep any brick or gravel streets. The Contractor shall remove and dispose of any and all debris picked up by such street sweeping program at no cost to City.

E. Dilapidated Structure Demolition and Removal: During the first year of the initial term of this Contract, the Contractor shall demolish, clean up, remove, and dispose of the demolition waste for up to two 2,500 square foot dilapidated structures that are situated within the corporate limits of the City which have been determined to be a nuisance and a threat to the health safety and welfare of the public at no cost to City subject to the exceptions stated herein. During each successive year of the initial term of this Contract and any renewal term hereof, the Contractor shall demolish, clean up, remove, and dispose of the demolition waste for up to one additional 2,500 square foot dilapidated structure that is situated within the corporate limits of the City which has been determined to be a nuisance and a threat to the health safety and welfare of the public at no cost to City subject to the exceptions stated herein.

Notwithstanding the foregoing, Contractor shall not be responsible for the demolition, removal and disposal of any structure that contains hazardous waste or contaminants of any kind including by way of example, and not limitation, lead-based paint; friable asbestos; oils, greases, and other petroleum based hydrocarbons; tires; and any other chemicals or materials that are defined as or which otherwise contain hazardous materials (collectively "Hazardous Materials").

City shall be responsible for obtaining the right and authority to demolish any such dilapidated nuisance structure(s), and the removal and relocation of the inhabitants and the contents, if any, of such structure(s). City shall also be

responsible for causing the structure(s) and its contents to be tested for the presence of Hazardous Materials; and if Hazardous Materials are present to develop a plan for, and the supervision of, the remediation, demolition and removal of the dilapidated structure(s) and all hazardous materials or contaminants. City shall be responsible for all costs associated with the development of such a plan and the retention of such persons or entities as are qualified and properly licensed to supervise and oversee the demolition, clean up, removal, and disposal of the demolition waste.

Contractor may, at its sole discretion, to the extent that the safety of all persons involved may be assured and to the extent that state and federal law will allow the demolition waste to be disposed of in Contractor's landfill without the need for any additional permits or environmental concerns, assist the City with the remediation, demolition and removal of the dilapidated structure(s) and any related non-hazardous demolition waste. Contractor may count any assistance provided to City regarding a structure that contains some level of hazardous waste or contaminants as satisfying the demolition of a dilapidated structure even though the Contractor did not perform all aspects of such related work at its sole cost and expense.

Section 5. Collection Operation

5.1 Hours of Operation:

A. Residential Customer Municipal Solid Waste collection shall be conducted only between the hours of 7:00 a.m. and 7:00 p.m. Collection outside of the hours set is strongly discouraged, unless Contractor notifies City at least forty-eight (48) hours in advance. An example would be late pickups after a holiday (i.e.; Christmas) or inclement weather. No solid waste collection shall be made on Sunday.

B. Commercial, Institutional and Industrial Customer Municipal Solid Waste collection for areas located adjacent to residential areas shall be conducted only between the hours of 7:00 a.m. and 7:00 p.m. No solid waste collection shall be made on Sunday.

C. All other Commercial and Industrial Customer Municipal Solid Waste collection not specified in subparagraph (b), above, shall be conducted only between the hours of 3:00 a.m. and 7:00 p.m. No solid waste collection shall be made on Sunday.

D. Municipal Solid Waste collection from public, institutional or governmental areas shall be conducted only between the hours of 7:00 a.m. and 7:00 p.m. No solid waste collection shall be made on Sunday.

5.2 Hours of Disposal: Contractor shall dispose of waste within the normal operating hours of the Disposal Site or Landfill.

5.3 Routes of Collection: Collection routes shall be established by Contractor, and approved by the City. The City shall be promptly provided route collection maps and container locations.

5.4 Holidays: The following shall be holidays for purposes of this Contract:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

When a holiday falls on a week day (Monday through Friday), Contractor shall be responsible for providing make-up collection for solid waste routes that occur on specified holidays by delaying all routes by one day from the day of the holiday to the next business day, completing all routes on Saturday of the holiday week. For example, if New Year's Day falls on Wednesday, no routes will be run on Wednesday. The New Year's Day routes will be run on Thursday, Thursday's routes will be run on Friday, and Friday's routes will be run on Saturday. Any deviation from a regular scheduled pickup day due to any holiday observed by Contractor must be marketed directly to all customers within City by the Contractor. In any event, Contractor is still expected to meet its obligation as required.

5.5 Complaints: The Contractor shall assume responsibility for receiving and coordinating all Customer service requests and complaint management functions related to the services provided for herein. At a minimum, Customer complaint procedures shall provide that the Customer complaint be addressed within twenty-four (24) hours of receipt of such complaint, and such complaint shall be promptly resolved. The Contractor shall be responsible for maintaining a log of complaints, and provide the City, on a monthly basis, with copies of all complaints indicating the date and hour of the complaint, nature of the complaint, and the manner and timing of its resolution. Calls logged to Contractor by City designee shall also be contained in said report. Any missed pickups shall be collected within twenty-four (24) hours with the exception of Saturday and Sunday, which shall be picked up on the following Monday.

Contractor shall meet with the City Manager (or his designee) at least quarterly, and more frequently as requested by the City Manager, to discuss any complaints and Contractor's resolution of such complaints. Furthermore, Contractor shall provide to the City, upon request, all relevant background information related to such complaints, if any, and their respective resolution.

5.6 Collection-Equipment: Contractor, at its sole cost and expense, agrees to furnish all trucks, equipment, machines and labor which are reasonably necessary to adequately, efficiently and properly collect and transport Solid Waste from Customers serviced by Contractor in accordance with this Contract. All collection vehicles used for handling Solid Waste and performing any part of the Contract shall be subject to the inspection of the City. Contractor shall provide Bins to all Commercial, Institutional and Industrial Customers and Roll-Offs to any Customers that request such service at the beginning of this Contract, unless otherwise specifically approved by the City in writing. The Equipment shall be maintained in a first class, safe, clean, and efficient working condition throughout the term of the Contract and any renewal period. The Contractor shall establish a regular preventative maintenance program for all Equipment. The Contractor shall clean the vehicles on a weekly basis or more frequently as may be necessary to maintain sanitary and safe working conditions. The Equipment shall be used by the Contractor in such a manner as to minimize the risk of injury to employees, citizens and property. The Contractor shall be responsible for initiating, maintaining, and supervising all maintenance programs, safety precautions and programs, in connection with the work and services performed hereunder. The Contractor shall establish reasonable procedures and programs to prevent property loss or damage and personal injury to persons, including, but not limited to, employees performing such work and all other persons who may be affected hereby. The Contractor shall comply with all OSHA rules and regulations when conducting operations pursuant to this Contract. The Contractor shall maintain files and records of all citations and violations of any laws, statutes, ordinances, or regulations in the ownership, title, maintenance, or operation of the Equipment used in the performance of this Contract shall be made available to the City within ten (10) days after the City's written request to the Contractor. The Contractor shall submit a complete written inventory of all Equipment used in the performance of this Contract and shall make such other submissions as required to reflect the Contractor's current Equipment inventory throughout the term of the Contract or any renewal period as requested by the City. Collection of Municipal Solid Waste shall be made using sealed packer-type trucks, and such Equipment shall not be allowed to leak nor scatter any waste within the corporate limits of the City nor while en route to the Disposal Site or Landfill, where such accumulation shall be dumped.

The Contractor, at its sole cost and expense, shall provide and distribute Polycarts to all Residential Customers; however, Contractor shall not be required to provide more than four (4) Polycarts per Customer's premises. The Polycarts shall be commonly colored and clearly marked with the Contractor's name. New Residential Customers shall initiate service with the City's Utility Billing Department and shall schedule delivery of Polycarts. The City shall notify the Contractor by 5:00 p.m. on each regular business day of all requests for delivery of Polycarts for new Residential Customers. The Contractor shall deliver new Polycarts, as scheduled by the City, on regular business days. However, the City shall provide at least 24 hours' notice (or no sooner than the end of the regular business day after a Residential Customer requests service) to Contractor prior to the scheduled date to deliver new Polycarts.

All Municipal Solid Waste accumulated by a Residential Customer and/or a Commercial Hand Collect Customer shall be disposed of via the Polycart. The Contractor shall be responsible for the cost of providing new Polycarts and shall retain ownership of all Polycarts. The Contractor shall be responsible for the cost of replacing Polycarts damaged by ordinary wear and tear. Each Customer will be responsible to take reasonable care of the Polycart(s) provided by Contractor for such Customer's use. Customers will be responsible for safely storing Polycart(s) between collection days and the proper placement and retrieval of the Polycart(s) on collection days. Customers that have a Polycart(s) stolen from the Customer's premises or otherwise damaged or destroyed by a third-party will promptly notify the City of Farmersville Police Department of such theft, damage or destruction and promptly request a replacement Polycart(s) from the City's Public Works Director. If the Customer damages or destroys the Polycart(s) provided for Customer's use the Customer will promptly request a new Polycart(s) from the City's Public Works Director. Contractor will provide one (1) only replacement Polycart per Customer's premises for a Polycart that has been stolen during the term of this Contract. Customer will thereafter be required to pay the then effective rate for replacement of the second and any subsequent Polycart(s) stolen from the Customer's premises or intentionally, recklessly or negligently damaged or destroyed by Customer or through Customer's actions or inactions during the term of this Contract. The Contractor shall provide additional Polycarts at an extra cost to the Customer as provided in Exhibit "A." Such additional Polycarts shall be collected on the Customer's regularly scheduled collection day.

Due to street size variations in the City, Contractor shall provide Equipment that will accommodate such public streets and alleys. Contractor shall utilize lighter-capacity single-axle automated collection trucks for those routes identified by the City and Contractor as likely to be damaged by the use of heavier garbage hauling equipment (i.e., on asphalt paved streets), preferably 20 yard single axle or 25 yard tandem. Special collections shall be made using appropriate equipment. Contractor shall, if necessary, hand clean all spillage resulting from its collection activities. Damage caused by collection equipment such as spillage, broken curbs or sidewalks, and ruts off-pavement shall promptly be repaired or replaced at the Contractor's expense and to the satisfaction of the City. The City expects Contractor not to weave from curb to curb, drive in the middle of the road, or apply severe braking during routes through residential streets in order to prevent damage to infrastructure and for safety reasons..

All motor vehicles used in performance of the Contractor's obligations under this Contract shall be clearly marked with Contractor's name, telephone number and unit number legible from a distance of one hundred fifty feet (150'). No advertising, except the company logo, Contractor's name and telephone number, shall be permitted on Contractor's vehicles. All collection equipment shall be maintained in a first class, safe and efficient working condition throughout the term of this Contract. Such vehicles shall be maintained and painted as often as necessary to preserve and present a well-kept appearance, and all vehicles shall undergo a regular preventative maintenance program. The Contractor shall furnish the City a list of all equipment to be used fulfilling the Contract and shall update that list as may be requested by the City. At any time during the duration

of this Contract, the City may inspect Contractor's vehicles to ensure compliance of equipment with this Contract, or the City may require an equipment replacement schedule to be submitted to the City upon request. Vehicles are to be washed on the inside and sanitized with a suitable disinfectant and deodorant a minimum of once a month. Such vehicles shall be washed and painted or repainted as often as necessary to keep them in a neat and sanitary condition. Contractor will adequately train drivers to protect Farmersville streets, curbs, sidewalks, and parkways and not make sudden breaking stops that will damage street surfaces. Contractor will periodically (not less than semi-annually) review the drivers' performance to ensure their compliance with such driving procedures.

5.7 Disposal: Contractor shall deliver Solid Waste collected under this Contract to a licensed sanitary Landfill of its choice operated in compliance with rules stipulated by the Texas Commission on Environmental Quality (TCEQ) and/or the Environmental Protection Agency (EPA), or their successor agencies.

5.8 Spillage: The Contractor shall not be responsible for scattered refuse unless the same has been caused by Contractor's acts or those of any of its employees; in which case, all scattered refuse shall be picked up immediately by the Contractor. A fork, push broom, and a scoop-type shovel shall be maintained on each truck for cleanup activity. The Contractor shall, if necessary, hand clean all spillage resulting from its collection activities. The City, at its discretion, may inspect the Contractor's vehicles at any time to ensure compliance of the equipment with the Contract, or require equipment replacement schedules to be submitted to the City. Contractor will not be required to clean up or collect loose refuse or spillage not caused by the acts of its employees, but shall report the location of such conditions to the City's designated contact so that proper notice can be given to the customer at the premises to properly contain refuse. The Contractor shall pick up commercial refuse spillage or excess refuse after the customer reloads the container. In the case of commercial customers, Contractor shall then be entitled to an extra collection charge for each reloading of a commercial container requiring an extra collection. Should such commercial spillage continue to occur, City shall require the commercial customer and Contractor to increase the frequency of collection of the commercial customer's refuse or require the customer to utilize a commercial container with a larger capacity, and the Contractor shall be compensated for such additional services.

5.9 Vicious Animals: Employees of Contractor shall not be required to expose themselves to the dangers of vicious animals in order to accomplish Municipal Solid Waste collection in any case where the owner or tenants have animals at-large. Contractor shall promptly notify the City's Police Department by telephone regarding any such vicious animals that are an immediate safety threat to Contractor's employees, and shall also promptly notify the City Manager and the City's Public Works Director by electronic mail of such condition and of Contractor's inability to make collection due to such condition.

5.10 Protection from Scattering: Vehicles shall not be improperly loaded or overloaded so as to scatter refuse; however, if refuse is scattered from Contractor's vehicle for any reason, it shall be picked up immediately. In addition, each of Contractor's vehicles shall be equipped with a cover, which may be net with mesh of not greater than one and one-half inches (1-1/2"), or tarpaulin, or a fully enclosed metal top, to prevent leakage, blowing, or scattering of refuse onto public or private property. Such cover shall be kept in good order and used to cover the load going to and from the disposal site, during loading operations, or when parked if contents are likely to be scattered. Vehicles shall not be overloaded so as to scatter refuse; however, if refuse is scattered from Contractor's vehicle for any reason, it shall be picked up immediately. Each vehicle shall be equipped with a fork, broom, and shovel for this purpose.

Section 6. Term

6.1 Primary Term: The primary term of this Contract shall be for a period of five (5) years commencing October 1, 2016 (the "Contract Date") and, unless renewed according to the terms of Section 6.2, terminating on September 30, 2021.

6.2 Renewal: This Contract will automatically renew for one (1) additional five-year term unless either party timely notifies the other party of the desire to not renew. If either party desires not to renew this Contract, such party should provide the other party written notice of its intent not to renew this Contract at least one hundred eighty (180) days prior to the expiration of the primary term.

