

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
TEXAS DISPOSAL SYSTEMS, INC.
For
Single-Stream Recycling**

This Agreement (the “**Agreement**”) is made this ____ day of August, 2010 (the “**Effective Date**”) by and between Texas Disposal Systems, Inc. (“**Contractor**”) having offices at 12200 Carl Road, Creedmoor, Texas 78610 and the City of Austin (“**City**”), a home-rule municipality incorporated by the State of Texas.

WHEREAS, the City has distributed in excess of 181,000 recycling carts for the city-wide implementation of SFR single-stream recycling; and

WHEREAS, the City desires to enter into a long-term agreement for the outsourcing of certain aspects of its single stream recycling process (the “**L-T Agreement**”), but the implementation of such L-T Agreement may be as long as 24 months after the Effective Date; and

WHEREAS, Contractor has agreed to provide SFR single stream recycling services (“**Services**”) according to the terms and conditions herein (including the attached Exhibits) until the date the L-T Agreement is fully implemented as certified by the City, while providing a cap on the costs the City shall incur for such Services; and

WHEREAS, the City Council, on _____, authorized the execution of an Agreement with the Contractor.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the Services set forth in SECTION 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work (“**Additional Services**”), the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the Additional Services, and from and after the execution of the exhibit or amendment with respect to the Additional Services, they shall be considered a part of the Services to be performed hereunder for all purposes.

1.3 **Responsibilities of the City.** The City’s Contract Manager will be responsible for exercising general oversight of the Contractor’s activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City’s interests in resolving day-to-day issues that may arise during the term of this Agreement, shall participate regularly in conference

calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Bob Gregory, Phone: (512) 421-1300. The City's Contract Manager for the engagement shall be Vidal Maldonado, Phone: (512) 974-7687; or Bert Brown, Phone: (512) 974-4315.

SECTION 2. SCOPE OF WORK.

2.1 **Contractor's Obligations.** The Contractor shall fully and timely perform all tasks pertaining to a recycling processing facility, such as receiving, transporting, sorting, processing, storing, and selling recyclable materials collected by the City or its designated contractors as described herein in strict accordance with the terms, covenants, and conditions of the Agreement and all applicable federal, state, and municipal Applicable Laws, rules, and regulations.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the following tasks:

2.2.1 Contractor shall follow the City's regular recycling collection and holiday collection schedules. The City's recycling collection program normally operates Monday through Friday, except when crews are off due to a holiday, in which case crews will work on the following Saturday. City crews do not collect Recyclable Materials on the holidays listed in Section 7.25.

2.2.2 **Performance of Services.** Contractor shall perform the Services in accordance with the Scope of Services attached hereto as Exhibit B. Contractor agrees that all or substantially all of the material designated on Exhibit A as Recyclable Material shall, as of the relevant date, be separated from the single stream of material delivered from the trucks of the City or its designated contractors at Contractor's facility, processed in accordance with generally accepted industry standards for recycling such material, and sold or reused in a manner that does not constitute a Disposal. As used herein, the term "***Disposal***" shall mean any of the following: (i) placing in a landfill, (ii) converting to a refuse-derived fuel, (iii) use as a landfill liner fill, (iv) use as a landfill alternative daily cover, (v) waste to energy conversion, (vi) biofuels conversion, or (vii) similar means that do not involve the incorporation of the material in question into useful products without combustion, incineration, or rapid oxidation through chemical means. Notwithstanding the foregoing, for the purposes of this Agreement, the use of Glass which has been ground into fragments conforming to reasonable industry standards as an approved drainage media in a leachate collection system in a duly licensed and permitted landfill for the life of the landfill plus thirty (30) years for post-closure monitoring will be permitted without violating the terms hereof.

2.2.3 Contractor shall guarantee an adequate number of processing personnel at its designated processing facility, and if such facility is remote to the city limits of the City (i.e.,

more than one (1) mile from the City's extraterritorial jurisdiction), the Contractor shall also guarantee an adequate number of trailers with drivers to handle the volume of SFR single stream material generated by the City, each day, Monday through Friday, to be taken to Contractor's facility located at 3606 FM 1327, Creedmoor, Texas 78610 to unload on a schedule mutually agreed upon by both parties.

2.2.4 Contractor shall, if necessary, increase the numbers of processing personnel and hours, and, if applicable, drivers, after collection holidays to accommodate the larger volumes of material due to the skipped collection days.

2.2.5 The City will tip all material collected for recycling at Contractor's designated tipping facility located at 3606 FM 1327, Creedmoor, Texas 78610. Title to the Recyclable Material shall pass from the City to Contractor upon tipping at the Contractor's designated tipping facility. No cost of transportation to any of Contractor's processing facility from Contractor's designated tipping facility may be deducted from the City's monthly payment. If the intended processing facility of Contractor is not operational during the term of this Agreement, Contractor will transport to another processing facility at no additional transportation cost to the City.

SECTION 3. PAYMENTS.

3.1 **Agreement Amount.** Contractor and City, for and in consideration of the Recyclable Material processed and purchased, and the rights and privileges granted hereunder, hereby covenants and shall pay, without notice, and free from any and all claims, or set-offs, the amounts set forth in Exhibit C, Price Agreement.

3.2 **Due Date.** Payments are due by the 15th of the following month based on the tonnage received.

3.2.1 Payments should be mailed to the Solid Waste Services Department, Attn.: Accounts Receivable, P.O. Box 1088, Austin, Texas 78767.

3.2.2 The termination of this Agreement, by the lapse of time or otherwise, shall not relieve the City or Contractor of its obligation to pay any fees or charges that have accrued during the period in which this Agreement is in effect.

3.3 **Late Payment Penalty.** A late payment penalty will be levied for all late payments. It will be calculated based on one and one-half percent (1.5%) per month or the highest amount permitted by law per month on the amount outstanding for more than thirty (30) days from the payment due date, with a minimum penalty of fifty dollars (\$50.00).

SECTION 4. TERM AND TERMINATION

4.1 **Term of Agreement.** The Agreement shall become effective on the Effective Date, but enforceable against a party on the date the last party executes this Agreement. Unless earlier terminated pursuant to the terms hereof, the Agreement shall be in effect for an initial term of one (1) year from the Effective Date ("***Initial Term***") and may be extended thereafter at

the discretion of the City for up to two (2) additional 6-month periods (each an “**Extension Period**”), upon 60 days written notice given by the City prior to any Extension Period.

4.1.1 Upon expiration of the Initial Term or Extension Period, the Contractor agrees to hold over under the terms and conditions of this Agreement for such a period of time (not to exceed 120 calendar days unless mutually agreed in writing) as is reasonably necessary to transition all Services to the service provider under the L-T Agreement.

