



CITY OF FORNEY
REQUEST FOR PROPOSALS FOR SOLID WASTE AND
RECYCLING SERVICES

DUE DATE: October 7, 2020

CITY OF FORNEY

REQUEST FOR PROPOSALS

The enclosed *Request for Proposals* (RFP) is for your convenience in proposing the enclosed referenced products and/or services for the City of Forney. **Sealed proposals shall be received no later than:**

Wednesday, October 7, 2020, @ 10:00 a.m., Central Time

PRE-PROPOSAL CONFERENCE

The City of Forney will have a mandatory proposal conference **Wednesday, September 9, 2020 at 10:00 a.m., Central Time at City of Forney City Hall (Council Chambers), 101 E. Main Street, Forney, TX 75126.**

Please reference “CITY OF FORNEY RFP FOR SOLID WASTE AND RECYCLING SERVICES,” in all correspondence pertaining to this RFP. All proposals shall be to the attention of the Community Development Department.

The City of Forney appreciates your time and effort in preparing a proposal. Please note that all proposals must be received at the designated location by the deadline shown. Proposals received after the deadline will be returned unopened and shall be considered void and unacceptable. Sealed proposals, subject to the terms and conditions of this Request for Proposals, received by Community Development by the deadline shown will be opened at the deadline and Proposers names will be publicly read. Proposal opening is scheduled to be held at Community Development, 101 E. Aimee Street, Forney, TX 75126. You are invited to attend.

To obtain results please contact Community Development at 972-564-7385.

INSTRUCTIONS/TERMS OF CONTRACT

CITY OF FORNEY RFP FOR SOLID WASTE AND RECYCLING SERVICES

By order of the City Council of the City of Forney, Texas, sealed proposals will be received for:

SOLID WASTE AND RECYCLING SERVICES

TO PROVIDE for an annual Contract commencing March 1, 2021 and continuing for a five (5) year period. The City of Forney reserves the right to extend this contract for two additional one (1) year periods as it deems to be in the best interest of the City of Forney.

IT IS UNDERSTOOD that the City Council of the City of Forney, Texas, reserves the right to reject any and/or all proposals for any or all products and/or services covered in this RFP and to waive informalities or defects in proposals or to accept such proposals as it shall deem to be in the best interests of the City of Forney.

PROPOSALS MUST BE submitted on the forms included for that purpose in this packet. Each proposal must be placed in a separate sealed envelope, with the letter of intent and the forms manually signed by a person having the authority to bind the firm in a Contract, and marked clearly on the outside as shown below. Facsimile transmittals shall not be accepted.

SUBMISSION OF PROPOSALS: Sealed proposals shall be submitted no later than Wednesday, October 7, 2020, at 10:00 a.m. to the address as follows:

City of Forney
Community Development
101 E. Aimee Street
Forney, TX 75126

MARK ENVELOPE: "CITY OF FORNEY RFP FOR SOLID WASTE AND RECYCLING SERVICES".

ALL PROPOSALS MUST BE RECEIVED AT COMMUNITY DEVELOPMENT BEFORE OPENING DATE AND TIME.

PUBLIC NOTICE STATEMENT FOR ADA COMPLIANCE

The City of Forney acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. Thus, in order to assist individuals with disabilities who require special services (i.e. sign interpretative services, alternative audio/visual devices, and amanuenses) for participation in or access to the City of Forney sponsored public programs, services and/or meetings, the City requests that individuals make request for these services forty-eight (48) hours ahead of the scheduled program, service and/or meeting. To make arrangements, contact the City of Forney at 972-564-7300.

UNAUTHORIZED COMMUNICATIONS: From the release of this RFP through the City Council award of a Contract, Proposers' contact regarding this RFP with members of the RFP evaluation, interview or selection panels, employees of the City or officials of the City other than as herein provided is prohibited and may result in disqualification from this procurement process. No officer, employee, agent or representative of the Proposers shall have any contact or discussion, verbal or written, with any members of the City Council, members of the RFP evaluation, interview, or selection panels, City staff or City's consultants, or directly or indirectly through others, seek to influence any City Council member, City staff, or City's consultants regarding any matters pertaining to this RFP, except as herein provided. If a representative of any Proposers violates the foregoing prohibition by contacting any of the above listed parties with whom contact is not authorized, such contact may result in the Proposers being disqualified from the procurement process. Any oral communications are considered unofficial and nonbinding with regard to this RFP.