Section 7. Indemnity

CONTRACTOR AGREES TO DEFEND, INDEMNIFY, AND HOLD THE CITY AND ALL OF ITS OFFICERS, AGENTS, EMPLOYEES, AND ELECTED OFFICIALS WHOLE AND HARMLESS AGAINST ANY AND ALL CLAIMS FOR DAMAGES, COSTS, AND EXPENSES OF PERSONS OR PROPERTY THAT MAY ARISE OUT OF, OR BE OCCASIONED BY, OR FROM ANY NEGLIGENT ACT, OR OMISSION OF CONTRACTOR, OR ANY AGENT, SERVANT, OR EMPLOYEE OF THE CONTRACTOR IN THE EXECUTION OF THE PERFORMANCE OF THIS AGREEMENT, WITHOUT REGARD TO WHETHER SUCH PERSONS ARE UNDER THE DIRECTION OF CITY AGENTS OR EMPLOYEES AS FOLLOWS:

(a) CONTRACTOR HEREBY ASSUMES THE RISK OF LOSS AND/OR INJURY TO PROPERTY AND/OR PERSONS CAUSED BY ANY NEGLIGENT OR WILLFUL ACTS OR OMISSIONS IN THE PERFORMANCE OR NON-PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

(b) MORE PARTICULARLY, CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL ACTIONS, CITATIONS, CLAIMS, LIABILITIES, DAMAGES, DEMANDS, FINES, SUITS, JUDGMENTS, LEGAL PROCEEDINGS, LOSSES, PENALTIES,

COSTS OR EXPENSES, INCLUDING BUT NOT LIMITED TO, EXPENSES OF LITIGATION AND ATTORNEYS' FEES, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OR NON-PERFORMANCE OF THE AGREEMENT OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF THE CONTRACTOR, ITS SUBCONTRACTORS AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS"). CONTRACTOR FURTHER AGREES TO PAY ALL ATTORNEYS' FEES INCIDENT TO ENFORCEMENT, RENEGOTIATION, OR INTERPRETATION OF THIS AGREEMENT.

(c) WITHOUT LIMITING THE FOREGOING, THE CONTRACTOR FURTHER AGREES THAT THE INDEMNITY PROVIDED FOR HEREIN SHALL EXTEND TO AND INCLUDE ANY AND ALL CLAIMS AGAINST THE CITY ARISING OUT OF OR PREDICATED UPON THE ENVIRONMENTAL LAWS AS DEFINED HEREIN. THE CITY SHALL NOT BE RESPONSIBLE FOR THE NEGLIGENCE OF THE CONTRACTOR, OR ANY OF ITS AGENTS, EMPLOYEES, OR CUSTOMERS.

(d) BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY. INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY

(e) THE CHOICE OF COUNSEL TO DEFEND OR OTHERWISE HANDLE ALL INDEMNIFIED ITEMS SHALL BE DETERMINED BY PROCEDURES SET FORTH IN THE APPLICABLE INSURANCE AGREEMENTS MAINTAINED BY THE CONTRACTOR OR, IN THE ABSENCE OF SUCH INSURANCE AGREEMENT, AT THE CHOICE OF THE CONTRACTOR SUBJECT TO THE APPROVAL OF THE CITY. CONTRACTOR SHALL RETAIN APPROVED COUNSEL FOR THE CITY WITHIN SEVEN (7) BUSINESS DAYS AFTER RECEIVING WRITTEN NOTICE FROM THE CITY THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR DOES NOT RETAIN COUNSEL FOR THE CITY WITHIN THE REQUIRED TIME, THEN THE CITY SHALL HAVE THE RIGHT TO RETAIN COUNSEL AND THE CONTRACTOR SHALL PAY THESE ATTORNEYS' FEES AND EXPENSES. THE CITY RETAINS THE RIGHT TO PROVIDE AND PAY FOR ANY OR ALL COSTS OF DEFENDING INDEMNIFIED ITEMS, BUT IT SHALL NOT BE REQUIRED TO DO SO. CONTRACTOR SHALL BE RESPONSIBLE TO PAY FOR ALL COSTS AND EXPENSES INCURRED BY THE CITY IN DEFENDING ANY INDEMNIFIED ITEMS.

(f) NOTHING ABOUT THIS SECTION OR ANY INDEMNIFICATION BY CONTRACTOR OF THE CITY SHALL SERVE AS AN EXPRESS OR IMPLIED WAIVER OF ANY RIGHTS OF GOVERNMENTAL IMMUNITY OR SOVEREIGN IMMUNITY ENJOYED BY THE CITY, ITS OFFICERS AND EMPLOYEES AND/OR THE CONTRACTOR.

Section 8. Security for Faithful Performance

8.1 **Performance Bond:** As security for this service, the Contractor shall provide the City a Two Hundred Fifty Thousand Dollar (\$250,000.00) performance bond in a form reasonably approved by the City Attorney guaranteeing the faithful performance of this Contract (hereafter "Performance Bond"). The Performance Bond shall be executed by a surety company licensed to do business in the State of Texas and reasonably approved by the City Attorney, and shall be for the term of this Contract and any renewal term in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00). The Performance Bond shall be furnished to the City by the Contractor within ten (10) days of the date of the execution of this Contract or any renewal hereof. Without limiting any other indemnity provisions herein, said Performance Bond shall guarantee full, satisfactory and complete performance of this Contract by the Contractor and indemnify the City against any loss, expense, cost or damage resulting from any default by the Contractor hereunder or any failure of performance hereunder by the Contractor.

The Contractor shall pay any and all premiums for the bonds described above. A certificate from the surety showing that the bond premiums are paid in full must accompany the bond. Such certificate shall be submitted to the City with the bond and any renewal thereof. The surety on the bond shall be a duly authorized corporate surety authorized to do business in the State of Texas that is authorized to underwrite federal obligations as reflected on the United States Department of the Treasury Circular 570.

8.2 **Power Of Attorney:** Attorneys-in-fact, who sign bonds, must file with each bond a certified and effectively dated copy of their power of attorney.

Section 9. Termination of Contract

9.1 **Notice and Cure by City:** If at any time Contractor shall fail to substantially perform the terms, covenants, or conditions herein set forth, City shall notify Contractor by certified mail addressed to the Contractor at the address set forth herein of specific reasons in support of City's claim that Contractor has substantially breached the terms and provisions of this Contract. Contractor shall be allowed thirty (30) days from the date of receipt of notice to remedy any failure to perform. Should City deem failures to be corrected, no hearing shall be held.

9.2 **Failure to Cure and Hearing regarding Contractor:** Should Contractor not remedy its performance within thirty (30) days after receipt of the written notice identified in Section 9.1, above, a hearing shall be scheduled before the City Council to allow the

Contractor an opportunity to show why the Contract should not be terminated. A notice shall be sent to Contractor no earlier than ten (10) days before a hearing is scheduled. The notice shall specify the time and place of the hearing, and shall include the specific reasons in support of City's claim that Contractor has substantially breached the terms and provisions of the Contract. Said hearing shall be conducted in public by the City Council and Contractor shall be allowed to be present, and shall be given the full opportunity to answer such claims that are set out against Contractor.

9.3 Termination by City: If the City Council determines that Contractor has failed to provide adequate Municipal Solid Waste collection services for the City, or has otherwise substantially failed to perform its duties as specified in the Contract, the City Council may terminate this Contract after a hearing described herein, and providing the Contractor one hundred twenty (120) days written notice of such termination. Upon the expiration of the one hundred twenty-day time period this Contract shall terminate without any further obligation or liability to City save and except payment for services actually provided by Contractor, less the Franchise Fee, prior to the termination date of this Contract.

9.4 Notice and Cure by Contractor: If at any time City shall fail to substantially perform the terms, covenants, or conditions herein set forth, Contractor shall notify City by certified mail addressed to the City at the address set forth herein of specific reasons in support of Contractor's claim that City has substantially breached the terms and provisions of this Contract. City shall be allowed thirty (30) days from the date of receipt of notice to remedy any failure to perform.

9.5 Termination by Contractor for Non-payment: If the City fails to pay Contractor Compensation due and owing in accordance with and pursuant to the Texas Prompt Payment Act and fails to cure such failure within the time period established by Section 9.4, herein above, Contractor may thereafter promptly terminate this Contract.

9.6 Termination by Contractor for Reasons other than Non-payment: If the City fails to timely cure and remedy any substantial failure to perform the terms, covenants, or conditions of this Contract, other than the payment of Compensation then due and owing in accordance with and pursuant to the Texas Prompt Payment Act, the Contractor may terminate this Contract after providing the City two hundred seventy (270) days written notice of such termination. Upon the expiration of the two hundred seventy-day time period this Contract shall terminate without any further obligation or liability to Contractor save and except payment for services actually provided by Contractor, less the Franchise Fee, prior to the termination date of this Contract.

Section 10. Notices

Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered when deposited in the United States mail, postage pre-paid via certified mail, return receipt requested, and addressed to the respective party of the address set forth below:

If to the City:

Office of the City Manager
City of Farmersville
205 S. Main Street
Farmersville, Texas 75442

If to the Contractor:

Sanitation Solutions, Inc.
PO Box 6190
Paris, Texas 75461-6190

Or such other addresses as the parties may hereafter specify by written notice delivered in accordance herewith.

Section 11. Roll-Off Containers and Services

11.1 Roll-Off Service: Contactor shall have the exclusive right to provide temporary Bins and front-end dumpster services to Customers within the corporate limits of the City of Farmersville, Texas. Notwithstanding anything to the contrary contained herein, Sanitation Solutions does not have the exclusive right of refusal to provide commercial open top roll-off containers and and/or commercial roll-off containers with compactors to commercial customers within the City's corporate limits. It is understood and agreed that the service provided under this Contract does not grant Contractor an exclusive franchise for the collection of Construction Debris, Bulky Waste, White Goods or other materials resulting from or arising out of remodeling and/or the preparation of property for construction and construction-related activities to the extent that such Construction Debris, Bulky Waste, White Goods or other materials have intrinsic value and/or are recyclable. However, the Contractor may negotiate an agreement on an individual basis with the Customer regarding the collection of such items by utilizing the Contractor's Roll-Off services. The Roll-Off services will be billed directly to such Customer in accordance with the Compensation then in effect and will be collected by the Contractor. The Contractor shall remit to the City the then Applicable Franchise Fee on any amounts collected pursuant to the Contractor's billing for such Roll-Off services. The Roll-Offs provided pursuant to this Section 11.1 must be located within the City in accordance with City ordinances and policies.

11.2 Gross Vehicle Weight Limits: Contractor specifically reserves the right to adjust the size of a Roll-Off and the frequency of collections of such Roll-Off if Contractor determines that hauling an individual Roll-Off will cause Contractor to exceed its maximum license limits as approved by the State of Texas for gross vehicle weight ("GVW"). In such instances Contractor shall give sufficient notice to the Customer and adjust the size of said Roll-Off and/or the frequency of service to achieve compliance with

GVW limits. For all GVW pounds in excess of 54,000 pounds Contractor may charge the Customer two and one-half (2.5) times the standard disposal fee.

11.3 Cleanliness: The Contractor shall, at its own expense, maintain all its commercial containers in a clean, presentable, and wholesome manner to prevent odors, unsightly conditions, public nuisances, insects, rodents, and possible health hazards. Contractor agrees to fully refurbish all commercial containers inside the City within 120 days of the effective date of this Contract.

The Contractor shall respond within twenty-four (24) hours to a request to maintain the structure, functionality and appearance of a container in need of attention ("Maintenance"). Routine cleaning shall occur often as may be necessary, to maintain to required appearance, however, the City may request Maintenance as determined necessary for specific containers. Collection containers that have been damaged shall be exchanged or repaired within seventy-two hours of notification. If an unsightly condition develops on the container due to fire, worn paint or other causes beyond the Contractor's control, the container shall be exchanged upon request of the Customer or the City. The Contractor shall exchange containers at reasonable intervals to maintain a good appearance considering type of refuse generated, normal wear, and weathering. The Contractor shall maintain an inventory of containers sufficient to respond to the City's and Customers' needs in a prompt manner to accommodate replacements or new service starts. (This paragraph shall be applicable to Polycart containers for Residential Customers as well as Commercial and Industrial and temporary Roll-Off containers.)

Section 12. Special Request Brush/Bulky Collection

Contractor shall provide Residential Customers with a "special request" collection of aggregate amounts of Bulky Waste and/or Brush and/or Bundles in excess of the normal amount collected during the weekly collection. The Contractor shall provide the Residential Customer with a price quote for the service within seven (7) calendar days of the request at the Compensation rate then in effect. The items collected by the Contractor during a special request collection shall consist of: (a) Brush (including tree stumps weighing in excess of 50 pounds but not exceeding 175 pounds), (b) Bulky Waste, and (c) Construction Debris (generated by the Residential Customer only) or (d) other items as agreed to by the City and Contractor. Contractor shall bill the Residential Customer directly for this service in accordance with the Compensation then in effect. The Contractor shall remit to the City the Applicable Franchise Fee on the amount collected for such service. "Special request" collection is limited in capacity to a maximum of ten (10) cubic yards in size. The Customer shall be billed directly by Contractor at the rate as indicated in the "Special Haul" fee schedule plus the Applicable Franchise Fee to be remitted to the City.

A Residential Customer that requests the collection of Bulky Waste, Brush and/or Bundles, materials comprised of Construction Debris, White Goods or any other materials resulting from remodeling, general property clean-up or clearing of property for the preparation of construction that exceed ten (10) cubic yards in size and/or one hundred

seventy-five pounds in weight at a rate negotiated by a Residential Unit Customer and the Contractor for the collection of such items. Any negotiated fee arrangement shall also include Applicable Franchise Fee, payable to the City, upon the gross fee amount which gross fee amount shall conform to the schedule approved by the City.

Section 13. Ownership

Title to Municipal Solid Waste shall pass to Contractor when placed in Contractor's collection vehicle, removed by Contractor from a Bin or Container of any sort, or removed by Contractor from the Customer's Premises, whichever last occurs. Title to Hazardous Waste or any other wastes excluded from this Contract remains with the generator of such waste and Contractor shall have no responsibility or liability to the City for such unacceptable waste.

Section 14. Insurance

14.1 Proof of Insurance Required: Contractor shall at all times during the term of this Contract and any extension or renewal term hereof, at its own expense, procure, pay for and maintain the following insurance coverage written by companies approved by the State of Texas and reasonably acceptable to the City. The Contractor shall furnish to the City certificates of insurance executed by the insurer or its authorized agent stating the type of coverages, limits of each such coverage, expiration dates and compliance with all applicable required provisions. Contractor shall provide a copy of insurance policies to City upon request. Certificates shall reference the Contract for Citywide Solid Waste Collection Services and be addressed as follows:

City Manager
City of Farmersville
205 S. Main Street
Farmersville, Texas 75442

14.2 Minimum Insurance Coverages and Amounts Required: Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at the Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following types and amounts:

	TYPE	AMOUNT
1.	Workers' Compensation and Employer's Liability	Statutory \$100,000/500,000/100,000
2.	Commercial General (Public) Liability insurance including coverage for the following:	Combined single limit for bodily injury and property damage in the amount of \$2,000,000 per occurrence or its

a. Premises Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Advertising Injury f. Contractual Liability g. Medical Payments	equivalent.
3. Comprehensive Automobile insurance, including coverage for loading and unloading hazards, for: a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined single limit for bodily injury and property damage in the amount of \$5,000,000 per accident.
4. Umbrella / Excess Liability following form and applying in excess of the above-indicated primary coverages (Item Nos. 1, 2 and 3).	\$5,000,000 limit per occurrence and annual aggregate for bodily injury and property damage.