4.1.2 For the first six (6) months of the Initial Term, the City shall deliver to Contractor 100% of the SFR material the City or its contractor collects. Notwithstanding the term of this Agreement set forth above, the City shall have the right to designate a ramp down period for the purpose of permitting an orderly transition to the service provider under the L-T Agreement. Upon no less than ninety (90) days advance written notice during the Initial Term or any Extension Period, the City may notify the Contractor that up to 50% of the regular SFR single stream recycling collection routes of the City then delivering to Contractor shall be excluded from the Services to be provided under this Agreement. In such event, the notice provided by the City shall include a designation of the specific routes the collected material of which will be excluded from the Services to be provided by Contractor under this Agreement. The City agrees that in such event, the City will, throughout the remainder of the applicable Initial Term or Extension Period, nonetheless continue to deliver to the facility of Contractor Recyclable Materials of no less than 4,000 tons per month with similar composition of Recyclable Material and Residual Material as was being delivered to the facility prior to the applicable ramp down notice (the “**Minimum Tonnage**”). The City shall not exercise its ramp down rights herein if prior to exercising such rights it shall determine that Contractor is the service provider under a L-T Agreement to the extent that the L-T Agreement will provide for Contractor to receive and process Recyclable Materials in excess of the Minimum Tonnage.

4.2 **Right To Assurance.** If the City, in good faith, has reason to question Contractor’s intent or ability to perform, demand may be made to the Contractor for written and/or financial assurance of the intent to perform, including the posting of a bond in an amount reasonably determined by the City from a surety and in a form acceptable to the City in its discretion. In the event that the assurance requested is not given within the time specified after demand is made, the City may treat this failure as an anticipatory repudiation of the Agreement. Negotiation over amount or form of assurance is not repudiation of the Agreement.

4.3 **Default.** The Contractor shall be in default under the Agreement if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under Section 4.2 above, or (c) becomes Insolvent.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days subsequent, such later date as specified therein, unless the Contractor, within such ten (10) day period, cures such default, provides a written response which outlines a plan acceptable to the City which demonstrates that Contractor is reasonably likely to cure such default within thirty (30) days from the date of the response, or provides evidence sufficient to prove to the City’s reasonable satisfaction that such default does not, in fact, exist. If the default

be of the nature as not being curable by default, then the City may immediately terminate this Agreement for cause by written notice. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and the Contractor understands and agrees that the City may consider such default as sufficient grounds for disqualification of Contractor under any offer to perform services for the City for a period of up to three (3) years. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Fraud.** Fraudulent statements by the Contractor under or related to this Agreement, the Services provided hereunder, or in connection with any other contract (or offer to enter into a contract) with the City shall be grounds for the termination of the Agreement for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance.** The following insurance requirement applies. (Applicable to Contracts for services that are performed at City facilities or at sites designated by the City and for supplies that are delivered to City facilities by the Contractor personnel).

5.1.1 General Requirements

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Agreement term and during any warranty period.

5.1.1.2 The Contractor shall provide to the City a certificate of insurance with respect to each required insurance policy as verification of coverages required below prior to contract execution and within fourteen (14) calendar days after any future written request from the City. In addition, the Contractor shall promptly obtain and provide to the City new certificates of insurance (i) annually, (ii) within ten (10) days after the renewal date for any policy, and (iii) within ten (10) days after any replacement or supplemental policy is obtained.

5.1.1.3 All certificates of insurance must be originals must be originals, duly endorsed by an authorized representative of the carrier, and be in such form as the City shall reasonably require.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. The Contractor shall provide the City with an electronic Excel spreadsheet in the form of Exhibit G listing all policies obtained by it in compliance with the requirements set forth in this Section 5.1 and shall send to the City a revised electronic copy of the spreadsheet each time there is a change to the information set forth therein. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The Contractor must submit certificates of insurance to the City for each Subcontractor prior to the Subcontractor commencing work on the project.

5.1.1.6 The Contractor's and all Subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best Financial Strength Rating of B+ or better, and A.M. Best Financial Size Category of VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund and other carriers approved by the City.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the contract reference number, the Buyer's name, and the Contractor's email address, and shall be mailed to the following address:

Attn: _____
Agreement Ref: Single-Stream Recycling
City of Austin
Purchasing Office P. O. Box 1088
Austin, Texas 78767

5.1.1.8 The "*other*" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review documents that provide proof of insurance, scope of coverage and all material policy terms, conditions and exclusions and may make any reasonable requests with the consent of the Contractor for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies. The Contractor shall have the right to protect its proprietary information such as gross revenues, equipment, contract pricing, etc.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor. The City shall reimburse Contractor for any additional cost incurred due to material changes in the City's insurance requirements from those set forth in this Agreement.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

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

5.1.2.1 Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$2,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Agreement and all other Contracts related to the project.

5.1.2.1.2 Independent Contractor's Coverage.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$2,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$500,000 bodily injury per person, \$2,000,000 bodily injury per occurrence and at least \$250,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.

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

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage.

5.1.2.4 Environmental Impairment Liability Insurance. with a minimum limit of \$2,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of sudden and accidental or non-sudden and accidental pollution arising out of the transportation, storage, or permanent disposal of hazardous and non-hazardous wastes.

With respect to sudden and accidental occurrences, all Contractors and/or Subcontractors who own or operate a treatment, storage and disposal facility must demonstrate financial responsibility for bodily injury and property damage to third parties of at least \$2,000,000 per occurrence.

With respect to non-sudden and accidental occurrences, all Contractors and/or Subcontractors who own or operate a surface impoundment, landfill or land treatment facility that is used to manage hazardous wastes must demonstrate financial responsibility for bodily injury and property damage to third parties of at least \$2,000,000 per occurrence. The amounts of coverage must be exclusive of legal defense costs.

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

5.1.2.6 Certificate. The following statement must be shown on the Certificate of Insurance.

The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies.

5.2 Equal Opportunity

5.2.1 Equal Employment Opportunity. No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit D.

5.2.2 Americans With Disabilities Act (ADA) Compliance. No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.3 Delays.

5.3.1 Subject to the provisions of Section 4.1.2, the City may delay scheduled delivery of collections or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, the City and the Contractor shall negotiate in good faith an equitable adjustment for costs incurred by the Contractor in the Agreement price and execute an amendment to the Agreement. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of each notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the performance of the Services with respect to any item not subject to delay, or to any materials delivered by the City after the period of delay has ended.

5.3.2 Force Majeure. The nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or act of God, or any other reason where failure to perform is beyond the control and not caused by the negligence of the nonperforming party ("***Force Majeure***"); provided that the party seeking excuse of any of its obligations hereunder due to a claim that it was affected by Force Majeure shall (i) have used reasonable diligence in accordance with good industry practice to have in place systems and procedures designed to avert or mitigate the impact of the event of Force Majeure, (ii) immediately began to take (and throughout the continuance of the Force Majeure event, diligently pursue) commercially reasonable steps to reduce, mitigate or eliminate the impact of the relevant Force Majeure event upon the performance of such party's obligations under this Agreement, and (iii) immediately notify the unaffected party of the occurrence of Force Majeure, and the unaffected party shall have the right to terminate this Agreement by written notice to the affected party if the affected party fails to perform under this Agreement due to such Force Majeure event for ten (10) consecutive days. In the event Force Majeure is claimed by a party, then the parties hereto shall

hold a conference within three (3) business days to establish a mutually agreeable period of time for the affected party to have implemented action as the parties shall reasonably agree to promptly overcome the effect of such Force Majeure.