LATE PROPOSALS: Proposals received after submission deadline will be considered void and unacceptable. The City of Forney is not responsible for lateness or non-delivery of mail, carrier, etc., and the date/time stamp in the Community Development Department shall be the official time of receipt.

ALTERING PROPOSALS: Proposals cannot be altered or amended after submission deadline. Any interlineations, alteration, or erasure made before opening time must be initialed by the signer of the proposal, guaranteeing authenticity.

WITHDRAWAL OF PROPOSAL: A proposal may not be withdrawn or canceled by the Proposer without the permission of the City for a period of one hundred and eighty (180) days following the date designated for the receipt of proposals, and Proposer so agrees upon submittal of their proposal.

SALES TAX: The City of Forney is exempt by law from payment of Texas State Sales Tax and Federal Excise Tax.

CONTRACT AWARD: The City reserves the right to award any combination of the services as is deemed in the best interest of the City. The City also reserves the right to not award the services.

CHANGE ORDERS: No oral statement of any individual shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting Contract. All Change Orders to the Contract will be made in writing by the City of Forney.

IF DURING THE life of the Contract, the successful Proposer's net prices to other customers for the same items awarded herein are reduced below the Contracted price, it is understood and agreed that the benefits of such reduction shall be extended to the City of Forney.

DELIVERY: All delivery and freight charges are to be included in the proposed price.

CONFLICT OF INTEREST: No public official shall have interest in this Contract, in accordance with Texas Local Government Code Title 5, Subtitle C, Chapter 171.

DISCLOSURE OF CERTAIN RELATIONSHIPS: Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of Forney not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

ETHICS: Proposer shall not offer or accept gifts of anything of value nor enter into any business arrangement with any employee, official or agent of the City of Forney. Any communication with the City of Forney City Council during the request for proposal process may result in rejection of the proposal.

EXCEPTIONS/SUBSTITUTIONS: All proposals meeting the intent of this Request for Proposals will be considered for award. Proposers taking exception to the Specifications, or offering substitutions, shall state these exceptions in the section provided or by attachment as part of the proposal. In the absence of such, a list shall indicate that the Proposer has not taken exceptions and shall hold the Proposer responsible to perform in strict accordance with the Specifications of the Request for Proposals. The City of Forney reserves the right to accept any and all, or none, of the exception(s)/substitution(s) deemed to be in the interest of the City.

ADDENDA: Any interpretations, corrections or changes to this Request for Proposals will be made by addenda. Sole issuing authority of addenda shall belong to the City of Forney. Addenda will be mailed to all who are known to have received a copy of this Request for Proposals. Proposers shall acknowledge receipt of all addenda.

PROPOSAL MUST COMPLY with all federal, state, county and local laws concerning these types of service(s).

DESIGN, STRENGTH, QUALITY of all materials must conform to industry standards.

MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE PROPOSERS: A prospective Proposer must affirmatively demonstrate Proposer's responsibility. If a proposal does not meet the minimum standards, proposal will not be included in the evaluation. A prospective Proposer must meet the following requirements:

1. Have adequate financial resources, or the ability to obtain such resources as required;
2. Be able to comply with the required or proposed delivery schedule;
3. Have a satisfactory record of performance;
4. Have a satisfactory record of integrity and ethics; and
5. Be otherwise qualified and eligible to receive an award.

PROPOSER SHALL PROVIDE with this RFP response, all documentation required by this RFP. Failure to provide this information may result in rejection of the proposal.

SUCCESSFUL PROPOSER SHALL defend, indemnify and save harmless the City of Forney and all its officers, agents and employees from all suits, actions or other claims of any character,

name and description brought for or on account of any injuries or damages sustained by any person, persons or property on account of any negligent act or fault of the successful Proposer, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any Contract which may result from RFP award. Successful Proposer indemnifies and will indemnify and save harmless the City of Forney from liability, claim or demand on their part, agents, servants, customers and/or employees whether such liability, claim or demand arise from event or casualty happening or within the occupied premises themselves or happening upon or in any of the halls, elevators, entrances, stairways or approaches of or to the facilities within which the occupied premises are located. Successful Proposer shall pay any judgment with costs which may be obtained against the City growing out of such injury or damages. In addition, Contractor shall obtain and file with City of Forney a Standard Certificate of Insurance and applicable policy endorsement evidencing the required coverage and naming the City of Forney as an additional insured on the required coverage. Each insurance policy to be furnished by successful Proposer shall include, by endorsement to the policy, a statement that a notice shall be given to the City of Forney by Certified Mail thirty (30) days prior to cancellation or upon any material change in coverage.