14.3 Additional Policy Endorsements: The City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Nothing in this Section 14.4 shall be interpreted to allow the City to require the Contractor to modify its insurance policies for any other reason than to be in compliance with the terms of this Contract. Upon such request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

14.4 Required Provisions: The Contractor agrees that with respect to the above-required insurance, all insurance contracts and certificate(s) of insurance shall contain and state, in writing, on the certificate, or its attachment, the following required provisions:

A. Name the City of Farmersville and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to the Commercial General (Public) Liability, Comprehensive Automobile Liability and Umbrella/ Excess Liability coverages;

B. Provide for thirty (30) days' notice to the City of Farmersville for cancellation, nonrenewable, or material change in the policies, and ten (10) days' notice for nonpayment;

C. The Contractor agrees to waive subrogation under the Workers' Compensation and Employer's Liability coverage as against the City of Farmersville, and its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of such coverage;

D. All copies of the certificates of insurance shall reference the project name or proposal number for which the insurance applies;

E. Provide that all provisions of this Contract concerning liability, duty, and standard of care, together with the indemnification provision, shall be underwritten by contractual liability sufficient to include such obligations within applicable policies; and

F. For coverages that are only available with "claims made" policies, the required period of coverage will be determined by the following formula: Continuous coverage for the life of the contract, plus one (1) year (to provide coverage for the warranty period) and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period; and

G. Provide for notice to the City of Farmersville at the address shown below by registered mail.

14.5 Notices: The Contractor shall notify the City in the event of any change in coverage and shall give such notices in writing not less than thirty (30) days prior to the change. The notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

Office of the City Manager
City of Farmersville
205 S. Main Street
Farmersville, Texas 75442

14.6 No Waiver Regarding Insurance: Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

Section 15. Books and Records

The City and Contractor agree to maintain at their respective places of business adequate books and records relating to the performance of their respective duties under the provisions of this Contract and such books and records shall be made available at any time during regular business hours for inspection by the other party, upon reasonable

advance notice. The inspecting party shall be responsible for all of their own expenses, including travel and contractual services.

Section 16. Contractor as Independent Contractor of City

Contractor shall be solely responsible for the actions of its employees during the performance of service under this Contract. Contractor shall assure the City that the actions of Contractor's employees shall be in the best interests of the City and its citizens. Contractor and its employees are independent contractors of the City.

Section 17. Enforcement of Franchise and Collections

The City grants unto Contractor the right to seek an injunction against any third-party which is believed to be infringing on the rights of Contractor to this Contract, including Contractor's franchise rights granted herein. By granting this right to Contractor, the City in no way reduces its right or obligation to enforce this Contract or any other City ordinance relating to the collection and disposal of Municipal Solid Waste. Furthermore, Contractor shall have all rights and remedies available to it under Texas law to collect delinquent payment of fees by the City and/or Commercial and Industrial Customers.

Section 18. PROMOTION/INFORMATION ACTIVITIES

Prior to 1) any significant route and service changes, 2) implementation of any new program and service, or 3) any addition to an existing program or service, the Contractor shall submit a strategy for a publicity campaign to the City for approval. The strategy shall include methods of publicizing the program, a time schedule of advertisements and the location where such advertisements shall appear.

Contractor shall develop and provide, at the expense of Contractor, instructional pamphlets for citizens regarding specific Municipal Solid Waste management practices as are applicable to the Customers in the City. Such pamphlets shall be available to the City for distribution to all citizens. Additional copies of the pamphlets shall be available to the City and any citizen upon request and shall be available for enclosure with water and other utility bills. All promotional activities and other information released as a part of its strategy shall be reviewed and approved by the City prior to release by the Contractor. On or before October 1 of each Agreement Year, the Contractor shall submit an annual public information strategy for the next Agreement Year to the City for its review and approval. At no time shall the Contractor mail promotional materials directly to Customers in the City without prior written notification to and approval of the City.

The Contractor shall invest at least \$5,000 annually on such public information materials and other marketing materials, approved by the City, regarding the Contractor's services. The scope and subject matter of these materials shall be mutually decided upon by the City and Contractor, and approved by the City, each year prior to October 1st.

Section 19. LABOR FORCE

The Contractor shall employ only such superintendents, supervisors, and workers who are reasonably careful and competent and fully qualified to perform the duties or tasks assigned. All employees of the Contractor and/or any approved subcontractors, if any, shall comply with all applicable laws and regulations, and shall have sufficient skill, ability, and experience to properly perform the work assigned to them and to operate any equipment necessary to properly carry out the performance of their assigned duties. The Contractor shall maintain a work environment free from the use, possession, distribution, and influence of controlled substances, alcohol, intoxicants, narcotics or other mind-altering substances (referred to hereafter as "Drugs and Alcohol") and to prohibit employees from using, possessing, distributing or being under the influence of Drugs and Alcohol at any time within the course and scope of their employment. The Contractor shall file with the City a copy of its substance abuse policy, and shall provide future updates and revisions to said substance abuse policy to City upon City's request. All drivers operating equipment requiring a commercial driver's license shall at all times maintain a valid, commercial driver's license (CDL).

Section 20. RIGHT OF INSPECTION

City hereby reserves the right to inspect and evaluate the Contractor's field operations within the City's corporate limits to determine Contractor's continuous performance hereunder either on a continuing or random inspection basis.

Section 21. CUSTOMER COMPLAINTS

21.1 Complaints: The Contractor shall within thirty (30) days of the Contract Date establish a written procedure for handling all service complaints from Customers. A copy of such procedure shall be kept at the local office of the Contractor and shall be provided to the City's Director of Public Works within such thirty (30) day period. At a minimum, the Customer complaint procedure shall provide that all Customer complaints shall be addressed within twenty-four (24) hours of receipt of such complaint and shall be promptly resolved. Further, the Contractor shall supply the City's Director of Public Works with copies of all complaints, at least weekly or as often as may be necessary to expedite resolution of each complaint, indicating the date and hour of the complaint, the nature of the complaint, and the manner and timing of its resolution. In addition, the Contractor shall keep a telephone log on all Customer-related phone calls, both incoming and outgoing calls, and shall supply the City's Director of Public Works with a copy at least weekly. The Contractor shall, in cooperation with the City, devise a mutually acceptable tracking procedure for complaints received by Contractor or City regarding Contractor's performance hereunder within 60 days of the Contract Date. Records of complaints handled by Contractor's customer service center shall be retained for a period of three years from the date of each such complaint.

21.2 Non-Collection: Should a dispute arise between the City, Contractor, and/or a Customer as to whether the Contractor actually failed to make a Collection (whether the

Contractor missed a pickup) the decision of the Farmersville City Manager shall be final, and the Contractor agrees to abide by such decision.

If the owner or occupant of any premises 1) fails to place a container out, or 2) is otherwise in violation of the City's ordinances with respect to (a) the location of a Polycart, (b) the means by which the Municipal Solid Waste is containerized or non-containerized, or (c) the volume, weight, or composition of Municipal Solid Waste to be removed from the premises renders service impossible, the Contractor may refrain from collecting all or a portion of such Municipal Solid Waste that is rendered uncollectible due to the aforementioned circumstances. The Contractor shall prior to 4 p.m. of the business day notify the City's Public Works Director and the owner or occupant thereof, at the Contractor's option by telephone, but in any event, in writing of the reason for such non-collection. Use of a standard notification tag, approved by the City, shall be utilized whenever appropriate. The use of such tag shall suffice as written notification. The Contractor shall collect such Municipal Solid Waste on the next scheduled Collection day after the Customer remedies the existing circumstances that inhibit Collection. The Contractor may charge for an extra Collection, as may be applicable, if the Customer requests Collection prior to said Customer's next scheduled Collection day.

Where the City is notified by an owner or occupant that Refuse has not been removed from a subject premises on the scheduled collection day and where no notice of non-collection or a route change in collection schedule has been received from the Contractor, the City's Director of Public Works shall investigate. If the investigation discloses that the Contractor has failed to collect Municipal Solid Waste from the subject premises without cause, as supported by notice described herein, the Contractor shall collect the same within twenty four (24) hours after a "Request to collect" is issued by the City's Director of Public Works or the City Manager. Contractor shall abide by the decision. Should the Contractor fail to honor a "Request to Collect", the Contractor shall be subject to such applicable penalty as described herein. It is expressly understood that these rules apply to any type of regularly scheduled service collections offered to a Customer, whether residential or commercial, as well as other waste collections as may be applicable.

21.3 Liquidated Damages: Except during *force majeure* events, in the event Contractor shall fail to perform any of the terms or conditions of this Contract, the City shall promptly notify Contractor in writing of the defect in performance. Thereafter, if Contractor does not correct or cure the defect in performance within five (5) business days after receipt of written notice, or in the case of defects that cannot be cured within five (5) days, if Contractor has not taken reasonable steps to effectuate a cure within five (5) business days after receiving written notice, the same shall constitute an act of non-compliance. For each such act, the City may deduct from the consideration to be paid Contractor, as liquidated damages, the sum of \$250.00 per day for each day that each such act of non-compliance shall continue. In addition to the damages listed above, if any such continuing failures to perform adversely affect the delivery of service to any particular customer or customers, the City may deduct from the consideration to be paid Contractor, as liquidated damages, the sum equal to one (1) monthly bill for that customer

or customers, per adverse event reported that Contractor has not cured pursuant to this section. This remedy is hereby expressly made cumulative of all or any other remedies available to the City, at law or in equity, for the breach of this Contract. The parties hereto agree that such liquidated damage amounts are fair and reasonable. The City Manager or his designee has the right to waive any applicable liquidated damages or a portion thereof at his discretion.

Section 22. Miscellaneous Provisions

22.1 **Construction of Contract Documents:** Although the Contract has been drafted by the City, should any portion of the Contract be disputed, the City and Contractor agree that it shall not be construed more favorably for or against either party. In this regard, Contractor specifically agrees the Contractor has been represented by legal counsel in the negotiation of this Contract and been advised, or has had the opportunity to have legal counsel review this Contract and advise Contractor, regarding Contractor's rights and obligations under this Contract as well as Texas and federal law.

22.2 **Binding Effect:** The Contract Documents are binding upon the City and Contractor and shall inure to their benefit and as well as that of their respective successors and assigns, if any, as provided in the Contract Documents.

22.3 **Jurisdiction and Venue:** The Contract is entered into subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. The Contractor will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Contractor's income. Exclusive venue for any claim or cause of action under this Contract is agreed to be the state and federal courts of Collin County, Texas, for all purposes, including performance and execution.

22.4 **Bankruptcy as Default:** It is hereby agreed that if the Contractor files for protection under any Bankruptcy Statute (voluntary or involuntarily), then this Contract shall automatically be in default and terminate effective on the day a Bankruptcy petition is filed.

22.5 **Non-discrimination:** The Contractor, in the execution, performance, or attempted performance of this Contract, shall not discriminate against any person or persons because of sex, race, religion, color, or national origin. The Contractor shall be an equal opportunity employer and have an affirmative action plan.

22.6 **Savings Clause:** If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

22.7 No Waiver: No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

22.8 No Oral Modification: No alteration of or amendment to this Contract shall be effective unless given in writing and signed by the signatories hereto or their respective heirs, successors and assigns. Any requested modifications to these standards by the Contractor shall be submitted in writing to the City Manager for approval and shall become part of this Contract following approval thereof by the City Council. Any City initiated modifications, agreed to by Contractor in writing, shall become effective upon thirty (30) calendar days written notice.

22.9. Damage Claims: The Contractor shall provide the City with a full explanation of the disposition of any complaint involving a customer's claim of damage to private property as a result of actions of the Contractor's employees, agents, or subcontractors upon request from the City.

22.10 Personnel Changes: The Contractor shall notify the City's Public Works Director of changes made in key management personnel fourteen (14) calendar days prior to changes becoming effective, or as soon as is otherwise reasonably practicable under the circumstances.

22.11 Communications With Utility Billing: All correspondence between the Contractor and the City's Utility Billing Department concerning accounts (new, updated, changed, ended, etc.) shall be provided daily (except holidays), prior to 5:00 p.m., to expedite and document account activity by hand-delivered copy, fax, or electronic transfer. Any account actions after 5:00 p.m. may be sent on the following business day as early as is reasonably possible. All documentation shall contain accurate and pertinent information about each account to insure proper tracking and serviceability. Contractor shall provide the City a list of all customers missed (did not have container out) at the end of each day's route before 8:30 a.m. of the immediately following business day.

22.12 Complete Contract: The Contract Documents embody the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

22.13 Headings: The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

22.14 Force Majeure: Notwithstanding anything herein to the contrary, Contractor shall not be liable for the failure to perform its duties if such failure is caused by a

catastrophe, riot, war, terrorism, governmental order or regulation, fire, act of God or other similar or different contingency beyond the reasonable control of Contractor.

22.15 Taxes; Audit: As required by the Texas Property Tax Code, the Contractor shall render a list of all real and tangible personal property located and/or operated within the City of Farmersville, with a declaration that such property has a taxable status in Farmersville, to the Collin County Central Appraisal District, by April 15th of each year. Personal property includes, but is not limited to vehicles, collection containers, office equipment, etc. The list shall include all personal property in use as of January 1st of each year. The list shall also be filed with the City of Farmersville City Manager by April 15th of each year throughout the term of this Contract. The Contractor shall bear the financial responsibility for the cost of any annual audit requested by the City up to a maximum cost of Ten Thousand Dollars (\$10,000.00) annually. The City, at its sole discretion and choosing, may utilize a private, independent third party auditor for such purposes. Any such audit requested by the City shall be limited to the billings and services performed under this Contract.

In addition to the amounts billed and collected by the City under Section 2.1.A., the City shall also be responsible for billing, collecting, remitting and paying any and all sales, use and service taxes assessed or payable in connection with the services. The Contractor shall be responsible for billing, collecting, remitting and paying any and all sales, use and service taxes assessed or payable in connection with the services billed and collected by the Contractor.

22.16 Assignment

The Contractor agrees that it shall not, without prior written approval of the City, assign any rights or delegate any duties arising hereunder the Contractor further agrees that any such assignment or delegation of rights or duties shall not relieve the Contractor of its obligations to the City hereunder unless expressly agreed by the City in writing. The approval of any such assignment shall not be unreasonably withheld or denied by the City.

IN WITNESS WHEREOF, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

SANITATION SOLUTIONS,
INC.