SECTION 6. WARRANTIES

6.1 **Warranty** - Services. The Contractor warrants and represents that all Services to be provided the City under the Agreement will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Agreement, and all applicable federal, state and municipal Applicable Laws.

6.1.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.1.2 Unless otherwise specified in the Agreement, the warranty period shall be at least one (1) year from acceptance of the Services. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the Services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights, nor excuse the Contractor's obligations, under this section.

6.1.3 If the Contractor is unable or unwilling to perform the Services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of Services it shall purchase under the Agreement from the Contractor, and purchase conforming Services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work**. The Contractor shall provide the City access to Contractor's designated tipping facility located at 3606 FM 1327, Creedmoor, Texas 78610. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the quality and quantity of the Recyclable Materials, the materials, equipment, labor and facilities reasonably necessary to perform the Services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under this Agreement. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual service conditions differ from expected conditions.

7.2 Workforce

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Agreement.

7.2.2 All personnel employed or used in connection with the provision of Services at Contractor's designated tipping facility shall be employees of Contractor, or its Subcontractors.

7.2.3 The Contractor, its employees, Subcontractors, and Subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.3.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Agreement.

7.2.3.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.4 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from performing any of the Services and shall not permit such worker onto Contractor's designated tipping facility in any capacity as an employee, agent or representative of Contractor. Such removed worker may not be used again in providing any Services under this Agreement without the City's prior written consent.

7.2.5 Non-circumvention of Living Wage Requirement. As set forth in Section 7.22, the Contractor shall agree to abide by, and cause each Subcontractor to abide by, the "living wage" requirements set forth in such Section, including the provision of insurance as set forth therein. Contractor agrees, and shall cause each Subcontractor to agree, that it shall not use Temporary Workers or Probationary Workers in an attempt to circumvent such living wage and insurance requirements and that as much as is practical, all persons performing any activities that constitute a portion of the Services shall be regular or seasonal employees of the Contractor or a Subcontractor. In no event shall more than fifteen percent (15%) of the hours used to process the City's Recyclable Material be provided by Temporary Workers or any person not subject to the City's living wage and insurance requirements, except for Probationary Workers. Furthermore, Contractor agrees not to engage in a practice of terminating Probationary Workers before the expiration of the relevant probation period in order to circumvent the living wage requirement, or to withhold from Probationary Workers information regarding their eligibility to be entitled to the living wage requirements set forth herein upon the successful completion of the relevant probationary period.

7.3 Compliance with Health, Safety, and Environmental Regulations. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all federal, state, and municipal Applicable Law, health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall

indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "*significant event*" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "*significant event*" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Agreement;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor becomes or is threatened with becoming Insolvent;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's work force or of any facilities used by the Contractor, or on which the Contractor is dependent, in the performance of this Agreement;

7.4.6 reorganization, reduction and/or relocation in key personnel such as, but not limited to, process supervisors or the Contractor's Contract Manager;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation filed by any supplier or customer of the Contractor seeking monetary damages that reasonably could equal or exceed \$100,000; or

7.4.10 significant change in market share or product focus.

7.5 **Right To Audit**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit or examine any and all records of the Contractor reasonably related to the performance under this Agreement. In connection therewith, the City shall have the right to make copies of any records demonstrating any non-compliance by the Contractor with any of the terms or conditions set forth in this Agreement, as it may be amended, supplemented, or extended from time to time. The records that the City may review shall be limited to invoices, weight tickets, regulatory authorizations, payroll records and any documents or records on which the Contractor is relying in asserting any right to payment or reimbursement hereunder, any breach hereunder by the City,

any cure or plans to cure any breach by the Contractor, or any dispute between the City and the Contractor regarding the performance of either party hereunder. These records shall not include financial statements, tax returns, or any other information of a confidential and proprietary nature, provided that the Contractor does not rely on any such confidential and proprietary records in connection with any payment hereunder, any assertion of a right to reimbursement hereunder, any breach hereunder by the City, any cure or plans to cure any breach by the Contractor, or any dispute between the parties arising out of or related to this Agreement. The Contractor shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Agreement.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of any federal, state, or municipal Applicable Law, and in a manner that is determined by the City to be unsafe to either life or property of the City. Upon notification, the Contractor will cease all work until the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 **Definitions.**

7.7.1.1 ***“Indemnified Claims”*** shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and Subcontractors; the officers, agents, and employees of such Subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker’s compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor’s Subcontractors, and third parties),

7.7.1.2 ***“Fault”*** shall include the provision of defective or non-conforming Services or deliverables, ordinary or gross negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL**

INDEMNIFIED CLAIMS ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES, TEMPORARY WORKERS OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Agreement, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the City's outside counsel. Delivery to the outside counsel shall be to Greenberg Traurig, 300 West 6th Street, Suite 2050, Austin, Texas 78701, attention John S. "Chip" Rainey, facsimile (512) 320-7210.

7.9 **Notices.** Unless otherwise specified herein or by written notice delivered by one Party to the other at least five (5) business days prior to any change of address, all notices, requests, or other communications required or appropriate to be given under the Agreement shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office
ATTN: Cynthia Gonzales
Acting Deputy Purchasing Officer
P.O. Box 1088
Austin, TX 78767
Tel: (512) 974-1905
Fax: (512) 974-2388

With a copy (which shall not constitute notice) to:

City Law Department,
PO Box 1088
Austin, 78767
Tel: (512) 974-6482
Fax: (512) 974-2268

To the Contractor:

Bob Gregory
Texas Disposal Systems, Inc.
12200 Carl Road
Creedmoor, Texas 78610
Tel: (512) 421-1300
Fax: (512) 243-4123
Email: bgregory@texasdisposal.com

7.10 **Confidentiality**. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "***Confidential Information***"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, Subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising**. The Contractor shall not advertise or publish (in any publication, by publication on a webpage, or through any press release), without the City's prior written consent, the fact that the City and the Contractor have entered into the Agreement, except to the extent required by law, and then only to the minimum extent necessary to comply with all Applicable Laws. The Contractor shall furnish to the City, at least five (5) business days prior to publication (unless such prior notice is not permitted by Applicable Law, in which case, at the earliest moment permitted by Applicable Law), a copy of all notices, press releases, advertising or web pages on which the Contractor intends or is required to advertise or publicize the fact that the City and Contractor have entered into the Agreement. No such notice, press release, advertising or web page of Contractor shall reveal the details of the financial or performance terms of this Agreement except to the extent required by Applicable Law. The Contractor shall reasonably cooperate with the City in any announcement, publication or advertising that the City wants to make with respect to this Agreement.

7.12 **No Contingent Fees**. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide

employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Agreement without liability.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel this Agreement without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities .

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in Contractor, any Subcontractor or any other aspect of this Agreement. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed, implied, or reasonably inferred of the Contractor shall render the Agreement voidable by the City.