WAGES: Successful Proposer shall pay or cause to be paid, without cost or expense to the City of Forney, all Social Security, Unemployment and Federal Income Withholding Taxes of all such employees and all such employees shall be paid wages and benefits as required by Federal and/or State law.

NOTICE: Any notice provided (or required by law) to be given to the successful Proposer by the City of Forney shall conclusively be deemed to have been given and received on the next day after such written notice has been deposited in the mail in the City of Forney, Texas, by Registered or Certified Mail with sufficient postage affixed thereto, addressed to the successful Proposer at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

PATENTS/COPYRIGHTS: The successful Proposer agrees to protect the City of Forney from claims involving infringement of patents and/or copyrights.

CONTRACT ADMINISTRATOR: Under this Contract, the City of Forney may appoint a Contract Administrator with designated responsibility to ensure compliance with Contract requirements, such as but not limited to, acceptance, inspection and delivery. The Contract Administrator will serve as liaison between the City of Forney and successful Proposer.

ITEMS supplied under this Contract shall be subject to the City's approval.

SAMPLES: When requested, samples shall be furnished free of expense to the City of Forney.

WARRANTY: Successful Proposer shall warrant that all items/services shall conform to the proposed Specification and/or all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title.

REMEDIES: The successful Proposer and the City of Forney agree that both parties have all rights, duties and remedies available as stated in the Uniform Commercial Code.

VENUE: This Agreement will be governed and construed according to the laws of the State of Texas. This Agreement is performable in the City of Forney.

ASSIGNMENT: The successful Proposer shall not sell, assign, transfer or convey this Contract, in whole or in part, without prior written consent of the City of Forney.

SPECIFICATIONS and model numbers are for description only. Proposer may propose on description only. Proposer may propose on alternate model but must clearly indicate alternate model being proposed. Proposer must enclose full descriptive literature on alternate items(s).

EMPLOYMENT ELIGIBILITY VERIFICATION: The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for employers to knowingly hire or recruit immigrants who do not possess lawful work authorization and requires employers to verify their employees' work eligibility on a U.S. Department of Justice form I-9. The contractor/vendor warrants that contractor/vendor is in compliance with IRCA and will maintain compliance with IRCA during the term of the Contract.

ANY QUESTIONS concerning this RFP must be directed to the Peter Morgan **in writing** at pmorgan@forneytx.gov with subject "Questions re: City of Forney RFP for Solid Waste and Recycling Services" before 3:00 p.m. on September 23, 2020.



REQUEST FOR PROPOSALS FOR SOLID WASTE AND RECYCLING SERVICES

The City of Forney will receive proposals for furnishing SOLID WASTE AND RECYCLING SERVICES. Each Proposer shall make its own examination, investigation and research regarding the proper method of doing the work, all conditions affecting the work to be done, the labor, the equipment and materials, and the quantity of the work to be performed. The Proposer agrees that it has satisfied itself by Proposer's own investigation and research regarding all of such conditions, and that Proposer's conclusion to enter into the Agreement and execution of the Agreement is based upon such investigation and research, and that Proposer shall make no claim against the City because of any of the estimates, statements or interpretations made by any officer or agent of the City which may prove to be erroneous in any respect.

The data contained in the RFP are for informational purposes only. The City makes no warranty as to the accuracy of this information. By submitting a proposal, Proposer agrees it is the sole responsibility of the Proposer to calculate and be responsible for the prices quoted in the applicable set of RFP forms.

SECTION 1: BACKGROUND

The City of Forney is a growing community of approximately 25,000 residents in North Texas. The City places a high priority on providing excellent municipal services, including solid waste and recycling services. The City's current contract for solid waste and recycling services expires at 12:00 a.m. on March 1, 2021. The current contract provides for residential services, commercial services, roll-off services and City services. For materials collected within the City, the current contractor is responsible for disposal of all solid waste and processing of all recyclable materials. This section provides an overview of the current services.