CITY OF FARMERSVILLE, TEXAS

By: _____

By: Benjamin L. White, P.E.,
CPM

Title: _____

Title: City
Manager

Date: _____

Date: _____

Address: _____

Address: 205 S. Main Street
Farmersville, Texas 75442

Phone: _____

Phone: (972) 782 – 6151

Fax: _____

Fax: (972) 782 – 6604

ATTEST:

Mary Tate
City Secretary

THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Benjamin L. White, P.E., CPM, City Manager of the **CITY OF FARMERSVILLE**, a Texas Municipal Corporation, known to me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 20____.

Notary Public, Collin County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, in his capacity as _____ of SANITATION SOLUTIONS, INC., a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of SANITATION SOLUTIONS, INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 20____.

Notary Public _____ County, Texas
My commission expires _____

EXHIBIT "A"

Description of Service	Sanitary
	Rate (USD/Mo.)
<i>Competitive Solid Waste Base Bid Calculations</i>	
1. Base Bid Solid Waste Collection Service	
1A. Residential Automated Collection, 1X Week	
First Polycart Collection	9.00
Additional Polycart Collection	5.00
1B. Commercial Hand Collection	
Automated	
First Polycart Collection	22.05
Additional Polycart Collection	15.00
Manual	
First Polycart Collection	
Additional Polycart Collection	
3. Base Bid Solid Waste Comm. Container Collect	
3A. Front-Load Container Rates	
2 Cubic Yard, 1X Week	53.62
2 Cubic Yard, 2X Week	89.82
2 Cubic Yard, Extra	29.00
3 Cubic Yard, 1X Week	60.85
3 Cubic Yard, 2X Week	111.54
3 Cubic Yard, Extra	35.00
4 Cubic Yard, 1X Week	69.60
4 Cubic Yard, 2X Week	134.71
4 Cubic Yard, Extra	41.00
6 Cubic Yard, 1X Week	108.53
6 Cubic Yard, 2X Week	197.08
6 Cubic Yard, 3X Week	264.10
6 Cubic Yard, 4X Week	310.78
6 Cubic Yard, Extra	47.00
8 Cubic Yard, 1X Week	127.52
8 Cubic Yard, 2X Week	224.53
8 Cubic Yard, 3X Week	297.07
8 Cubic Yard, 4X Week	343.79
8 Cubic Yard, Extra	53.00

Description of Service	Sanitary
	Rate (USD/Mo.)
3B. Maximum Commercial Roll-Off ³	
20 Yard, Open	360.00
25 Yard, Open	
30 Yard, Open	415.00
35 Yard, Open	
40 Yard, Open	460.00
Dry Run Trip Charge, Open	90.00
Weekday Delivery, Open	90.00
Rental Per Day, Open	4.00
28 Yard, Compactor	465.00
30 Yard, Compactor	465.00
35 Yard, Compactor	490.00
40 Yard, Compactor	520.00
42 Yard, Compactor	520.00
Dry Run Trip Charge, Compactor	90.00
Weekday Delivery, Compactor	90.00
Rental Per Day, Compactor	4.00
Solid Waste Monthly Proposed Cost	
<i>Special Considerations</i>	
Cost Per Caster Per Month	5.00
Cost Per Lock Per Month	5.00
Special Haul Fee, 1 Cubic Yard	0.00
Special Haul Fee, 2 Cubic Yard	18.00
Special Haul Fee, 3 Cubic Yard	30.00
Special Haul Fee, 4 Cubic Yard	40.00
Special Haul Fee, 5 Cubic Yard	53.00
Special Haul Fee, 6 Cubic Yard	64.00
Special Haul Fee, 7 Cubic Yard	76.00
Special Haul Fee, 8 Cubic Yard	87.00
Special Haul Fee, 9 Cubic Yard	99.00
Special Haul Fee, 10 Cubic Yard	111.00

Description of Service	Sanitary
	Rate (USD/Mo.)
City Requested Container, Polycart	123.00
City Requested Container, 2 Cubic Yard	25.00
City Requested Container, 4 Cubic Yard	3.00
City Requested Container, 6 Cubic Yard	0.00
City Requested Container, 8 Cubic Yard	1.00
City Requested Container, 20 Cubic Yard, Open	0.00
City Requested Container, 25 Cubic Yard, Open	0.00
City Requested Container, 30 Cubic Yard, Open	0.00
City Requested Container, 35 Cubic Yard, Open	3.00
City Requested Container, 40 Cubic Yard, Open	0.00

EXHIBIT "B"

Storm Management Plan

Sanitation Solutions is prepared to deal with disasters affecting our normal collection services and management ability. The first concern will be to ensure that local service interruptions are minimized. As all requests for services are managed through our service center, we will immediately notify the City of Farmersville and provide City staff with a local point of contact and phone numbers to request service until a new toll-free number can be established. Once a new number is established, we will communicate this information to your local City Manager. In addition, Sanitation Solutions also has access to Track-hoes, Back-hoes, and other equipment that could become beneficial during an emergency. We could work in conjunction with a subcontractor that has an assortment of grapple truck equipment and the expense could be negotiated based on quantities. Brush and Bulky Waste as a result of natural disaster (not day-to-day collections) will be done at an hourly rate of \$125.00 per hour for Roll-off trucks and disposal costs will be passed on to the City or the Customer, if the City does not provide a dump site.

The equipment pricing and disposal rates for municipal storm debris shown below is the type of equipment that Sanitation Solutions could bring in if a natural disaster occurred:

- Grapple Truck(s) - \$145.00 per hour/ per truck
- Roll-off(s) - \$125.00 per hour/ per truck
- Track-hoe Cat - \$200.00 per hour/ per piece with a \$500.00 dollar mobilization fee
- Chipping (Mulching) - \$1750.00 per day/ 8 hour day or an hourly rate of \$218.75 with a six (6) hour minimum charge. (Brush has to be less than six (6) inches in diameter and the City has to provide a dump site for the chips)
- Disposal costs for municipal storm debris per ton - \$28.50 with a four (4) ton minimum per load.

Note: *All hourly rates include an equipment operator.*

EXTRA PICK-UPS/ REFILLS FOR STORM EVENT DEBRIS	
2 Yard Dumpster	\$29.00
3 Yard Dumpster	\$35.00
4 Yard Dumpster	\$41.00
6 Yard Dumpster	\$47.00
8 Yard Dumpster	\$53.00

Agenda Section	Regular Agenda
Section Number	VI.D
Subject	Consider, discuss, and act upon approving the awarded contract for Citywide Recycle/Household Hazardous Waste Collection Services
To	Mayor and Council Members
From	Ben White, City Manager
Date	September 27, 2016
Attachment(s)	Contract
Related Link(s)	http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php
Consideration and Discussion	City Council discussion as required.
Action	<ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Approve with Updates <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action

CONTRACT FOR CITYWIDE RECYCLING SERVICES

(Commencing October 1, 2016)

THE STATE OF TEXAS)

)

COUNTY OF COLLIN)

KNOW ALL MEN BY THESE PRESENTS:

This Contract for Citywide Recycling Services (the "Contract") is made by and between Community Waste Disposal, LP, a Texas Limited Partnership, (the "Contractor") and the City of Farmersville, Texas, a municipal corporation (the "City").

The City grants to Contractor a license to conduct the business of providing Recycling Collection to the Commercial and Residential Customers of the City of Farmersville, Texas, and the right to use the public streets, alleys, and thoroughfares within the corporate limits of the City for the purpose of engaging in the business of Recycling Collection located within the City. It is specifically understood and agreed that nothing in this Contract mandates or requires that Commercial and/or Residential Customers within the corporate limits of the City participate in Contractor's recycling programs; and, that Commercial and/or Residential Customers may choose to recycle through other businesses and facilities.

The Contractor shall furnish all personnel, labor, equipment, trucks, and all other items necessary and agrees to make such collections of Recyclable Materials available to all Residential and Commercial Customers within the City and agrees that such Collections shall be performed pursuant to and consistent with the terms of this Contract, as well as all ordinances and regulations of the City governing or relating to the Collection of Recycling. In addition to providing recycling Polycarts to Residential Customers within the City, Contractor shall provide the City a sufficient supply of recycling Polycarts each year during the term of this Contract and any extension or renewal period, unless agreed otherwise in writing by the City, that the City may provide to Residential Customers desiring to recycle, increase their recycling capabilities, or replace missing, damaged or stolen recycling Polycarts. The parties agree that the Contract Documents shall consist of the following:

Section 1. Contract Documents and Order of Precedence

This Contract shall include the following documents, and this Contract does hereby expressly incorporate same herein as fully as if set forth verbatim in this Contract:

- a. This Contract and Contract terms and definitions;
- b. The Request for Qualifications and Proposals from the City;
- c. The Contractor's proposal including all applicable exhibits, as finally agreed;

- d. The performance bond; and
- e. Any addenda or changes to the foregoing documents agreed to in writing and signed by the parties hereto.

These Contract Documents are incorporated by reference into this Contract as if set out herein in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed herein above.

Section 2. Basis and Method of Payment

Compensation paid to or collected by the Contractor during the initial twenty-four (24) month period of the Contract shall be an amount equal to the compensation described in the attached **Exhibit "A"** ("Base Compensation"). Thereafter, the compensation paid to or collected by the Contractor shall be an amount equal to the Base Compensation plus such additional amount(s) as may be authorized by the City pursuant to Section 2.4 ("Modified Compensation"). Base Compensation and Modified Compensation are collectively referred to as hereinafter as "Compensation." A License Fee based on either (1) a percentage of gross receipts multiplied by the Compensation collected as described in **Exhibit "A"** or (2) a flat fee based on the volume a Polycart, bin or container may hold multiplied by the number of Polycarts, bins or containers collected as described in **Exhibit "A"** shall be charged and collected from (a) Residential Customers and (b) Commercial, Institutional and Industrial Customers in accordance with the provisions set out in the "Master Fee Schedule" (defined below) as a License Fee for the use and benefit of the City. The amount of the License Fee to be collected may be changed from time to time as directed by the City Council of the City of Farmersville, Texas. Any such change in the License Fee shall be communicated to Contractor and both Contractor and City shall thereafter collect the amount of the Applicable License Fee together with any other applicable amounts collected under this Contract.

2.1 Billing and Collection:

A. **Residential Customers:** City shall provide all residential billing for the Recycling Services. Contractor shall not bill any residential customers within the City for any Recycling Services. It is understood and agreed that the City may collect from residential Customers in addition to the Contractor's Compensation and Applicable License Fees such additional amounts as may be determined necessary by the City to cover the costs of billing and collection services, fees, and other associated Recycling Services costs per household per month. Any amounts collected in excess of the Compensation due to Contractor

that is paid by each residential Customer shall be retained by the City to offset such additional costs of administering this program.

B. Commercial, Institutional and Industrial Customers: The Contractor shall be responsible for billing and collecting from all commercial and industrial Customers directly the amount of the then effective rate of Compensation for said services plus the Applicable License Fee to be remitted to the City. Contractor agrees to pay to City the Applicable License Fee, as agreed upon between the City and Contractor, on or before the last day of each month. Such fee will be based on the gross amount billed for all services rendered during the preceding month, excluding any sales taxes. Contractor shall quote rates for commercial, institutional and industrial Recycling Services in compliance with the rate structure set forth in this Contract. Contractor shall bill Commercial, Institutional and Industrial Unit customers directly, and the City shall not be entitled to any compensation relating to such billing, other than the aforementioned Applicable License Fee. Contractor shall have the right to suspend services to any Commercial, Institutional or Industrial Unit Customer that does not timely pay for Recycling Services after providing written notice to said Customer. If Contractor suspends service to a Commercial, Institutional or Industrial Unit Customer for failure to timely pay said invoices, Contractor has the right to charge a service reactivation fee and/or finance charges or late payment fees if such service to the Commercial, Institutional or Industrial Unit Customer is reinstated.

C. Collection of Past Due Accounts: City and Contractor shall each prepare a list of delinquent accounts on a monthly basis. City shall provide to Contractor and Contractor shall provide to City their respective lists of delinquent accounts each month. Contractor shall have all rights and remedies available to it under Texas law to collect delinquent payment of fees by the City and/or Commercial Unit, Institutional Unit and Industrial Unit Customers. The City agrees to take all steps necessary and permitted by law to require Customers to comply with the terms of this Contract. If Contractor desires to pursue the collection of delinquent payments owed by one or more Residential Unit Customers, Contractor shall notify City of such intent and City shall allow Contractor to collect such delinquent accounts so that both City and Contractor are not attempting to collect the same delinquent accounts.

Contractor shall remit to City with Contractor's monthly payment the Applicable License Fee on any and all amounts paid to or collected by Contractor on delinquent accounts including service reactivation fees and/or or late payment fees but excluding attorney's fees and costs of court during the immediately preceding month. For any delinquent accounts that are paid to or collected by City, City shall remit to Contractor with City's monthly payment the Compensation due to Contractor on any delinquent accounts paid to or collected by the City during the immediately preceding month.

2.2 Regular Service for Municipally Owned or Operated Facilities: Contractor shall make no charge for Recycling Services at City-owned or operated office buildings, facilities and sites, City Parks and other City-designated sites identified as follows including the type and number of containers per location.

Best Center	One Polycart
City Hall	One Polycart
Farmersville Downtown Park	Four Polycarts
Farmersville Library/Civic Center	Two Polycarts
Farmersville Onion Shed*	Two Polycarts
Farmersville Police/Fire	Two Polycarts
Farmersville Public Works	Two Polycarts
Farmersville Senior Center	One Polycart
Spain Athletic Complex*	Two Polycarts

Such service shall be provided on an alternating bi-weekly basis according to a schedule approved by the City unless otherwise agreed by the parties in writing.

Contractor shall work with the City Manager and the City's Director of Public Works to add any other City-owned or operated office buildings, facilities and sites, City Parks and other City-designated sites that may have been omitted from the foregoing list or which may hereafter come online. Service to any such new or omitted City-owned or operated office buildings, facilities and sites, City Parks and other City-designated sites shall be provided by Contractor at no charge.

2.3 Farmersville Independent School District Recycling Program: The Farmersville Independent School District ("FISD") is very interested in developing an educational program regarding recycling in conjunction with the Contractor. Contractor and FISD have had preliminary discussion regarding an educational recycling program and recognize that such a program may increase the amount of Recyclable Materials being recycled by Farmersville Recycling Customers. In this regard, Contractor agrees to cooperate with FISD to develop and implement an educational Recycling program, and provide an update regarding this effort to the City Manager on a quarterly basis.

2.4 Contractor's Compensation and License Fees: The City shall, on or before the 10th day of each month, remit to the Contractor, for residential accounts serviced per City billing records during the preceding month, the Compensation due and payable to Contractor plus the amount of the Applicable License Fee. The City shall only be required to remit Compensation and the Applicable License Fee to the Contractor based on the number of Customer accounts actually collected by the City. Contractor shall approve or deny all residential adjustment request forms sent by the City to the Contractor within twenty-four (24) hours of receipt thereof. All denied requests shall immediately include a detailed explanation by the Contractor.