7.15 **Independent Contractor.** The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture between the City and the Contractor or any Subcontractor. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Agreement does not grant to it any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Agreement shall be binding upon and inure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in this Agreement shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement. To the extent that the Contractor employs any Subcontractor in the provision of any activities that constitute any part of the Services, in addition to the City having to receive notice of all such Subcontractors prior to the conduct of their activities, the Contractor shall remain fully liable for the work of each such Subcontractor, shall warrant the work of such Subcontractor to the same extent as if the work had been performed directly by the Contractor hereunder, and shall remain liable for any breach of this Agreement by any Subcontractor, including the failure of any Subcontractor to provide the certifications, representations and warranties required herein.

7.17 **Waiver.** No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No

waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Agreement can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the term s, covenants, and conditions of the Agreement.

7.19 **Interpretation.** The Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

7.20 **Dispute Resolution**

7.20.1 If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties shall select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. In such event, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/VVBES) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Agreement. Even though no goals have been established for this Agreement, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.

7.21.3 If any service is needed to perform the Agreement and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Agreement; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Living Wages and Benefits (applicable to procurements involving the use of labor)

7.22.1 In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "*living wage*" and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for the Contractor's employees (other than Probationary Workers) directly assigned to provide Services under this Agreement. If during the Initial Term or any Extension Period of this Agreement the City shall change, from time to time, the minimum wage for City employees, the Contractor shall also comply by changing the minimum wage for any of its employees directly assigned to provide Services under this Agreement other than Probationary Workers, and causing each Subcontractor to change the minimum wage for each of its employees assigned to provide activities that constitute a portion of the Services, with such change to be effective no later than the end of the month that begins within 30 days of the City's notice of the change in the City's minimum wage.

7.22.2 Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members in the same manner as its other employees. The Contractor and Subcontractors must offer health insurance at reasonable rate with optional family coverage for the Contractor's employees, other than Probationary

Workers, directly assigned to this Agreement. Proof of the health care plan shall be provided prior to award of a contract.

7.22.3 The City requires the Contractor and each Subcontractor to provide a signed certification within five (5) calendar days of contract execution certifying that the employees directly assigned to provide Services under this Agreement other than Probationary Workers will be paid a minimum living wage equal to or greater than \$11.00 per hour (or such other minimum wage rate as established by the City for its employees from time to time) and are offered a health care plan (see Exhibit E, Living Wages and Benefits Contractor Certification). The certification shall include a list of all employees directly assigned to providing Services under this Agreement including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Agreement.

7.22.4 The Contractor shall maintain throughout the term of the resultant Agreement basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:

7.22.4.1 employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

7.22.4.2 time and date of week when employee's workweek begins;

7.22.4.3 hours worked each day and total hours worked each workweek;

7.22.4.4 basis on which employee's wages are paid;

7.22.4.5 regular hourly pay rate;

7.22.4.6 total daily or weekly straight-time earnings;

7.22.4.7 total overtime earnings for the workweek;

7.22.4.8 all additions to or deductions from the employee's wages;

7.22.4.9 total wages paid each pay period; and

7.22.4.10 date of payment and the pay period covered by the payment.

7.22.5 The Contractor shall provide with the first invoice and as requested by the City's Contract Manager, individual Employee Certifications for all Contractor and Subcontractor employees directly assigned to provide Services under this Agreement other than Probationary Workers containing (see Exhibit F, Living Wages and Benefits Employee Certification):

7.22.5.1 the employee's name and job title;

7.22.5.2 a statement certifying that the employee is paid at a rate equal to or greater than the living wage of \$11.00 per hour or at such other minimum wage rate as otherwise established by the City for its employees from time to time;

7.22.5.3 a statement certifying that the employee is offered a health care plan with optional family coverage.

7.22.6 The Contractor and Subcontractor employee certifications shall be signed by each employee directly assigned to the Agreement.

7.22.7 Contractor shall submit Contractor and Subcontractor employee certifications quarterly with the respective invoice to verify that employees are paid the living wage throughout the term of the Agreement.

7.22.8 The City's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this living wage provision. The City retains the right to review employee records identified above in this paragraph verify compliance with this provision.

7.23 **Jurisdiction And Venue.** The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.24 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

7.25 **Holidays.** The holidays identified below are observed by City recycling collection crews when the holiday falls on a weekday. When a holiday is observed on a weekday, recycling crews will conduct collection operations on the following Saturday ("***Slide***" Schedule).

Holiday	Date Observed
New Year's Day	January 1
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

7.26 **Survivability of Obligations.** All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

7.27 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from federal, state or City of Austin Contracts. By accepting a contract with the City, the Contractor certifies that its firm and its principals are not currently suspended or debarred from doing business with the United States federal government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin and said suspension is not under appeal.

7.28 **Incorporation Documents.** The City's contracting document referred to as **Standard Purchase Definitions**, is hereby incorporated into this Agreement by reference, with the same force and effect as if they were incorporated in full text, except to the extent that any term defined herein is also defined in such Standard Purchase Definitions, in which case the terms so defined herein shall have the meaning given them in this Agreement or its Exhibits. The full text versions of this Section are available on the Internet at the following online address:

In witness whereof, the parties have caused duly authorized representatives to execute this Agreement as of the dates set forth below.

TEXAS DISPOSAL SYSTEMS, INC.

CITY OF AUSTIN

By:

By:

Name: Bob Gregory

Name:

Title: Chairman and CEO

Title:

Date:

Date:

List of Exhibits

Exhibit A	Definitions
Exhibit B	Scope of Services
Exhibit C	Pricing Agreement
Exhibit D	Non Discrimination Certification
Exhibit E	Living Wages and Benefits Contractor Certification
Exhibit F	Living Wages and Benefits Employee Certification
Exhibit G	Form of Insurance Spreadsheet

Exhibit A Definitions

In addition to the defined terms stated in this Contract, capitalized terms in this Agreement have the following meanings:

"***Additional Services***" has the meaning set forth in Section 1.2.

"***Agreement***" has the meaning set forth in the preamble.

"***Applicable Law***" means, with respect to any governmental authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such governmental authority, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority.

"***Appropriate***", "***Appropriated***", or "***Appropriation***" is the adoption by the City Council of a budget for a fiscal year that includes payments to be made under a contract during the respective fiscal year.

"***City***" has the meaning set forth in the preamble.

"***Colored High Density Polyethylene***" or "***CHDPE***" shall mean opaque plastic containers labeled with the #2 code.

"***Confidential Information***" shall have the meaning set forth in Section 7.10.

"***Contractor***" has the meaning set forth in the preamble.

"***Disposal***" has the meaning set forth in Section 2.2.2.

"***Effective Date***" has the meaning set forth in the preamble.

"***Existing Contract***" has the meaning set forth in the preamble.

"***Existing Services***" has the meaning set forth in the preamble.

"***Extension Period***" has the meaning set forth in Section 4.1.

"***Fault***" has the meaning set forth in Section 7.7.1.2.

"***Force Majeure***" has the meaning set forth in Section 5.3.2.

"***Glass***" means glass jars, bottles, and containers.

"High density polyethylene" or **"HDPE"** means translucent plastic containers labeled with #2 code (U.S. EPA 1995c)

"High Price" is the index sale price of paper fibers such as Mixed Paper, Old Corrugated Containers, and Old Newspaper that is generated and published in first week of each month for the Southwest Region by Paperboard Packaging.