1. **Residential Services.** Under the current contract, the contractor provides services to approximately 6,166 Residential Service Units within the City. Residents receive: once per week collection of solid waste and bulky waste, and every other week program recyclable materials. 9,350 tons of solid waste, including bulky waste, and 1,110.4 tons of program recyclable materials were collected from Residential Service Units from July 2019 to July 2020.
2. **Commercial Services.** In addition to providing residential services, the current contractor is the exclusive provider of solid waste services to Commercial Service Units. The majority of

Commercial Service Units utilize commercial containers, dumpsters and roll-offs, for solid waste collection services. Select Commercial Service Units that generate minimal waste receive commercial hand pick-up of a 96-gallon cart once per week. Table 1 shows the estimated number of commercial containers by service level.

Table 1: Commercial Containers by Service Level

	TOTAL
Dumpster	
2 CY Dumpster	31
3 CY Dumpster	17
4 CY Dumpster	35
6 CY Dumpster	43
8 CY Dumpster	215
TOTAL	341

- Roll-off Services.** The current contractor is also the exclusive provider of roll-off services within the City. There are currently sixteen (16) permanent roll-off accounts and twenty-seven (27) non-permanent roll-off accounts.
- City Services.** Last, the current contract also provides for solid waste and recycling services to City Facilities. Table 3 shows the solid waste and recycling service levels for City Facilities.

Table 3: City Facilities by Service Level

City Facility	Solid Waste Service Level	Recycling Service Level
Forney Community Development/ Public Works	2- 8 CY Dumpsters collected 1x per week	4 Carts
Forney Community Park	3- 8 CY Dumpsters collected 2x per week	NA
Mulberry Park	2- 8 CY Dumpsters collected 2x per week	NA
City Hall	1- 8 CY Dumpsters collected 2x per week	1- 8 CY Dumpster collected 1x per week
Fire Department	2- 8 CY Dumpsters collected 1x per week	2 Carts
Police Gun Range	1- 2 CY Dumpster collected 1x per week	NA
Police/Courts/Storage Facility	3- 8 CY Dumpsters collected 2x per week	1-8 CY Dumpster Collected 1x per week
Animal Shelter	1- 8 CY Dumpster collected 2x per week ¹	NA

1. Includes collection and disposal of dead animals.

Other Services provided under the current contract include once a month on-call collection of program household hazardous waste and electronics for Residential Service Units. A citizen calls the current contractor to receive a kit and to reserve a pickup time. The contractor mails the collection kit, which includes a large plastic bag to place the household hazardous waste

items in. Acceptable items include poison, solvent, oil-based, and latex paint, aerosols, used motor oil, auto batteries, fluorescent tubes, and televisions.

SECTION 2: SPECIFICATIONS

The purpose of this section is to familiarize Proposers with the requested scope of services. Proposer must carefully review the Agreement in Appendix A for the complete scope of services. Services performed will be in accordance with the Agreement included as Appendix A. The Agreement in Appendix A is based on once per week collection of solid waste via bags/cans, once per week collection of bulky waste, once every-other-week collection of program recyclable materials via carts, and on-call collection of program household hazardous waste and electronics for Residential Service Units and the Proposer providing disposal of all solid waste. The following is an overview of the scope of services.

1. **Agreement Term.** An Agreement awarded in response to this RFP will be for an initial term of five (5) years with a City option for two (2) one-year renewal terms.
2. **Exclusive Franchise.** The successful Proposer will be granted the exclusive right to provide residential services, commercial services, roll-off services and City services except as explicitly excluded in the Agreement.
3. **Residential Services.** The City is considering the following residential service:
 - **Solid Waste Services:** Once per week collection of unlimited solid waste contained in bags/cans and yard trimmings bags/cans/bundles;
 - **Program Recyclable Materials Services:** Once every other week collection of program recyclable materials contained in or adjacent to carts;
 - **Bulky Waste Services:** Once per week collection of up to four cubic yards of bulky waste; and
 - **Program Household Hazardous Waste and Electronics Services:** On-call collection of program household hazardous waste and electronics properly set-out.

As an alternative to the once every other week collection of program recyclable included in the above residential services, Proposer may propose to provide once every week collection of recycling. In this scenario the Proposer shall provide the cost of both options.

4. **Commercial Services.** The successful Proposer shall provide collection of solid waste via dumpsters or dumpster compactors. For Commercial Service Units that are low waste generators, the successful Proposer shall provide collection of solid waste via carts. For Commercial Service Units that are multi-family properties, the successful Proposer shall offer, as an optional service, collection of program recyclable materials at the same rate or less than equivalent solid waste collection services.
5. **Roll-off Services.** The successful Proposer shall provide collection of solid waste, including construction and demolition debris, via roll-off and roll-off compactors.