The Contractor, on or before the twenty-fifth (25th) day of each month shall remit to the City the detailed billing of all commercial and industrial Customers in a format

approved by the City together with all other fees and charges of any kind or nature collected from commercial and industrial Customers. The Applicable License Fee on such gross receipts shall be collected by the Contractor and paid to the City on a monthly basis contemporaneously with the submission of such detailed billing report. The Contractor shall also pay the full amount of the Applicable License Fee collected by City and turned over to Contractor for Residential Customers to City on a monthly basis contemporaneously with the submission of the detailed billing report on or before the twenty-fifth (25th) day of each month.

Contractor must abide by policies set forth by City for Recycling Services. The Contractor shall only be required to remit to the City based on what is collected from the Customers.

In the event that any Customers are in default, the Contractor reserves the right to stop service to those Customers until they have paid their balance in full. The Contractor shall notify the City's Public Works Director at least twenty-four (24) hours prior to initiating any stoppage in service to any Customer.

2.5 Modification of Contractor Compensation: The Collection rates shall not be adjusted during the first twenty-four (24) months of the Contract, through September 30, 2018. Beginning on October 1, 2018 and on each October 1 thereafter, the Contractor will be entitled to an annual rate review. The rates may be adjusted up or down no more than once every twelve (12) months to be effective October 1 of each year through the term of this Contract (the "Annual Adjustment"). The Annual Adjustment will be applicable to all charges for Recycling Services for both Residential and Commercial services as contained in the Contract Documents. Rates and fees will be adjusted by the Contractor for the third and subsequent years of the Contract as provided herein-below. The amount of the Applicable License Fee to be collected and retained by or remitted to the City shall increase proportionately with any Annual Adjustment.

A. Operating Cost Adjustment in excess of the CPI: Beginning on June 1, 2018 and on every June 1st thereafter, if requested by Contractor, the Contractor's Base Compensation shall be considered by the City Council for increase or decrease upon the City's receipt and review of appropriate documentation by Contractor, as the case may be, based on Contractor's ability to cover increases in documented costs resulting from (1) changes in any laws, ordinances, regulatory requirements or guidelines (including changes in construction or interpretation thereof or changes in the manner or method of enforcement thereof); (2) documented increased costs due to changes in location of recycling facilities and/or documented increases in recycling costs; or (3) documented increased direct costs of operations, over and above the CPI, including but not limited to changes in fuel costs. The Contractor shall provide the City with appropriate documentation outlining the need for such increase or decrease in the rates. The City shall approve or deny such petition before October 1 of the year in which the petition was received. All increases or decreases to the rates shall become effective October 1 of the year in which the

petition was granted. Only one such petition shall be considered for any Agreement Year. In the event the City fails or refuses to consent to any such requested rate increase and the Contractor can demonstrate that such rate increase is necessary to offset the Contractor's increased costs in connection with performing the services under this Contract not otherwise offset by any previous rate adjustments hereunder, the Contractor may, in its sole discretion, terminate this Contract upon two hundred seventy (270) days written notice to the City.

B. CPI Adjustments. Beginning on June 1, 2018 and on every June 1st thereafter, Contractor may petition the City Council for CPI adjustments to the Base Compensation described in **Exhibit "A"** no more than once every twelve (12) months, on or before June 1, to be effective October 1, annually during the term of this Agreement, to reflect changes in the cost of operations, as reflected by fluctuations in the Price Wage Earners and Clerical Workers (CPI-U, All Items) published by the U.S. Department of Labor, Bureau of Labor Statistics, Dallas-Fort Worth area, in the "March - April" report (the "DFW CPI-U, All Items"). The amount of the increase or decrease under this Section 2.5.B. may be adjusted up or down for the ensuing twelve (12) month period by a percentage not to exceed eighty percent (80%) of the net percentage change of the DFW CPI-U, All Items Index.

C. DFW CPI-U, All Items Index - Discontinued. If the index specified above is discontinued, the parties hereto shall agree by April 1 of the then current year to substitute another equally authoritative measure of change in the purchasing power of the U. S. dollar for CPI as may then be available so as to carry out the intent of this provision. If the Bureau of Labor Statistics designates an index with a new title or code number or table number as being the continuation of the index cited herein, the new index shall be used. If the specific "Dallas-Fort Worth" index is discontinued, but the "U.S. City Average" remains, the latter index shall be used. Otherwise, a substitute shall be agreed upon by the parties.

D. Additional Services. If a customer requests Recycling Services that are not described on **Exhibit "A"**, Contractor shall so advise City and propose a reasonable fee for such services. The City Manager, or designee, shall authorize such services at a reasonable fee, as he determines it, for a time not to exceed thirty (30) calendar days, or other time reasonably necessary to obtain City Council approval of an amendment to the City rate and **Exhibit "A"**.

E. City Approval. All changes in the Contractor's Base Compensation, which the Contractor may request or petition to receive, under this Contract shall require approval by the City Council. City Council approval will not be unreasonably withheld or denied.

2.6 Revenue Sharing: The Contractor shall pay to City fifty percent (50%) of the net revenues Contractor receives from the marketing and sale of Recyclable Materials collected from within the City's corporate limits. Payments of said revenue sharing shall be calculated and paid on a quarterly basis with such quarters ending on April 30, June 30, September 30 and January 31 of each year of this Contract or any extension or renewal hereof. Contractor shall pay said revenue sharing payments to City on or before the fifteenth day of the month following the quarter then ending.

Section 3. Definitions

Unless otherwise specified herein the following terms shall have the following meanings:

3.1 Agreement Year: A twelve (12) month period of time commencing upon the Contract Date hereof and, thereafter, a twelve (12) month period of time commencing upon the anniversary of the Contract Date.

3.2 Applicable License Fee: The Applicable License Fee is a fee based on either (1) a percentage of gross receipts multiplied by the Compensation collected as described in Exhibit "A" or (2) a flat fee based on the volume a Polycart, bin or container may hold multiplied by the number of Polycarts, bins or containers collected as described in Exhibit "A" shall be charged and collected from (a) Residential Customers and (b) Commercial, Institutional and Industrial Customers in accordance with the provisions set out in the Master Fee Schedule for the use and benefit of the City. The amount of the License Fee to be collected may be changed from time to time as directed by the City Council of the City of Farmersville, Texas. Any such change in the License Fee shall be communicated to Contractor and both Contractor and City shall thereafter collect the amount of the Applicable License Fee together with any other applicable amounts collected under this Contract.

3.3 Backdoor Service: All handicapped or disabled customers, or elderly [over the age of sixty-five (65)], who have provided verification to the Contractor from a physician as to their inability to carry containers to the curbside, may place containers at their front doorstep to be visible from the street, or at a location as may be determined by the Contractor. Contractor cannot enter or be responsible for entering garages or behind enclosed fences to collect residential recycling.

3.4 City: The City of Farmersville, Texas.

3.5 Collect, Collected, and Collection: The picking up and transporting, storage, delivery to a recycling processing center for recyclables from Customers that choose to participate in Contractor's Recycling programs.

3.6 Commercial and Industrial Unit: All premises, locations or entities, public or private, requiring Recycling collection within the corporate limits of the City, other

than one to four family residential units, including hotels, motels, structures containing more than four (4) dwellings, and residential care facilities.

3.7 Commodity: Material that can be sold in a spot or future market for processing and use or reuse.

3.8 Commodity Buyer: A buyer or processor, selected by Contractor pursuant to the Contract Documents, of Recyclable Materials delivered by Contractor.

3.9 Compactable Waste: Items that can be crushed under the weight of compaction equipment.

3.10 Construction Debris: Waste building materials resulting from construction, remodeling, repair or demolition operations.

3.11 Container or Commercial Container: Containers commonly used by recycling collectors for the storage and transportation of Recyclable Materials including, but not limited to, roll-off containers, compactors and front-load containers. Such containers shall be equipped with suitable covers to prevent blowing or scattering of Recyclable Materials and shall be maintained in a first class, sanitary, safe, clean, and efficient working condition. Such containers shall be clearly marked with the Contractor's name, telephone, and an identifying number and/or letters not less than two (2) inches in height. Such containers shall be maintained in the City approved single color or color scheme. The Contractor shall be the sole provider of all commercial containers, permanent or temporary, utilized for Recyclable Materials within the City.

3.12 Contract Documents: The Request for Proposal, Contractor's Proposal, Performance Bond, Contract resulting from negotiations, and any addenda or changes to the foregoing documents agreed to by the City and Contractor.

3.13 Contractor: The person, corporation, or partnership performing recyclable material collection and processing services under this Contract.

3.14 Customer: An occupant, owner, or tenant of a Residential, Commercial Hand Collect, Commercial or Industrial Unit who generates Recyclable Materials.

3.15 Equipment: All vehicles, containers, machinery, tools, and equipment, as well as related supplies and materials reasonably necessary for the Contractor's performance.

3.16 Hazardous Waste: Waste, in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate state agency by or pursuant to Federal or State law, or waste, in any amount, which is regulated under Federal or State law. For purposes of this Contract,

the term Hazardous Waste shall also include tires, motor oil, gasoline, paint and paint cans.

3.17 Master Fee Schedule: Comprising Appendix A of the City's Code Of Ordinances, the various fees charged by the City to provide services required by and through the Code of Ordinances have been consolidated into Master Fee Schedule for ease of use.

3.18 Non-compactable Waste: Brick, concrete, dirt, composition shingles, ceramic tile and related like items that cannot be crushed under the weight of compaction equipment.

3.19 Overflow: All Recyclable Materials generated at a Residential Unit that do not fit inside the Residential Unit's Polycart(s) with the lid(s) closed.

3.20 Polycart: A wheeled receptacle with a maximum capacity of 90 to 96 gallons constructed of plastic, metal and/or fiberglass, designed for automated or semi-automated solid waste collection systems, and having a tight fitting lid capable of preventing entrance into the container by small animals. The weight of a Polycart and its contents shall not exceed 175 lbs. Polycarts will be provided to each Residential Unit and Commercial Hand Collect Unit, with ownership retained by Contractor.

3.21 Premises: All public and private establishments, including individual residences, all multi-family dwellings, residential care facilities, hospitals, schools, businesses, other buildings, and all vacant lots.

3.22 Recyclable Materials or Recyclables, Acceptable: Commodities collected by Contractor pursuant to the Contract Documents, which can be sold in a spot or future market for processing and use or reuse including, but not limited to, cardboard and chipboard; cereal boxes; non-yellowed dry newsprint, slicks and ads; magazines; phone books; catalogs; junk mail; copy paper; office paper; envelopes; plastic containers #1 through 7 (PET and HDPE); unbroken glass bottles and jars; plastic bags and packaging; wax coated paper drink containers; and Crimped Aluminum, Steel and Tin Food & Drink Cans. All materials must be thoroughly rinsed.

3.23 Recyclable Materials or Recyclables, Unacceptable: The following items are NOT acceptable Recyclable Materials or Recyclables: paper towels, facial tissue and toilet tissue; styrofoam; spray cans; batteries; food; chip bags; grease; grass clippings; electronics; and NO HAZARDOUS MATERIALS CONTAINERS including, but not limited to, Flammables, paint, insecticides, herbicides, poisons or solvents.

3.24 Recycling Container: A plastic polycart designed for the purpose of curbside collection of Recyclable Materials at Residential Units.

3.25 Recycling Services: The collection, transportation, marketing and sale or recycling of Recyclable Materials.

3.26 Refuse: Residential and commercial Bulky Waste, Construction Debris and Stable Matter generated at a Residential Premises, unless the context otherwise requires, and Commercial and Industrial Refuse.

3.27 Residential Recyclables: All Recyclables generated by a Customer at a Residential Unit.

3.28 Residential Premise: A private residence or multi-family dwelling within the corporate limits of the City occupied by a person or group of persons comprising not more than four (4) units. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. Each separate single-family unit in a multi-unit residential dwelling, whether of single or multi-level construction, shall be billed separately as a Residential Premise or Residential Unit.

3.29 Rubbish: All waste wood, wood products, tree trimmings, grass cuttings, dead plants, weeds, leaves, dead trees or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded mattresses, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp and other products such as are used for packaging, or wrapping crockery and glass, ashes, cinders, floor sweeping, glass mineral or metallic substances, and any and all other waste materials not included in the definition of Bulky Waste, Construction Debris, Dead Animals, Recyclables, Hazardous Waste or Stable Matter.

3.30 Stable Matter: All manure and other waste matter normally accumulated in or about a stable, or any animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry, or livestock.

Section 4. Scope and Nature of Operation

4.1 Residential Collection: Contractor shall undertake curbside collection service for the collection of residential Recyclable Materials to each Residential Unit on an alternating bi-weekly basis according to a schedule approved by the City; provided, that (i) such Recyclable Materials is placed in Polycarts provided by the Contractor, and (ii) such Polycarts are placed within five (5) feet of the curbside or right-of-way adjacent to the Residential Unit by 7:00 a.m. on the designated collection day. Further, Contractor shall provide City a copy of maps indicating the routes used in the collection of Recyclables from all residential customers. The City has the right to reject and request reasonable modification of routes, and updates on routes of Contractor.

A. Special Needs Residential Units: Notwithstanding anything to the contrary contained herein, the Contractor agrees to adequately assist Special Needs Residential Units with house-side collection of their Polycarts and Recyclable Materials not exceeding two (2) cubic yards during regular Recyclables collection hours; provided, that the Contractor receives prior written

notice from the City regarding the requirement of special assistance needs for such Special Needs Residential Unit.

4.2 Commercial and Industrial Accounts: Contractor shall collect and remove acceptable Recyclables from the premises of Commercial, Institutional and Industrial Customers at such frequency as shall be reasonably requested by the owner, owner's agent, or tenant of the property. Collection service shall be a minimum of once every other week according to a schedule approved by the City or more to maintain premises free of accumulation of Recyclables. If collection is from a Container, that Container should be located on a concrete pad to accommodate Equipment. The City shall be the sole determinant of acceptable dumpster pads, locations and screening; provided that the Contractor is able to access the Bin using reasonable Equipment. To the extent not in conflict with the City's Code of Ordinances and the zoning or site plan on the Customer's Premises, City will upon Contractor's request work with the Contractor to relocate existing Container pad sites to a more suitable location on the Customer's Premises.

4.3. Commercial Hand Collection Customers: Contractor shall provide curbside collection service for the collection of Recyclables from Commercial Hand Collect Units as defined by this Contract on an alternating bi-weekly basis according to a schedule approved by the City when placed in Polycarts, and placed within five (5) feet of the curbside by 7:00 a.m. on the designated collection day. Further, Contractor shall provide City a copy of maps indicating the routes used in the collection of recyclables from all Commercial Hand Collection Customers. The City has the right to reject and request reasonable route modifications.