"Indemnified Claims" has the meaning set forth in Section 7.7.1.1.

"Initial Term" has the meaning set forth in Section 4.1.

"Insolvent" means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within 30 days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Low Density Polyethylene" or **"LDPE"** shall mean squeezable bottles, such as honey and mustard, with the #4 code.

"L-T Agreement" has the meaning set forth in the preamble.

"Minimum Tonnage" has the meaning set forth in Section 4.1.2.

"Mixed Paper" shall mean recovered paper that is not sorted in specific categories including junk mail, magazines, Old Corrugated Containers (OCC), folding boxes (cereal box), telephone books, wrapping paper and other paperboard products (U.S. EPA, 1993a).

"Offer" is a complete signed proposal by Contractor to provide services of any nature to the City in response to a City solicitation including, but not limited to, an invitation for bid, a request for proposal, a request for qualification statements, or a request for quotation.

"Official Board Market" or **"OBM"** is the pricing index used to determine the sale price of paper fibers such as Mixed Paper, Old Corrugated Containers, and Old Newspaper that is generated

and published weekly by Paperboard Packaging. As used in the Contract, this term means the Southwest Region, High Price pricing published in the first week of each month.

"Old Corrugated Containers" or **"OCC"** means corrugated containers having liners of either test liner, jute, or kraft. (Paper Stock Industries Chapter Standards and Practices Circular).

"Old Newspaper" or **"ONP"** means newspaper, containing not more than the normal percentage of rotogravure and colored sections. (Reference: Paper Stock Industries Chapter Standards and Practices Circular).

"Other Plastics" with the #7 code means a wide variety of plastic resins that don't fit into plastic numbers 1 through 6.

"Polyethylene terephthalate" or **"PETE"** is clear plastic containers labeled with the 1# code. PETE container use includes soft drinks, water, sports drinks, mouthwash and salad dressing. (U.S. EPA 1995c).

"Polypropylene" or **"PP"** shall mean packaging, film and containers with the #5 code. PP containers include catsup, yogurt, magazine, and medicine containers.

"Polystyrene" or **"PS"** shall mean clear, hard and brittle plastics with the #6 code and is usually used for plastic cutlery and food containers.

"Polyvinyl Chlorine" or **"PVC"** shall mean vinyl products with the #3 code and its application can be for pipe fittings, floor tiles, food and non-food packaging.

"Probationary Worker" shall mean a person employed by either Contractor or a Subcontractor not previously employed by a Contractor or Subcontractor during the 12 months prior to the current hire date, and that has been employed since their most recent hire date for less than the shorter of (a) 90 days or (b) the Contractor's or Subcontractor's stated probationary period.

"Recyclable Material" shall mean Glass, HDPE, LDPE, PP, PETE, Mixed Paper, ONP, Steel, PVC, UBC and such other material as the City may, from time to time, designate as being Recyclable Material in accordance with the terms and conditions of this Agreement.

"Residual Material" or **"Trash"** means non-recyclable waste such as disposable diapers, animal waste, soiled paper plates, toilet tissue and any other materials that are rendered non-recyclable due to residual contamination.

"SFR" means single family residential.

"Steel" means containers made of tin-coated steel such as cans for food packaging (U.S. EPA 1995c) including food cans, beverage cans, aerosol cans and lids from bottles and jars.

"Subcontractor" means any person or organization that will provide on behalf of the Contractor any portion of the Services, excluding from this definition only (a) regular or seasonal direct employees of the Contractor, (b) direct employees of a Subcontractor, and (c) Temporary Workers (as such term is defined herein). All Subcontractors, prior to beginning any work on, or

in preparation with respect to, any aspect of the Services, must first be identified to the City, and shall provide all of the certifications and documents required herein for any such Subcontractor, and may not commence work on any aspect of the Services until such notification and submission have occurred.

“Temporary Worker” shall mean a natural person that is employed, hired, or utilized by Contractor or any Subcontractor with the intent that such person perform any activities that constitute any portion of the Services on a temporary basis and is actually so employed, hired or utilized for less than ten (10) business days in a calendar year. A person that is employed, hired or utilized by Contractor or any Subcontractor on a part time basis but performs activities that constitute any portion of the Services for more than any portion of ten (10) business days in a calendar year shall not be considered to be a Temporary Worker.

"Used Aluminum Beverage Cans" or ***"UBC"*** means beverage containers made of aluminum material.

EXHIBIT B

Scope of Services

General Conditions:

Contractor shall operate a materials recycling facility (“**MRF**”) located at 3606 FM 1327, Creedmoor, Texas 78610 (the “**Designated Facility**”) for the purpose of accepting, sorting, processing, storing and then marketing Recyclable Material collected by the City of Austin or any person or entity which the City has identified to Contractor as being an agent or contractor of the City for the purpose of collecting or transporting Recyclable Material from single family residences (the “**Designated Contractor**”). Except as otherwise permitted below, Contractor shall accept, sort, process, store and ship solely from the Designated Facility. In the event that at any time after the Commencement Date (defined below), the Designated Facility is unable to accept and store all Collected Material (defined below) from the City in compliance with Applicable Law, it shall be Contractor’s sole responsibility to arrange for storage or off-site processing of all Collected Material and any costs for so doing in excess of the per ton All-in Fee shown on Exhibit C shall be borne solely by the Contractor. The location of the Storage Facility is 3606 FM 1327, Creedmoor, Texas. By September 30, 2010, Contractor will provide a copy of its business continuity plans in reasonable detail to the City, and shall include in such plans the identification of an off-site single-stream MRF (the “**Backup Facility**”) that will have agreed to process the Collected Materials to the same specifications and with the same limitations as Contractor has agreed to herein, should the Designated Facility ever be unable to process the Collected Materials timely in accordance with the standards set forth herein. Contractor shall be solely responsible for any additional costs to transfer the Collected Material to the Backup Facility, in the event that Contractor is unable to store the Collected Materials at its Designated Facility in accordance with the requirements of this Agreement until Contractor is able to perform the Services with respect to such Collected Material at its Designated Facility. Contractor shall periodically review and update its business continuity plans as it determines is necessary to ensure uninterrupted Services to the City, shall notify the City whenever such update has occurred and shall permit a representative of the City to review the updated plans at Contractor’s offices. The business continuity plans shall be designed to mitigate any condition of Force Majeure including those that would be reasonably foreseeable to an experienced operator of a MRF located in the Southwestern United States that could be subject to the weather events and extremes as occur from time to time in Central Texas.