6. **City Services.** The successful Proposer shall provide City Services in accordance with the Agreement. The successful Proposer shall provide City Services at no cost to the City unless explicitly authorized in the Agreement. City Services will include, but not be limited to, the following:
 - Collection and disposal of solid waste from City Facilities; and
 - Collection and processing of program recyclable materials from City Facilities; and
 - Collection and disposal of solid waste from City Facilities for up to four (4) City special events per year (i.e. 4th of July celebration). Temporary containers shall be provided at no charge for each event.
7. **Program Recyclable Materials Collection.** Program recyclable materials shall include those materials as defined in the Agreement. The successful Proposer may identify other materials that the City may elect to include in its recycling program.
8. **Residential Services Set-out Limits.** For residential services, solid waste set-out limits shall not be enforced for (i) first collection following a holiday; (ii) first collection following a move-out or move-in, and (iii) Monday of last full week in December to Saturday of first full week in January.
9. **Collection Days.** Residential services are to be provided from Monday through Thursday. Each Residential Service Unit shall receive solid waste services and all other collection services (i.e. program recyclable materials services and bulky waste services) on the same scheduled collection day. For residential services, the City has a strong preference for all residential services to be provided on the same scheduled collection day City-wide. The City will also consider proposals to provide residential services over two scheduled collection days. For other services, the successful Proposer and customer shall mutually agree on collection days.
10. **Disposal Services.** Proposers must propose on providing disposal of all solid waste, including bulky waste, collected. In addition, the successful Proposer will be prohibited from commingling solid waste collected via residential base services with materials from other sources.
11. **Processing Services.** The successful Proposer shall provide all processing of program recyclable materials and program household hazardous waste and electronics collected.
12. **Holidays.** If a holiday occurs on a scheduled collection day for a Residential Service Unit, the successful Proposer shall perform the collection for the holiday and the remainder of the week ending on Thursday on the next calendar day after the scheduled collection day.
13. **Collection Location.** Unless otherwise instructed in writing by the City, the successful Proposer shall provide collection for Residential Service Units at the curbside of the residential lot. All other collection services shall be provided at a location agreed upon between the successful Proposer and the customer and not objected to by the City.

14. **Public Education and Outreach.** The successful Proposer shall develop, submit for approval from the City, and distribute public education and outreach materials, including program introduction notices and non-acceptable set-out notices, in accordance with the Agreement.
15. **Carts.** The successful Proposer shall purchase new carts that will be used for the Agreement. The carts shall meet the requirements set forth in the Agreement. Recycling Carts must be blue. Carts shall be 96 gallons. The contractor shall maintain ownership of all Recycling Carts in the possession of Residential Service Units upon the expiration or termination of the Agreement. The successful Proposer shall be responsible for the carts during the Agreement term including, but not limited to, distribution, storage, ongoing repair, replacement, warranty issues, and other requirements.
16. **Collection Vehicles.** The successful Proposer shall utilize collection vehicles that meet the requirements set forth in the Agreement. This includes a requirement that collection vehicles shall be eight (8) years old or less.
17. **Customer Service.** The successful Proposer shall be responsible for managing all customer service requests in accordance with the requirements of the Agreement. As set forth in the Agreement, the successful Proposer shall provide weekly reports of customer service requests to the City.
18. **Billing.** The City shall be responsible for billing base services for residential services. The successful Proposer shall be responsible for all other billings.
19. **Franchise Fee.** The successful Proposer shall pay the City a franchise fee equal to ten percent (10%) of gross billings for services provided via the Agreement within the City.
20. **Performance Bond and Insurance.** The successful Proposer shall comply with performance bond and insurance requirements set forth in the Agreement.

SECTION 3: PROPOSAL CONTENT

Proposers must submit the following information with Proposal packets in support of their Proposals. Proposers are encouraged to use the following format as a Table of Contents for submittals.