5. Collection Operation

5.1 Hours of Operation:

A. Residential recyclable collection shall be conducted only between the hours of 7:00 a.m. and 7:00 p.m. Collection outside of the hours set is strongly discouraged, unless Contractor notifies City at least forty-eight (48) hours in advance. An example would be late pickups after a holiday (i.e.; Christmas) or inclement weather. No recyclable collection shall be made on Sunday.

B. Commercial, institutional and industrial recyclable collection for commercial areas located adjacent to residential areas shall be conducted only between the hours of 7:00 a.m. and 7:00 p.m. No recyclable collection shall be made on Sunday.

C. All other commercial, institutional and industrial recyclable collection not specified in subparagraph (B), above, shall be conducted only between the hours of 3:00 a.m. and 7:00 p.m. No recyclable collection shall be made on Sunday.

D. Recyclable collection from public, institutional, or governmental areas shall be conducted only between the hours of 7:00 a.m. and 7:00 p.m.

5.2 Hours of Transferring/Processing: Contractor shall transfer/process Recyclables within the operating hours of the material recovery facility operated by Contractor.

5.3 Routes of Collection: Collection routes shall be established by Contractor and approved by the City. The City shall be provided route collection maps and container locations.

5.4 Holidays: The following shall be holidays for purposes of this Contract:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

When a holiday falls on a week day (Monday through Friday), Contractor shall be responsible for providing make-up collection for recyclable routes that occur on specified holidays by delaying all routes one day from the day of the holiday until the end of that week, completing all routes on Saturday of the holiday week. For example, if New Year's Day falls on Wednesday, no routes are run on Wednesday. The New Year's Day routes will be run on Thursday, Thursday's routes will be run on Friday, and Friday's routes will be run on Saturday. Any deviation from a regular scheduled pickup day due to any holiday observed by Contractor must be marketed directly to all customers within City by the Contractor. In any event, Contractor is still expected to meet its obligation as required.

5.5 Complaints: The Contractor shall assume responsibility for receiving and coordinating all residential service requests and complaint management functions related to Contractor's Recyclable Materials collection service. At a minimum, customer complaint procedure shall provide that the customer complaint shall be addressed within twenty-four (24) hours of receipt of such complaint and shall be promptly resolved. The Contractor shall be responsible for maintaining a log of complaints, and provide the City, on a monthly basis, with copies of all complaints indicating the date and hour of the complaint, nature of the complaint, and the manner and timing of its resolution. Calls logged to Contractor by City designee shall also be contained in said report. Any missed pickups shall be collected within twenty-four (24) hours with the exception of Saturday and Sunday, which shall be picked up on the following Monday. Contractor shall meet with the City Manager (or his designee) at least quarterly, and more frequently as requested by the City Manager, to discuss any complaints and their resolution.

5.6 Collection-Equipment: Contractor, at its sole cost and expense, agrees to furnish all trucks, equipment, machines and labor which are reasonably necessary to adequately, efficiently and properly collect and transport Recyclable Materials from accounts serviced by Contractor in accordance with this Contract. All collection vehicles used for handling Recyclable Materials and performing any part of the Contract shall be subject to the inspection and approval of the City. Contractor shall provide commercial containers to all Commercial, Institutional and Industrial Customers at the beginning of this Contract, unless otherwise specifically approved by the City in writing. The Equipment shall be maintained in a first class, safe, clean, and efficient working condition throughout the term of the Contract and any renewal period. The Contractor shall establish a regular preventative maintenance program for all Equipment. The Contractor shall clean the vehicles and equipment on a weekly basis or more frequently as may be necessary to maintain sanitary and safe working conditions. The Equipment shall be used by the Contractor in such a manner as to minimize the risk of injury to employees, citizens and property. The Contractor shall be responsible for initiating, maintaining, and supervising all maintenance programs, safety precautions and programs, in connection with the work and services performed hereunder. The Contractor shall establish reasonable procedures and programs to prevent property loss or damage and personal injury to persons, including, but not limited to, employees performing such work and all other persons who may be affected hereby. The Contractor shall comply with all OSHA rules and regulations when conducting operations pursuant to this Contract. The Contractor shall maintain files and records of all citations and violations of any laws, statutes, ordinances, or regulations in the ownership, title, maintenance, or operation of the Equipment, and such files and records shall be available at all times for review by the City. The Contractor shall submit a complete written inventory of all Equipment used in the performance of this Contract and shall make such other submissions as required to reflect the Contractor's current Equipment inventory throughout the term of the Contract or any renewal period as requested by the City. Collection of recyclables shall be made using sealed packer-type trucks, and such equipment shall not be allowed to leak nor scatter any Recyclables within the corporate limits of the City nor while *en route* to the Contractor's material recovery facility, where such accumulation shall be transferred, processed, marketed and sold or recycled.

The Contractor, at its sole cost and expense, shall provide and distribute Polycarts to all residences with not more than four (4) units per premises. The Polycarts shall be clearly marked with the Contractor's name, the City's logo and an identifying number. New Residential Customers shall initiate service with the City's Utility Billing Department and schedule delivery of Polycarts. The City shall notify the Contractor by 5:00 p.m. on each regular business day of all requests for delivery of Polycarts for new Residential Customers. The Contractor shall deliver new Polycarts as requested on regular business days. However, the City shall provide at least 24 hours' notice (or no sooner than the end of the next regular business day) to Contractor to deliver new Polycarts. The Contractor shall be responsible for the cost of providing new Polycarts and shall retain ownership of all Polycarts. The Contractor shall be

responsible for the cost of replacing Polycarts damaged by ordinary wear and tear. Each Customer will be responsible to take reasonable care of the Polycart(s) provided by Contractor for such Customer's use. Customers will be responsible for safely storing Polycart(s) between collection days and the proper placement and retrieval of the Polycart(s) on collection days. Customers that have a Polycart(s) stolen from the Customer's premises or otherwise damaged or destroyed by a third-party will promptly notify the City of Farmersville Police Department of such theft, damage or destruction and promptly request a replacement Polycart(s) from the City's Public Works Director. If the Customer damages or destroys the Polycart(s) provided for Customer's use the Customer will promptly request a new Polycart(s) from the City's Public Works Director. Contractor will provide one (1) only replacement Polycart per Customer's premises for a Polycart that has been stolen during the term of this Contract. Customer will thereafter be required to pay the then effective rate for replacement of the second and any subsequent Polycart(s) stolen from the Customer's premises or intentionally, recklessly or negligently damaged or destroyed by Customer or through Customer's actions or inactions during the term of this Contract. All Residential Recyclables shall be disposed of via the Polycart. The Contractor shall provide additional Polycarts at an extra cost to the Customer as provided in Exhibit "A." Such additional Polycarts shall be collected on the Customer's regularly scheduled Collection day.

Due to street size variations in the City, Contractor shall provide equipment that will accommodate such public streets and alleys. Contractor shall utilize lighter-capacity single-axle automated collection trucks for those routes identified by the City and Contractor as likely to be damaged by the use of heavier recyclables hauling equipment (i.e., on asphalt paved streets), preferably 20 yard single axle or 25 yard tandem. Special collections shall be made using appropriate equipment. Contractor shall, if necessary, hand clean all spillage resulting from its collection activities. Damage caused by collection equipment such as spillage, broken curbs or sidewalks, and ruts off-pavement shall promptly be repaired or replaced at the Contractor's expense and to the satisfaction of the City. The City expects Contractor not to weave from curb to curb, drive in the middle of the road, or apply severe braking during routes through residential streets in order to prevent damage to infrastructure and for safety reasons.

All motor vehicles used in performance of the obligations herein created shall be clearly marked with Contractor's name, telephone number and unit number legible from a distance of 150 feet. No advertising, except the company logo, Contractor's name and telephone number, shall be permitted on vehicles. All collection equipment shall be maintained in a first class, safe and efficient working condition throughout the term of this Contract. Such vehicles shall be maintained and painted as often as necessary to preserve and present a well-kept appearance, and a regular preventative maintenance program. The Contractor shall furnish the City a list of all equipment to be used fulfilling the Contract and shall update that list as may be requested by the City. The City may inspect Contractor's vehicles at any time to insure compliance of Equipment with this Contract, or require an equipment replacement schedule to be submitted to the City. Vehicles are to be washed on the inside and sanitized with a suitable disinfectant and deodorant a minimum of once a month. Such vehicles shall be washed and painted or

repainted as often as necessary to keep them in a neat and sanitary condition. Contractor will adequately train drivers to protect Farmersville streets, curbs, sidewalks, and parkways and not make sudden breaking stops that will damage street surfaces. Contractor will periodically (not less than semi-annually) review the drivers' performance to ensure their compliance with such driving procedures.

5.7 Recycling: Contractor shall collect and deliver Recyclable Materials collected to Contractor's licensed material recovery facility operated in compliance with rules stipulated by the Texas Commission on Environmental Quality (TCEQ) and/or the Environmental Protection Agency (EPA).

5.8 Spillage: Contractor shall not be responsible for scattered Recyclables unless the same has been caused by its acts or those of any of its employees, in which case all scattered Recyclables shall be picked up immediately by Contractor. A fork, push broom, and a scoop-type shovel shall be maintained on each truck for cleanup activity. The Contractor shall, if necessary, hand clean all spillage resulting from its collection activities. The City, at its discretion, may inspect the Contractor's vehicles at any time to ensure compliance of the equipment with the Contract, or require equipment replacement schedules to be submitted to the City. Contractor will not be required to clean up or collect loose Recyclables or spillage not caused by the acts of its employees, but shall report the location of such conditions to the City Manager or the City's Public Works Director so that proper notice can be given to the customer at the premises to properly contain the Recyclable Materials. Contractor shall pick up commercial Recyclables spillage or excess Recyclables after the customer reloads the container. In the case of commercial customers, Contractor shall then be entitled to an extra collection charge for each reloading of a commercial container requiring an extra collection. Should such commercial spillage continue to occur, City shall require the commercial customer and Contractor to increase the frequency of collection of the commercial customer's Recyclables or require the customer to utilize a commercial container with a larger capacity, and Contractor shall be compensated for such additional services.

5.9 Vicious Animals: Employees of Contractor shall not be required to expose themselves to the dangers of vicious animals in order to accomplish Recyclable Materials collection in any case where the owner or tenants have animals at large, but Contractor shall immediately notify the City Manager and the City's Public Works Director by telephone or electronic-mail and in writing, of such condition and of its inability to make collection.

5.10 Protection from Scattering: Vehicles shall not be improperly loaded or overloaded so as to scatter Recyclable Materials; however, if Recyclable Materials are scattered from Contractor's vehicle for any reason, it shall be picked up immediately. In addition, each of Contractor's vehicles shall be equipped with a cover, which may be net with mesh of not greater than one and one-half inches (1-1/2"), or tarpaulin, or a fully enclosed metal top, to prevent leakage, blowing, or scattering of recyclables onto public or private property. Such cover shall be kept in good order and used to cover the

load going to and from the Contractor's licensed material recovery facility, during loading operations, or when parked if contents are likely to be scattered. Vehicles shall not be overloaded so as to scatter recyclables; however, if recyclables are scattered from Contractor's vehicle for any reason, it shall be picked up immediately. Each vehicle shall be equipped with a fork, broom, and shovel for this purpose.

Section 6. Term

6.1 **Primary Term:** The Primary Term of this Contract shall be for a period of five (5) years commencing October 1, 2016 (the "Contract Date") and, unless renewed according to the terms of Section 4.2, terminating on September 30, 2021.

6.2 **Renewal:** This Contract may be extended by mutual agreement of the parties for one (1) additional five-year term. If either party desires to renew this Contract, such party should provide the other party written notice of its intent to renew this Contract at least one hundred eighty (180) days prior to the expiration of the Primary Term.

Section 7. Recyclable Materials

Contractor shall provide a single-stream Recyclable Materials collection service to Residential Units on a once per week schedule. Residents will not be required to separate Recyclable Materials by type of material; therefore, all Recyclables may be commingled with other Recyclable Materials. Contractor shall include a list of acceptable Recyclable Materials in its program materials sent to Residential Units.

Contractor shall be responsible for transporting the Recyclable Materials to a material recovery facility of its choice and must have established buyers or markets for the Recyclables, as the market allows. Contractor shall be required to identify the buyers of the Recyclable Materials upon request by the City. Recyclable Materials collected for the purpose of recycling may not be deposited in any landfill unless the Recyclable Materials load is contaminated with Refuse or other unacceptable waste.

Contractor shall be totally responsible for the costs of processing and marketing of all Recyclable Materials collected pursuant to this Contract and, accordingly, shall retain all revenues, if any, from sales of Recyclable Materials save and except as provided herein.

Section 8. Indemnity

CONTRACTOR AGREES TO DEFEND, INDEMNIFY, AND HOLD THE CITY AND ALL OF ITS OFFICERS, AGENTS, EMPLOYEES, AND ELECTED OFFICIALS WHOLE AND HARMLESS AGAINST ANY AND ALL CLAIMS FOR DAMAGES, COSTS, AND EXPENSES OF PERSONS OR PROPERTY THAT MAY ARISE OUT OF, OR BE OCCASIONED BY, OR FROM ANY NEGLIGENT ACT, OR OMISSION OF CONTRACTOR, OR ANY AGENT, SERVANT, OR EMPLOYEE OF THE

CONTRACTOR IN THE EXECUTION OF THE PERFORMANCE OF THIS AGREEMENT, WITHOUT REGARD TO WHETHER SUCH PERSONS ARE UNDER THE DIRECTION OF CITY AGENTS OR EMPLOYEES AS FOLLOWS:

(a) CONTRACTOR HEREBY ASSUMES THE RISK OF LOSS AND/OR INJURY TO PROPERTY AND/OR PERSONS CAUSED BY ANY NEGLIGENT OR WILLFUL ACTS OR OMISSIONS IN THE PERFORMANCE OR NON-PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

(b) MORE PARTICULARLY, CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL ACTIONS, CITATIONS, CLAIMS, LIABILITIES, DAMAGES, DEMANDS, FINES, SUITS, JUDGMENTS, LEGAL PROCEEDINGS, LOSSES, PENALTIES, COSTS OR EXPENSES, INCLUDING BUT NOT LIMITED TO, EXPENSES OF LITIGATION AND ATTORNEYS' FEES, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OR NON-PERFORMANCE OF THE AGREEMENT OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF THE CONTRACTOR, ITS SUBCONTRACTORS AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS"). CONTRACTOR FURTHER AGREES TO PAY ALL ATTORNEYS' FEES INCIDENT TO ENFORCEMENT, RENEGOTIATION, OR INTERPRETATION OF THIS AGREEMENT.