Process:

The City or its Designated Contractor collects the material from its residents in a single stream method using trucks on regular routes for curb-side pickup from the carts designated for Recyclable Materials that have previously been distributed to single family residences in the City (the “**Collected Material**”). The material placed in the carts are selected by the residents of the City and the collection personnel for the City undertake no quality assurance tests or pre-sorting of such material. As a consequence, a portion of the Collected Material placed in such carts, collected by the City and to be delivered to the MRF will contain matter that is not classified in this Agreement as Recyclable Material, or will have a certain amount of impurities and contamination attached to or intermingled with such Recyclable Material. When a load of Collected Material delivered to Contractor contains more than 20% contamination (estimated by

Contractor in good faith based upon weight), the Contractor will isolate the load through the next business day for City personnel inspection and if the load is determine to have excess contamination, the City will either retrieve the contaminated load or Contractor will deduct the tonnage of the rejected load from the total figure used for calculation of payment to the City. Contractor's MRF shall be designed to effectively identify any matter not marketable in a commercially reasonable manner as Recyclable Material, separate contaminants from Recyclable Material that may not be commercially acceptable to reasonably prudent purchasers of the relevant Recyclable Material operating in the marketplace, and to remove such non-marketable matter and contaminants (collectively, the "**Residual**") from the stream of Recyclable Material. If no higher and best use is commercially available for the Residual, then a Disposal (as defined in Section 2.2.2 of the Agreement) of the Residual shall occur.

The City or its Designated Contractor shall deliver the Collected Material to the Designated Facility either (a) in the vehicles currently owned by the City used to collected such Collected Material at curb-side ("**Collection Vehicles**") or (b) aggregate and transfer such Collected Material at another location owned or operated by the City (or a contractor selected solely by the City) into walking floor transfer trailers and deliver the Collected Material to the Designated Facility in such transfer trailers (a "**Trailer**"). In either case, Contractor shall operate its Designated Facility so that all delivery vehicles used by or for the benefit of the City shall be able to travel from publicly-maintained streets or thoroughfares to the tipping floor of the Designated Facility over all-weather drives with suitable base (underpavement) and top concrete or asphalt pavement with a rated capacity that would permit the delivery of at least 10,000 tons per month of Collected Material (plus the weight of the delivery vehicles) across such drives without significant deterioration with normal maintenance routines.

Contractor solely is responsible for the conditions within its facility and shall maintain such conditions in a manner to permit the timely and efficient delivery by City vehicles to the MRF and the sorting, processing, and storage of all Recyclable Material. The tipping floor and all Collected Material, until all sorting and processing is completed, shall be in an all-weather facility designed to ensure that no such material is degraded by any forces of weather. Once sorted, processed, and made ready for delivery to any purchaser of the Recyclable Material (which means baled and palletized or otherwise placed in shipping-ready condition according to good industry practice designed to minimize damage or degradation to the Recyclable Material and minimize excess escape of litter from the material in transit), Contractor shall store all such Recyclable Material in appropriate conditions for each category of Recyclable Material so that no appreciable amount of degradation of the Recyclable Material shall occur due to weather, even if such storage shall persist for a period of 90 days.

Hours of Operation:

The City or its Designated Contractor should be able to make deliveries to the Designated Facility and tip all Collected Material at the MRF every weekday (Monday through Friday, except for the holidays listed in Section 7.25 of the Agreement, in which event, the following Saturday), between the hours of 7:00 am and 6:00 pm.

Metrics and Composition Studies:

Residual Limits and Composition Study -- Contractor shall use all commercially reasonable efforts to limit the amount of Residual subject to a Disposal to no greater than the percentage of residual indicated by the most recent and agreed upon material composition study. A reasonable sampling of Collected Materials delivered by the City shall be subject to a periodic (no more often than every 3 months, beginning one (1) month after the Commencement Date) composition study conducted by the City and Contractor at the request of the City at the Designated Facility, conducted in accordance with good industry practice. Contractor shall reasonably cooperate in each such composition study, including providing a safe, all-weather location for Contractor's personnel or designated agent to select random samples in a mutually agreed amount from Collected Material tipped by the City (not commingled with material received from any other source, commercial or residential), weigh such samples, and then conduct separation and weighing of the sorted Recyclable Material extracted from the samples and any Residual. The City shall be permitted to have its personnel observe all aspects of the composition study and verify the results obtained therefrom, but shall promptly register with the composition study team established by mutual agreement of the City and Contractor any disagreement with the study results before Recyclable Materials are processed at the Designated Facility. Contractor shall make its equipment and personnel reasonably available to conduct the composition study at no additional cost, unless City requests additional studies beyond those specified herein.

Weighing Procedures; Wait Time -- Contractor shall maintain at the Designated Facility in good working order an accurately calibrated automated inbound and outbound scales suitable for weighing of both Collection Vehicles and Trailers entering and exiting the Designated Facility. At least one set of scales shall be at an entrance to the Designated Facility. The automated scales shall be capable of printing a ticket with the weight, time and date stamp for each vehicle in question, including a duplicate that shall be given to the driver of the vehicle. Average wait time (as measured on a monthly basis) during regular business hours (designated above) for City Collection Vehicles or Trailers from the time of arrival at the gates of the Designated Facility until weigh-in shall be no greater than 5 minutes. After tipping of the Collected Material and returning to the scales at an exit from the Designated Facility, the average wait time until weigh-out shall be no greater than 5 minutes. In the aggregate, from arrival at the gates of the Designated Facility, until weigh-out, including time to tip their respective loads, City vehicles shall not average a total time inside the Designated Facility in excess of 20 minutes for Collection Vehicles and 45 minutes for Trailers as long as no more than four (4) City vehicles arrive in an hour, as measured, calculated and reported for each calendar quarter during the term of the Agreement.

Tipping Floor and Non-sorted Material Storage -- Contractor shall ensure that its tipping floor has the capacity to store thereon no less than 5 days of Collected Material delivered from the City or its Designated Contractor, based upon a maximum monthly tonnage of 6,000 short tons (2,000 pounds) of Collected Material delivered to the Designated Facility in an all weather condition. In addition, Contractor should also have the ability, upon 72 hours notice, to arrange for an additional 15 days of storage of Collected Material delivered from the City or its Designated Contractor in temporary storage conditions, which shall still be reasonably protected from rain, flood, wind storm or any other significant degradation due to weather, regardless of any condition of Force Majeure.

Storage of Recyclable Material in Bunkers -- All Recyclable Material, once sorted and processed, shall be stored in Bunkers in conditions suitable for the particular kind and grade of such Recyclable Material so that it may efficiently be shipped to or picked up by the purchasers of such Recyclable Material, and so that such Recyclable Material does not experience significant degradation in quality or quantity while being stored prior to sale and delivery. At a minimum, Contractor shall ensure that with respect to all Recyclable Material obtained from the City or its Designated Contractor, no less than 90 days of appropriate storage for each kind of such Recyclable Material is available once the material has been made ready for delivery.

Priority:

With respect to acceptance of material, storage, or processing, the City shall, in all cases, be provided the priority of Contractor compared to material received from any other source so that the City shall experience uninterrupted Services from Contractor and if Contractor's capacity at any time is in any way limited, material received from the City shall be accepted, processed and stored in the manner and conditions set forth herein.

Testing and Transition from Existing Service Provider:

No later than September 13, 2010, Contractor shall certify to the City that the MRF at the Designated Facility is substantially complete and ready to commence operations (subject to testing and transition), including but not limited to a certification that (a) all road and parking surfaces necessary to operate the MRF are installed, cured and ready for travel, (b) all life-safety equipment and systems have been installed and tested, (c) sufficient automated scales are installed, calibrated and certified by all appropriate government agencies as required by law, (d) all utilities necessary to operate the MRF are installed, hooked up and all deposits, tests or other requirements of any utility operator have been met, (e) the installer of the equipment is satisfied that the equipment is properly installed, hooked up to any necessary utility service, in a new condition or comprehensively refurbished to original performance specifications, capable of maintaining sustained operations with a minimum hourly throughput of no less than 20 tons per hour, and an adequate supply of consumable materials and spare parts to keep such equipment efficiently operating are on hand and stored in an acceptable manner, and (f) that all approvals (including, if applicable, any certificates of occupancy) necessary to be obtained from any government agency to begin operations at the MRF on a schedule with throughput reasonably able to process all of the City's Collected Material have been obtained.

No later than September 15, 2010, Contractor shall commence a testing of the readiness and throughput of its Designated Facility and operating staff. The City may have personnel or a designated agent (not from a competitor of the Contractor) present to observe such testing. The readiness testing shall consist of Contractor for a minimum of 3 consecutive days receiving at its gates and weighing vehicles of the City with no less than 100 tons in the aggregate for each day of the testing period, weighing such vehicles at its automated scales, accepting upon the tipping floor of the MRF the material from such vehicles, and then processing (with only a reasonable level of Residual material as the City's observer shall reasonably determine based upon the composition of the Collected Material delivered to the Designated Facility during the test period) no less than 20 tons per hour, on average, during a 5 hour period for each day of the testing period. In the event that the MRF shall fail an initial 3 day testing period, the test may be

repeated under the same requirements once more prior to September 22, 2010. If the MRF shall again fail the 3 day re-testing period, then Contractor must implement the delivery of the Collected Material to the Storage Facility or Backup Facility, and shall not commence processing Collected Material (except for test purposes) at the MRF on behalf of the City until it has successfully passed a 3-day testing period, as the City shall reasonably determine. Any costs incurred by the use of the Storage Facility or Backup Facility shall be solely those of the Contractor.

Commencement of Operations:

Notwithstanding any ability of the City to divert or withhold a portion of the Collected Material from Contractor pursuant to Section 4.1.2 of the Agreement, Contractor shall be ready to commence accepting 100% of the Collected Material from the City or its Designated Contractor no later than October 1, 2010, and shall continue to maintain such readiness condition thereafter through-out the term of the Agreement.

Assurances:

In the event that Contractor shall fail to meet the October 1, 2010 deadline set forth above or materially fail to meet any of the metrics or other quality or quantity standards set forth in this Exhibit B or in Section 2 of the Agreement, the City may invoke the terms of Section 4.2 of the Agreement, and require Contractor to post a bond in a form and from a surety reasonably acceptable to the City, in an amount as the City in its reasonable discretion shall determine is necessary to protect the City from additional cost or expense it might incur as a result of Contractor's failure, and in such event Contractor may not commence or continue operations on behalf of the City at the MRF until such bond is posted. This right to demand such financial assurances is without prejudice to the City's rights to demand assurance as otherwise provided in Section 4.2, and is without prejudice to any other rights or remedies the City may have with respect to any breach of the Agreement by Contractor.

EXHIBIT C
Pricing Agreement

Costs and Fees:

For the Initial Term of the Agreement and each Renewal Term, Contractor shall be entitled to charge an “**All-in Fee**” of \$80 per short ton (2,000 pounds) of Collected Material delivered by the City to Contractor’s Designated Facility. Subject to the mutual agreement of the parties to subsequently add Additional Services beyond those provided for in Section 2 of the Agreement (which incorporates by reference the Scope of Services set forth in Exhibit B), such All-in Fee shall be the only fee, charge, expense or cost to be paid by the City for all of the Services to be provided by Contractor.

For the avoidance of doubt, Contractor shall be compensated for the sorting, processing and disposal of all Residuals solely through the All-in Fee charged on Collected Material delivered by the City to Contractor, with no additional disposal fees charged to the City.

Revenue Share:

Contractor shall compensate the City by paying to the City 80% of the value of Recyclable Material derived from the Collected Material delivered by the City to Contractor (the “**Revenue Share Payment**”). The value of the Recyclable Material shall be derived solely by reference to indices published with respect to each category of Recyclable Material that have been mutually agreed to by the parties as being reasonably representative of the market price for such Recyclable Materials, and shall be determined without regards to the actual price obtained by Contractor in marketing and selling any Recyclable Material, nor with regards to the timing of such sale or payment by any purchaser of such Recyclable Material. The parties agree that as of the Effective Date, the following published indices are presumed to meet the criteria of being reasonably representative of the market price for the indicated category of Recyclable Material:

Category	Published Index
ONP #8	Official Board Markets (OBM) SW Region High Value
OCC	Official Board Markets (OBM) SW Region High Value
Mixed Paper #1	Official Board Markets (OBM) SW Region High Value
Tin/Steel cans Sorted, Densified	Secondary Materials Online Houston South Central High Value EOM
Aluminum cans Sorted, Baled	Secondary Materials Online Houston South Central High Value EOM
NHDPE	Secondary Materials Online Houston South Central High Value EOM
CHDPE	Secondary Materials Online Houston South Central High Value EOM
PETE	Secondary Materials Online Houston South Central High Value EOM
PVC	A market index to be agreed in the future if a market develops
PP	A market index to be agreed in the future if a market

	develops
Glass	A market index to be agreed in the future if a market develops
Plastics 6-7	A market index to be agreed in the future if a market develops

The calculation of the Revenue Share Payment shall be made by the Contractor and such calculation shall be sent to the City by the 10th calendar day of the month following the month in which the Recyclable Material is delivered to Contractor, or such later date as the index shall be published for the month in question. Except with respect to the cap and floor for the Revenue Share Payment set forth in the *Collar* Section below, the calculation of the Revenue Share Payment shall be a simple mathematical equation equal to the sum, for all Recyclable Material categories, of the product of the calculated number of tons of each Recyclable Material category, based on the most recent agreed upon material composition percentage contained within the Collected Material delivered to the Contractor by the City in the month in question, times 80%, times the relevant index price per ton for the referenced Recyclable Material category (with all tons to be short tons, so that if the applicable index is quoting metric tons, then the index shall be converted to an equivalent value for short tons).

Replacement or New Index; Dispute Resolution:

To the extent that either party determines in good faith that any index listed in the above table no longer reasonably represents the market price for the referenced Recyclable Material category, then such party may propose a different index, and shall support its proposal by evidence as to how such different index more closely approximates the market price, from month to month, of the applicable category of Recyclable Material, and demonstrating that the proposed index is published in a manner that makes it equally available to both parties by a source that is unaffiliated with either party. If the other party, in good faith, concurs in such assessment, then the proposed index shall replace the index from the table above in calculating the amount of the Revenue Share Payment to which the City is entitled.

In the event that a commercially feasible market is developed for the sale of Recyclable Material in the categories of PVC, PP, Glass or Plastics #6 or #7, then the parties shall mutually agree upon an index for such Recyclable Material category, and in such case, Contractor shall no longer be permitted to include any such material in Residuals or to make a Disposal of any such Recyclable Material, except that Contractor may continue to use Glass as a leachate collection drainage media in its own permitted landfill, but shall compensate the City by the inclusion in the Revenue Share Payment of an amount based upon the index designated for Glass.