(c) WITHOUT LIMITING THE FOREGOING, THE CONTRACTOR FURTHER AGREES THAT THE INDEMNITY PROVIDED FOR HEREIN SHALL EXTEND TO AND INCLUDE ANY AND ALL CLAIMS AGAINST THE CITY ARISING OUT OF OR PREDICATED UPON THE ENVIRONMENTAL LAWS AS DEFINED HEREIN. THE CITY SHALL NOT BE RESPONSIBLE FOR THE NEGLIGENCE OF THE CONTRACTOR, OR ANY OF ITS AGENTS, EMPLOYEES, OR CUSTOMERS.

(d) BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY. INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY

(e) THE CHOICE OF COUNSEL TO DEFEND OR OTHERWISE HANDLE ALL INDEMNIFIED ITEMS SHALL BE DETERMINED BY PROCEDURES SET FORTH IN THE APPLICABLE INSURANCE AGREEMENTS MAINTAINED BY THE CONTRACTOR OR, IN THE ABSENCE OF SUCH INSURANCE AGREEMENT, AT

THE CHOICE OF THE CONTRACTOR SUBJECT TO THE APPROVAL OF THE CITY. CONTRACTOR SHALL RETAIN APPROVED COUNSEL FOR THE CITY WITHIN SEVEN (7) BUSINESS DAYS AFTER RECEIVING WRITTEN NOTICE FROM THE CITY THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR DOES NOT RETAIN COUNSEL FOR THE CITY WITHIN THE REQUIRED TIME, THEN THE CITY SHALL HAVE THE RIGHT TO RETAIN COUNSEL AND THE CONTRACTOR SHALL PAY THESE ATTORNEYS' FEES AND EXPENSES. THE CITY RETAINS THE RIGHT TO PROVIDE AND PAY FOR ANY OR ALL COSTS OF DEFENDING INDEMNIFIED ITEMS, BUT IT SHALL NOT BE REQUIRED TO DO SO. CONTRACTOR SHALL BE RESPONSIBLE TO PAY FOR ALL COSTS AND EXPENSES INCURRED BY THE CITY IN DEFENDING ANY INDEMNIFIED ITEMS.

(f) NOTHING ABOUT THIS SECTION OR ANY INDEMNIFICATION BY CONTRACTOR OF THE CITY SHALL SERVE AS AN EXPRESS OR IMPLIED WAIVER OF ANY RIGHTS OF GOVERNMENTAL IMMUNITY OR SOVEREIGN IMMUNITY ENJOYED BY THE CITY, ITS OFFICERS AND EMPLOYEES AND/OR THE CONTRACTOR.

Section 9. Security for Faithful Performance

9.1 Performance Bond: As security for this service, the Contractor shall provide the City a Thirty Thousand Dollar (\$30,000.00) performance bond in a form approved by the City Attorney guaranteeing the faithful performance of this Contract (hereafter "Performance Bond"). The Performance Bond shall be executed by a surety company licensed to do business in the State of Texas and approved by the City Attorney, and shall be for the term of this Contract and any renewal term in the amount of Thirty Thousand Dollars (\$30,000.00). The Performance Bond shall be furnished to the City by the Contractor within ten (10) days of the date of the execution of this Contract or any renewal hereof. Without limiting any other indemnity provisions herein, said Performance Bond shall guarantee full, satisfactory and complete performance of this Contract by the Contractor and indemnify the City against any loss, expense, cost or damage resulting from any default by the Contractor hereunder or any failure of performance hereunder by the Contractor.

The Contractor shall pay any and all premiums for the bonds described above. A certificate from the surety showing that the bond premiums are paid in full must accompany the bond. Such certificate shall be submitted to the City with the bond and any renewal thereof. The surety on the bond shall be a duly authorized corporate surety authorized to do business in the State of Texas that is authorized to underwrite federal obligations as reflected on the United States Department of the Treasury Circular 570.

9.2 Power Of Attorney: Attorneys-in-fact, who sign bonds, must file with each bond a certified and effectively dated copy of their power of attorney.

Section 10. Termination of Contract

10.1 Notice and Cure: If at any time Contractor shall fail to substantially perform the terms, covenants, or conditions herein set forth, City shall notify Contractor by certified mail addressed to the Contractor at the address set forth herein of specific reasons in support of City's claim that Contractor has substantially breached the terms and provisions of this Contract. Contractor shall be allowed thirty (30) calendar days from the date of receipt of notice to remedy any failure to perform. Should City deem failures to be corrected, no hearing shall be held.

10.2 Failure to Cure and Hearing: Should Contractor not remedy its performance within thirty (30) calendar days after receipt of the written notice identified in Section 10.1, above, a hearing shall be scheduled before the City Council to allow the Contractor an opportunity to show why the Contract should not be terminated. A notice shall be sent to Contractor no earlier than ten (10) calendar days before a hearing is scheduled. The notice shall specify the time and place of the hearing, and shall include the specific reasons in support of City's claim that Contractor has substantially breached the terms and provisions of the Contract. Said hearing shall be conducted in public by the City Council and Contractor shall be allowed to be present, and shall be given the full opportunity to answer such claims that are set out against Contractor.

10.3 Termination by City: If the City Council makes a finding that Contractor has failed to provide adequate Recyclable Materials collection services for the City, or has otherwise substantially failed to perform its duties as specified in the Contract, the City Council may terminate this Contract after a hearing described herein, and providing the Contractor one hundred twenty (120) days written notice of such termination. Upon the expiration of the one hundred twenty-day time period this Contract shall terminate without any further obligation or liability to City save and except payment for residential services actually provided by Contractor, less the License Fee, prior to the termination date of this Contract.

10.4 Notice and Cure by Contractor: If at any time City shall fail to substantially perform the terms, covenants, or conditions herein set forth, Contractor shall notify City by certified mail addressed to the City at the address set forth herein of specific reasons in support of Contractor's claim that City has substantially breached the terms and provisions of this Contract. City shall be allowed thirty (30) days from the date of receipt of notice to remedy any failure to perform.

10.5 Termination by Contractor for Non-payment: If the City fails to pay Contractor Compensation due and owing in accordance with and pursuant to the Texas Prompt Payment Act and fails to cure such failure within the time period established by Section 10.4, herein above, Contractor may thereafter promptly terminate this Contract.

10.6 Termination by Contractor for Reasons other than Non-payment: If the City fails to timely cure and remedy any substantial failure to perform the terms, covenants, or conditions of this Contract, other than the payment of Compensation then

due and owing in accordance with and pursuant to the Texas Prompt Payment Act, the Contractor may terminate this Contract after providing the City two hundred seventy (270) days written notice of such termination. Upon the expiration of the two hundred seventy-day time period this Contract shall terminate without any further obligation or liability to Contractor save and except payment for services actually provided by Contractor, less the Franchise Fee, prior to the termination date of this Contract.

Section 11. Ownership

Title to Recyclable Materials shall pass to Contractor when placed in Contractor's collection vehicle, removed by Contractor from a Bin or container of any sort, or removed by Contractor from the customer's premises, whichever last occurs. Title to hazardous waste or any other wastes excluded from this Contract remains with the generator of such waste and Contractor shall have no responsibility or liability to the City for such unacceptable waste.

Section 12. Polycarts

As of the effective date of this Contract, Polycarts shall be new, labeled with a unique serial number for identification and tracking purposes. Polycarts used for recycling shall be made of recycled materials and of a different color than those Polycarts utilized for Refuse disposal. The colors utilized for Polycarts shall be mutually agreed upon by Contractor and the City prior to the effective date of this Contract. Contractor shall provide Polycarts to new residents, and shall repair and/or replace any damaged Polycarts within two (2) business days of first notification.

Section 13. Quarterly Meetings

Contractor shall conduct quarterly meetings with designated City staff to provide a review/update of any outstanding issues.

Section 14. Reporting Requirements

Contractor shall provide, at a minimum, the following types of reports within the time periods specified:

- A. Daily reports for the alternating weeks during which recyclables are collected within the City detailing Polycart transactions provided to the Utility Billing office;
- B. Monthly reports, within two (2) weeks of the end of the reporting period, detailing: Polycart transactions; tonnage of Recyclables collected; participation/set-out rates, etc.;
- C. Quarterly revenue sharing reports shall be prepared and submitted together with any associated payment on a quarterly basis with such quarters

ending on April 30, June 30, September 30 and January 31 of each year of this Contract or any extension or renewal hereof, on or before the fifteenth day of the month following the quarter then ending; and

D. Annual reports each October on the status of the terms and conditions of the Contract and any points that need to be addressed.

Section 15. State, Local, and Federal Regulations

Contractor agrees to comply with all applicable existing laws of the United States and of this state and any further applicable laws which may be enacted by the United States or this state, and agrees to comply with the regulations of any regulatory body or officer authorized to prescribe or enforce regulations pertaining to the subject matter of this Contract, it being expressly agreed that nothing in this Contract shall be construed in any manner to abridge the right of City to pass or enforce necessary police and health regulations for the protection of its inhabitants.

Section 16. Licenses and Taxes

Contractor shall obtain all licenses and permits (other than the license and permit granted by this Contract) and promptly pay all taxes required by the City and the state.

Section 17. Promotion/Information Activities

Prior to 1) any significant route and service changes, 2) implementation of any new program and service, or 3) any addition to an existing program or service, the Contractor shall submit a strategy for a publicity campaign to the City for approval. The strategy shall include methods of publicizing the program, a time schedule of advertisements and the location where such advertisements shall appear.

Contractor shall develop and provide, at the expense of Contractor, instructional pamphlets for citizens regarding specific Recyclable Materials management practices as are applicable to the Customers in Farmersville. Such pamphlets shall be available to the City for distribution to all citizens. Additional copies of the pamphlets shall be available to the City and any citizen upon request and shall be available for enclosure with water and other utility bills. All promotional activities and other information released as a part of its strategy shall be reviewed and approved by the City prior to release by the Contractor. On or before October 1 of each Agreement year, the Contractor shall submit an annual public information strategy for the next Agreement year to the City for its review and approval. At no time shall the Contractor mail promotional materials directly to customers in Farmersville without prior written notification to and approval of the City.

The Contractor shall invest at least \$3,000 annually on such public information materials and other marketing materials, approved by the City, regarding the Contractor's services. The scope and subject matter of these materials shall be

mutually decided upon by the City and Contractor, and approved by the City, each year prior to October 1st.

Section 18. Books and Records

The City and Contractor agree to maintain at their respective places of business adequate books and records relating to the performance of their respective duties under the provisions of this Contract and such books and records shall be made available at any time during regular business hours for inspection by the other party, upon reasonable advance notice. The inspecting party shall be responsible for all of their own expenses, including travel and contractual services.

Section 19. Contractor as Independent Contractor of City

Contractor shall be solely responsible for the actions of its employees during the performance of service under this Contract. Contractor shall assure the City that the actions of Contractor's employees shall be in the best interests of the City and its citizens. Contractor and its employees are independent contractors of the City.

Section 20. Notices

Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the respective part of the address set forth below:

If to the City, at:

City Manager
City of Farmersville
205 South Main Street
Farmersville, Texas 75442

If to Contractor, at:

Community Waste Disposal, LP,
2010 California Crossing
Dallas, Texas 75220
ATTN: _____

or such other addresses as the parties may hereafter specify by written notice delivered in accordance herewith.

Section 21. Insurance

21.1 Proof of Insurance Required: Contractor shall at all times during the term of this Contract and any extension or renewal term hereof, at its own expense, procure, pay for and maintain the following insurance coverage written by companies approved by the State of Texas and reasonably acceptable to the City. The Contractor shall

furnish to the City certificates of insurance executed by the insurer or its authorized agent stating the type of coverages, limits of each such coverage, expiration dates and compliance with all applicable required provisions. Contractor shall provide a copy of insurance policies to City upon request. Certificates shall reference the Contract for Citywide Recycling Services and be addressed as follows:

City Manager
City of Farmersville
205 S. Main Street
Farmersville, Texas 75442

21.3 Minimum Insurance Coverages and Amounts Required: Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at the Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following types and amounts:

	TYPE	AMOUNT
1.	Workers' Compensation and Employer's Liability	Statutory \$100,000/500,000/100,000
2.	Commercial General (Public) Liability insurance including coverage for the following: a. Premises Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Advertising Injury f. Contractual Liability g. Medical Payments	Combined single limit for bodily injury and property damage in the amount of \$2,000,000 per occurrence or its equivalent.
3.	Comprehensive Automobile insurance, including coverage for loading and unloading hazards, for: a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined single limit for bodily injury and property damage in the amount of \$5,000,000 per accident or its equivalent.
4.	Umbrella / Excess Liability following form and applying in excess of the above-indicated primary coverage (Item Nos. 1, 2 and 3)	\$5,000,000 limit per occurrence and annual aggregate for bodily injury and property damage.

21.4 Additional Policy Endorsements: The City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Nothing in this Section 21.4 shall be interpreted to allow the City to require the Contractor to modify its insurance policies for any other reason than to be in compliance with the terms of this Contract. Upon such request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

21.5 Required Provisions: The successful Contractor agrees that with respect to the above-required insurance, all insurance contracts and certificate(s) of insurance shall contain and state, in writing, on the certificate, or its attachment, the following required provisions:

A. Name the City of Farmersville and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to the Commercial General (Public) Liability, Comprehensive Automobile Liability and Umbrella/ Excess Liability coverages;

B. Provide for thirty (30) days' notice to the City of Farmersville for cancellation, nonrenewable, or material change in the policies, and ten (10) days' notice for nonpayment;

C. The Contractor agrees to waive subrogation under the Workers' Compensation and Employer's Liability coverage as against the City of Farmersville, and its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of such coverage;

D. All copies of the certificates of insurance shall reference the project name or proposal number for which the insurance applies;

E. Provide that all provisions of this Contract concerning liability, duty, and standard of care, together with the indemnification provision, shall be underwritten by contractual liability sufficient to include such obligations within applicable policies; and

F. For coverages that are only available with claims made policies, the required period of coverage will be determined by the following formula: Continuous coverage for the life of the contract, plus one (1) year (to provide coverage for the warranty period) and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period; and

G. Provide for notice to the City of Farmersville at the address shown below by registered mail.

21.6 Notices: The Contractor shall notify the City in the event of any change in coverage and shall give such notices in writing not less than thirty (30) days prior to the change. The notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

Office of the City Manager
City of Farmersville
205 S. Main Street
Farmersville, Texas 75442

21.7 No Waiver Regarding Insurance: Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

Section 22. Miscellaneous Provisions

22.1 Construction of Contract Documents: Although the Contract has been drafted by the City, should any portion of the Contract be disputed, the City and Contractor agree that it shall not be construed more favorably for or against either party. In this regard, Contractor specifically agrees the Contractor has been represented by legal counsel in the negotiation of this Contract and been advised, or has had the opportunity to have legal counsel review this Contract and advise Contractor, regarding Contractor's rights and obligations under this Contract as well as Texas and federal law.

22.2 Binding Effect: The Contract Documents are binding upon the City and Contractor and shall inure to their benefit and as well as that of their respective successors and assigns, if any, as provided in the Contract Documents.

22.3 Jurisdiction and Venue: The Contract is entered into subject to the Ordinances of the City of Farmersville, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. The Contractor will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Contractor's income. Exclusive venue for any claim or cause of action under this Contract is agreed to be the state and federal courts of Collin County, Texas, for all purposes, including performance and execution.

22.4 Bankruptcy as Default: It is hereby agreed that if the Contractor files for protection under any Bankruptcy Statute (voluntary or involuntarily), then this Contract

shall automatically be in default and terminate effective on the day a Bankruptcy petition is filed.

22.5 Non-discrimination: The Contractor, in the execution, performance, or attempted performance of this Contract, shall not discriminate against any person or persons because of sex, race, religion, color, or national origin. The Contractor shall be an equal opportunity employer and have an affirmative action plan.

22.6 Savings Clause: If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

22.7 No Waiver: No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

22.8 No Oral Modification: No alteration of or amendment to this Contract shall be effective unless given in writing and signed by the signatories hereto or their respective heirs, successors and assigns. Any requested modifications to these standards by the Contractor shall be submitted in writing to the City Manager for approval and shall become part of this Contract following approval thereof by the City Council. Any City initiated modifications shall become effective upon thirty (30) calendar days written notice.

22.9. Damage Claims: The Contractor shall provide the City with a full explanation of the disposition of any complaint involving a customer's claim of damage to private property as a result of actions of the Contractor's employees, agents, or subcontractors. In the event of an insurance dispute, arbitration, or litigation, the Contractor shall maintain records indicating an expeditious course of action to resolve the disputed matter.

22.10 Personnel Changes: The Contractor shall notify the City's Public Works Director of changes made in key management personnel fourteen (14) calendar days prior to changes becoming effective, or as soon as is otherwise reasonably practicable under the circumstances.

22.11 Communications With Utility Billing: All correspondence between the Contractor and the City's Utility Billing Department concerning accounts (new, updated, changed, ended, etc.) shall be provided daily (except holidays), prior to 5:00 p.m., to expedite and document account activity by hand-delivered copy, fax, or electronic transfer. Any account actions after 5:00 p.m. may be sent on the following business day

as early as is reasonably possible. All documentation shall contain accurate and pertinent information about each account to insure proper tracking and serviceability. Contractor shall provide the City a list of all customers missed (did not have container out) at the end of each day's route before 8:30 a.m. of the immediately following business day.

22.12 Complete Contract: The Contract Documents embody the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

22.13 Headings: The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

22.14 Force Majeure: Notwithstanding anything herein to the contrary, Contractor shall not be liable for the failure to perform its duties if such failure is caused by a catastrophe, riot, war, terrorism, governmental order or regulation, fire, act of God or other similar or different contingency beyond the reasonable control of Contractor.

22.15 Taxes: As required by the Texas Property Tax Code, the Contractor shall render a list of all real and tangible personal property located and/or operated within the City of Farmersville, with a declaration that such property has a taxable status in Farmersville, to the Collin County Central Appraisal District, by April 15th of each year. Personal property includes, but is not limited to vehicles, collection containers, office equipment, etc. The list shall include all personal property in use as of January 1st of each year. The list shall also be filed with the City of Farmersville City Manager by April 15th of each year throughout the term of this Contract. The Contractor shall bear the financial responsibility for any annual audit requested by the City. The City, at its sole discretion and choosing, may utilize a private, independent third party auditor for such purposes. The cost incurred by the Contractor for the purpose of a City requested audit shall not exceed \$10,000 annually. Any such audit requested by the City shall be limited to the billings and services performed under this Contract.

In addition to the amounts billed and collected by the City under Section 2.1.A., the City shall also be responsible for billing, collecting, remitting and paying any and all sales, use and service taxes assessed or payable in connection with the services. The Contractor shall be responsible for billing, collecting, remitting and paying any and all sales, use and service taxes assessed or payable in connection with the services billed and collected by the Contractor.

23.16 Assignment

The Contractor agrees that it shall not, without prior written approval of the City, assign any rights or delegate any duties arising hereunder; the Contractor further

agrees that any such assignment or delegation of rights or duties shall not relieve the Contractor of its obligations to the City hereunder unless expressly agreed by the City in writing. The approval of any such assignment shall not be unreasonably withheld or denied by the City.

COMMUNITY WASTE DISPOSAL, LP,
a Texas Limited Partnership

CITY OF FARMERSVILLE, TEXAS

By: _____

Title: _____

Date: _____

Address: 2010 California Crossing
Dallas, Texas 75220

Phone: (972) 392-9300

Fax: (972) 392-9301

By: Benjamin L. White, P.E., CPM

Title: City Manager

Date: _____

Address: 205 S. Main Street
Farmersville, Texas 75442

Phone: (972) 782 – 6151

Fax: (972) 782 – 6604

ATTEST:

Mary Tate
City Secretary

[Remainder of page left blank intentionally.]

THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Benjamin L. White, P.E., CPM, City Manager of the **CITY OF FARMERSVILLE**, a Texas Municipal Corporation, known to me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 20____.

Notary Public, Collin County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, in his capacity as _____ of **COMMUNITY WASTE DISPOSAL, LP**, a Texas Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of **COMMUNITY WASTE DISPOSAL, LP**.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 20____.

Notary Public _____ County, Texas
My commission expires _____

EXHIBIT "A"

95 Gallon Single Stream Recycling

- A. \$3.35 Per Home Per Month – NET to CWD Bi-weekly 95 Gallon Single Stream Recycling Services.
- B. \$5.34 Per Commercial Account Per Month – NET to CWD Bi-weekly 95 Gallon Single Stream Recycling Services.

Residential Household Hazardous Waste

- A. \$495.42 per month fee for services provided as follows: _____.

Agenda Section	Regular Agenda
Section Number	VI.E
Subject	Consider, discuss, and act upon a contract for City IT Administration Services
To	Mayor and Council Members
From	Ben White, City Manager
Date	August 23, 2016
Attachment(s)	Contract
Related Link(s)	http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php
Consideration and Discussion	City Council discussion as required.
Action	<ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Approve with Updates <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action

Information Technology Services Agreement

This Agreement is made and entered into as of the day of October 1, 2016 (the "Effective Date") and ending on September 30, 2017 (the "Termination Date") by and between TLC NetCon Inc., a Texas corporation ("TLC"), and City of Farmersville ("Client").

TLC Services. Upon the terms and subject to the conditions of this Agreement, which includes all the Schedules attached hereto, TLC will provide to Client the Information Technology services set forth or described in Schedule A attached hereto (collectively, the "Services"). Client agrees that TLC is responsible only for providing the Services, and TLC is not responsible for providing any services or performing any tasks not specifically set forth in Schedule A hereto.

Confidentiality. The parties acknowledge that in the course of performing their responsibilities under this Agreement, they each may be exposed to or acquire information that is proprietary to or confidential to the other party or third parties. The parties agree to hold such information in strictest confidence,

Payment. Client shall pay TLC within ten (10) days after the date of an invoice: unless otherwise specified in Appendix A.

Limitation of Liability. TLC SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE AGGREGATE LIABILITY OF TLC FOR ANY REASON AND UPON ANY CAUSE OF ACTION OR CLAIM, INCLUDING TLC OBLIGATION TO INDEMNIFY AND HOLD HARMLESS, UNDER THIS AGREEMENT, SHALL BE LIMITED TO: (i) THE PROJECT SERVICE FEES PAID TO TLC BY CLIENT FOR THE PROJECT SERVICES IF THE CAUSE OF ACTION OR CLAIM ARISES OUT OF OR RELATES TO THE PROJECT SERVICES; OR (ii) THE ADMINISTRATIVE SERVICE FEES PAID TO TLC BY CLIENT FOR THE ADMINISTRATIVE SERVICES CORRESPONDING TO THE INITIAL TERM OR THE RENEWAL PERIOD DURING WHICH THE CAUSE OF ACTION OR CLAIM ACCRUED IF THE CAUSE OF ACTION OR CLAIM ARISES OUT OF OR RELATES TO THE ADMINISTRATIVE SERVICES.

Termination. In addition to the express rights of TLC to terminate this Agreement set forth herein, TLC and Client shall also have the right to terminate this Agreement and cancel any unfilled portion of it given 90 days written notice.

Hiring of Employees. Both parties agree not to engage in any attempt to hire, or to engage as independent contractors, the others employees or independent contractors for the period ending one year after the expiration or earlier termination of this Agreement, except as may be otherwise agreed to in writing by both parties.

Independent Contractor.

- (a) TLC and any all TLC personnel, in performance of this Agreement are acting as independent contractors and not employees or agents of Client.
- (b) Client acknowledges that in performance of the Services, TLC is not engaging in any management role with respect to Client, TLC is not exercising any form of operating control over Client, and that any such management or operational activities of Client shall be deemed to be conducted by Client alone.

Entire Agreement. This Agreement, including all attachments, Exhibits and/or Schedules hereto, evidences the complete understanding and agreement of the parties with respect to the subject matter hereof and supersedes and merges all previous proposals of sale, Communications, representations, understandings and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a writing subscribed to by authorized representatives of both parties.

Amendments, No amendment, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of each of the parties.

Force Majeure. Neither party shall be liable to the other for any delay or failure to performance of the services or obligations set forth in this Agreement due to causes beyond its reasonable control including, without limitation, acts of God, natural or human-caused disasters such as flood and fire, civil disturbances, labor disputes, compliance with governmental regulations or other authority, or the inability of freight forwarders or carriers to complete shipments in accordance with TLC instructions.

Governing Law. This Agreement and performance hereunder shall be governed by tile laws of the State of Texas without giving effect to principles of conflict of laws of such state or international treaties. TLC and Client hereby agree on behalf of themselves and any person claiming by or through them that the sole jurisdiction and revenue for any litigation arising from or relating to this Agreement shall be an appropriate federal or state court located in Collin County, Texas.

IN WITNESS WHEREOF, the parties have caused This Agreement to be executed by their duly authorized representatives as of the date first written above.

TLC:

CLIENT:

TLC NetCon, INC.

City of Farmersville

By: _____
(Signature)

By: _____
(Signature)

Name: Tony Linton

Name: Diane Piwko

Title: CEO

Title: Mayor

Date: _____

Date: _____

Appendix A

CUSTOMER: City of Farmersville
Attn: Benjamin L. White
DATE: September 15, 2014
PHONE NUMBER: 972-782-6151
FAX NUMBER: 972-782-6604

SALES PERSON: Tony Linton

Monthly Desktop/Laptop Computer support

Number of systems: 65
Support unit price: \$50.00
Sub-Total: \$3250.00

Monthly Server support:	Physical	Virtual
Number of systems:	7	5
Unit price of:	\$100.00	\$50.00
Sub-total:	\$700.00	\$250.00

Total monthly price: \$4200.00

Monthly Service

Includes:

- Help Desk
(Phone and Web based remote support)
- On Site Support (Scheduled and non-scheduled maintenance during TLC regular business hours: 8 - 5, M-F)
- Structured Administration based upon industry standards
- Scheduled Auditing (Data integrity, backup recovery. etc)
- Reporting - Monthly executive ~
(Includes Status of network, Audit results, # Incidents, # Problems, network performance)
- Install Service Packs / Updates
- Antivirus maintenance / Updates
- Workstation maintenance (Antivirus updates, Windows Updates. etc.)
- Server maintenance (Antivirus updates. Windows Updates, Backups, etc.)
- Restoring software from customer installation media after hardware failure
- Installation of hardware shipped from manufacturer under manufacturer's warranty

- Complete managed network support for your business
- Provide up to date and accurate enterprise level configuration diagrams including IP addresses, Administrative passwords, and user passwords
- Basic hardware and software upgrades
- File Restoration

Monthly Service

Does Not Include:

- Server installation and configuration
- Project implementation
- Cost of computer hardware
- Service or maintenance on printers, copiers, etc.
- Non-scheduled maintenance due to client over sight, negligence, or malicious intent
- Major upgrades of hardware or software involving new equipment or applications

User new system installation and migration of an existing system will be billed at a flat rate of \$125.00

New server installation including migration from an existing server will be billed at a flat rate of \$500.00

All uncovered work will be billed at regular hourly rate of \$125.00 per hour and major projects will be billed at an amount agreed upon by TLC and Client.

Agenda Section	Regular Agenda
Section Number	VI.F
Subject	Consider, discuss, and act upon filling an open board position for the Planning & Zoning Commission
To	Mayor and Council Members
From	Ben White, City Manager
Date	September 27, 2016
Attachment(s)	NA
Related Link(s)	http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php
Consideration and Discussion	City Council discussion as required.
Action	<ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Approve with Updates <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action

Agenda Section	Regular Agenda
Section Number	VI.G
Subject	Consider, discuss, and act upon updates to the property located at 140, 148, and 150 S. Main Street
To	Mayor and Council Members
From	Ben White, City Manager
Date	September 27, 2016
Attachment(s)	NA
Related Link(s)	http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php
Consideration and Discussion	City Council discussion as required.
Action	<ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Approve with Updates <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action

Agenda Section	Regular Agenda
Section Number	VI.H
Subject	Consider, discuss, and act upon appointing an Interim City Secretary
To	Mayor and Council Members
From	Ben White, City Manager
Date	September 27, 2016
Attachment(s)	Resolution # R-2016-0927-001
Related Link(s)	http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php
Consideration and Discussion	City Council discussion as required.
Action	<ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Approve with Updates <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action

**CITY OF FARMERSVILLE
RESOLUTION # R-2016-0927-001**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS,
APPROVING THE CITY MANAGER'S APPOINTMENT OF AN INTERIM CITY
SECRETARY**

WHEREAS, the City of Farmersville, Texas has adopted the city manager form of government pursuant to Chapter 25 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code § 25.051 provides that all municipal officers, except members of the governing body, in a city manager form of government are appointed as provided by ordinance; and

WHEREAS, Section 2.305(b) of the Farmersville Code provides that the City Secretary may be appointed or removed by the City Manager only after consultation with, and approval of, the Mayor and City Council; and

WHEREAS, the City Secretary recently resigned and the City Manager has consulted with the Mayor and Council and requested that Paula Jackson be appointed to serve as Interim City Secretary until a new City Secretary is recommended for appointment and approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, THAT:

SECTION 1. All of the above premises are true and correct legislative and factual findings of the City Council, and they are hereby approved, ratified and incorporated into the body of this resolution as if copied in their entirety.

SECTION 2. The City Council of the City of Farmersville, Texas, does hereby approve the City Manager's appointment of Paula Jackson to serve as Interim City Secretary.

PASSED AND APPROVED by the City Council of the City Council of the City of Farmersville, Texas on this the 27th day of September, 2016.

APPROVED:

Diane C. Piwko, Mayor

ATTEST:

Mary Tate, City Secretary

VII. Requests to be placed on future agendas

VIII. Adjournment