In the event that at any time there is no published reasonably acceptable index with respect to any of the items in the table above besides PVC, PP, Glass or Plastics #6 or #7, the parties agree to instead select three independent brokers of the referenced Recyclable Material active in the Southwestern region of the United States to provide an estimate of the mid-point of bid/ask quotations for the month in question for such referenced Recyclable Material, and the index used to calculate the Revenue Share Payment to the City shall be the simple arithmetic average of the estimates provided by such independent brokers. In the event a party shall nominate a replacement index for any of the indices listed in the above table or shall nominate an index with

respect to PVC, PP, Glass or Plastics #6 or #7 and the other party shall reject such nominated index, then the parties agree that they shall meet and confer in good faith as to an acceptable replacement index or new index, and if unable thereafter to agree, then they shall submit their respective positions to [Brook Edwards] [a person designated by the City within 15 days of the rejected index nomination and agreed to by Contractor, with such agreement not be unreasonably withheld or delayed](the “*Expert*”), not as an arbitrator but as an expert in the industry and that if Expert shall concur with a party as to the appropriate index to use for the referenced Recyclable Material category, then the parties shall each abide by such decision, absent either bad faith on the part of the Expert or manifest error by the Expert. In the event either party shall believe that the decision by such Expert was made in bad faith or by manifest error, such party may bring an action in litigation to prevent the use of such index within 30 days of the Expert’s decision. If either party fails to contest the Expert’s decision by the filing of a lawsuit in the state courts of Travis County, Texas within such 30-day period, then the Expert’s decision shall be deemed accepted by the parties and shall become the index for the referenced Recyclable Material category until there shall be a material change in the marketplace such that it is reasonably likely that the index no longer reasonably represents the market price for the referenced Recyclable Material category. If such litigation is initiated, then the parties agree that the predicate issue for the court with respect to such index shall be whether or not the Expert acted in bad faith or made the decision in manifest error, and only if such finding is found in the affirmative by the court shall the litigation then be concerned with determining what is the appropriate index with respect to the referenced Recyclable Material category.

Collar:

To the extent that applying the 80% revenue share ratio to the then-applicable indices produces a blended value for any month where the Revenue Share Payment from the Contractor would otherwise be in excess of \$120 per short ton of all Collected Material (including Residuals) delivered to the Contractor by the City for the month in question, then the Revenue Share Payment shall be limited to the amount derived by multiplying the actual number of short tons of Collected Material delivered by the City to the Contractor in the month in question times \$120.

To the extent that applying the 80% revenue share ratio to the then-applicable indices produces a blended value for any month where the Revenue Share Payment from the Contractor would otherwise be less than \$40 per short ton of all Collected Material (including Residuals) delivered to the Contractor by the City for the month in question, then the Revenue Share Payment shall be increased to be the amount derived by multiplying the actual number of short tons of Collected Material delivered by the City to the Contractor in the month in question times \$40.

Procedures:

The following information shall be provided to the City monthly, prior to or contemporaneous with any monthly remittances to the City:

- a. Date, truck number, ticket number, and net weight for all loads per day.
- b. Monthly total tonnage by type of recycling commodity received for processing.

- c. Weight of residuals
- d. Revenue calculated from pre-selected published indexes for recycling commodity sold.
- e. Revenue sharing due the City .
- f. Processing payment due the Contractor.

Payments to City: On a monthly basis, the Contractor shall submit a check to the City in accordance with the price structure above. Each check shall be due to the City within thirty (30) days of the end of each month during which recycling services are provided by the Contractor. Each check shall include an itemized report, including the volume of each material processed, the index market prices used for calculating rebate, processing fees, and a breakdown of transportation costs. Payment check and/or net charge for processing shall be mailed to the following address:

City of Austin — Solid Waste Services
Attn: Accounts Receivable
P.O. Box 1088
Austin, Texas 78767

Net Amount Due to Contractor: Deduction of tipping/processing fees from the City's monthly gross revenues shall be full compensation to Contractor for all tipping/processing/transportation services, unless processing fees exceed the gross revenues calculated from commodity value index formulas.

Exhibit D
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NONDISCRIMINATION CERTIFICATION

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4 of the Code of the City of Austin (Discrimination in Employment by City Contractors) requires that at all times while acting as a Contractor (as defined under Chapter 5-4) a Contractor must agree:

- (1) Not to engage in any discriminatory employment practice defined in this chapter (including any later amendments or modifications).
- (2) To take affirmative action to ensure that applicants are employed and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising; layoff or termination, rate of pay or other form of compensation and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to the employees and applicants for employment, notices to be provided by the City setting forth the provisions of this chapter.
- (4) To state in all Solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with the City's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to insure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter.

Please check one of the following:

- ☐ Our firm's nondiscrimination policy conforms to the requirements of City Code, Chapter 5-4-2-B, items (1) through (7) and will be sent to the City upon request.
- ☐ Our firm does not have an established nondiscrimination policy and will adopt the City's minimum standard shown below. Our firm will send the adopted policy on company letterhead to the City upon request.

Minimum Standard Nondiscrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the _____ (company name) will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The _____ (company name) will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting violation of this policy. Furthermore, any employee, supervisor or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

A COPY OF THE FIRM'S NONDISCRIMINATION POLICY WILL BE REQUIRED UPON CONTRACT AWARD.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the Agreement and suspension or debarment from participation in future City contracts until deemed compliant with this chapter.

Contractor's
Name: _____

Signature of
Officer or
Authorized
Representative: _____

Date: _____

Printed Name: _____

Title _____

Exhibit E
CITY OF AUSTIN, TEXAS
Living Wages and Benefits Contractor Certification
(Please duplicate as needed)

Pursuant to the living wages and benefits provision of the Agreement, the Contractor is required to pay to all employees directly assigned to this Agreement that are not Probationary Workers a minimum living wage equal to or greater than \$11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this Agreement:

(1) are compensated at wage rates equal to or greater than \$11.00 per hour; and are offered a health care plan with optional family coverage in the same manner as its other employees.

Employee Name	Employee Job Title
---------------	--------------------

(2) all future employees assigned to this Agreement that are not Probationary Workers will be paid a minimum living wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage in the same manner as other employees.

(3) Our firm will not retaliate against any employee claiming non-compliance with the living wage provision.

A Contractor who violates this living wage provision shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Agreement for Cause and subject the firm to possible suspension or debarment.

Dated this ____ day of _____, 20____

Company Name:

Title:

Signature:

Printed Name:

Exhibit F
CITY OF AUSTIN, TEXAS
Living Wages and Benefits Employee Certification

Agreement Number: Description of Services:

Contractor Name:

Pursuant to the living wages and benefits provision of the Agreement, the Contractor is required to pay to all employees directly assigned to this Agreement that are not Probationary Workers a minimum living wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the living wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the living wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this Agreement and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Dated this ____ day of _____, 20____

Company Name:

Title:

Signature:

Printed Name:

(Witness Signature)

(Printed Name)

Exhibit G
Form of Insurance Spreadsheet