1. **Section 1 – Letter of Intent and Company Overview**
 - a. Proposers shall submit a letter of intent containing a statement that the proposal is a firm offer for one hundred eighty (180) days from the due date. The letter shall include a signature from a representative authorized to legally bind the proposing company.
 - b. Proposers shall complete Form 1 – Company Information.
2. **Section 2 – Method of Approach**
 - a. **Overview of Approach to Services.** Proposer shall provide a brief overview of the method of approach for providing the following:
 - i. Residential Services
 - ii. Commercial Services

- iii. Roll-off Services
 - iv. City Services
- b. **Description of Personnel.** Proposer shall meet the personnel standards as set forth in the Agreement. Proposer shall describe the following:
 - i. Proposer shall describe policies and procedures that are in place to ensure that personnel performing services are qualified and proficient.
 - ii. Proposer shall describe any training programs for personnel.
 - iii. Proposer shall describe the dress code that is required for personnel.
- c. **Recyclable Materials to be Collected.** Proposer shall identify all program recyclable materials to be collected.
 - i. Proposer shall collect, at a minimum, the materials defined as program recyclable materials and program household hazardous waste and electronics in the Agreement.
 - ii. Proposer shall identify any additional materials that can be collected as part of the recycling program at no additional cost.
 - iii. Proposer shall describe approach to processing materials that can be collected as part of the recycling program.
- d. **Residential Services Collection Route Schedules and Maps.** Proposer shall include a proposed route schedule and maps for Residential Service Units. Residential services are to be provided from Monday through Thursday. Each Residential Service Unit shall receive Solid Waste Services and all other collection services (i.e. program recyclable materials services and bulky waste services) on the same scheduled collection day. For residential services, the City has a strong preference for all residential services to be provided on the same day, but will consider alternative options. Proposers must describe the collection route schedules and maps. Proposers must describe the number of routes for each collection operation (e.g. solid waste, recycling, bulky).
- e. **Description of Carts.**
 - i. Proposer shall describe the carts that will be purchased by the Proposer (required for Recycling, option for Solid Waste). The description shall include, at a minimum, the manufacturer, capacity, color, any text provided on the cart and the method of affixing any logo. Recycling carts shall be blue. Photos of the proposed carts should be included.
 - ii. If requested, Proposer shall provide a sample of the carts to the City.
 - iii. Approach to Minimize Cart Damage: Proposer shall describe procedures used to minimize damage to carts.
 - iv. City shall have the sole decision in determining the appearance of carts.
- f. **Description of Commercial Containers.**
 - i. Descriptions shall include, at a minimum, the manufacturer, color, capacities, and logos on the containers. Photos of the proposed commercial containers and roll-offs should be included.
 - ii. Proposers must provide a description of the maintenance program, including frequency of cleaning and any fees associated with excessive maintenance.
- g. **Description of Collection Vehicles.** Proposer shall provide a description of all collection vehicles to be used to provide service under the Agreement. Collection

vehicles shall comply with the requirements of the Agreement. Descriptions shall include:

- i. Make, model, and age of each proposed vehicle. Photos of each type of vehicle proposed should be included.
 - ii. Number of front line and spare vehicles to be used to perform each service.
 - iii. Any future equipment to be acquired and a timeline for acquisition of new equipment.
 - iv. Number of personnel needed for each collection crew to conduct each service.
 - v. Proposed maintenance program for all collection vehicles used to perform services, including a proposed frequency of cleaning vehicles.
 - vi. Environmental features or benefits of proposed collection vehicles (e.g. compressed natural gas).
- h. **Disposal Facility Information.** For disposal services provided by the Proposer, Proposers shall provide the following information for all facilities to be used under the Agreement.
- i. Name, location, and description of the facility.
 - ii. Name of owner and operator of the facility(ies), identifying whether the company that owns and/or operates the disposal facility is the same as the Proposer, a related-party entity, or subcontractor.
 - iii. Contact name and phone number of the site manager.
 - iv. Term of the Proposer's contract with the facility.
 - v. If the facility is owned and operated by the Proposer, provide a guarantee to provide the disposal services proposed and guaranteeing the capacity required over the term of the Agreement. If the facility is not owned and operated by the Proposer, provide a letter from the facility owner and operator that documents their commitment to provide the disposal services proposed and guaranteeing the capacity required over the term of the Agreement. If the capacity guaranteed to the City relies on development of a new facility or expansion of an existing facility, describe the development or expansion plans, additional capacity to be constructed, schedule for development/expansion, and permitting status of the development/expansion plan.
- i. **Processing Facility Information.** Proposers shall provide the following information for all processing facilities to be used under the Agreement.
- i. Name, location, and description of the facility and the type of material that will be processed at the location.
 - ii. Name of owner and operator of the facility(ies), identifying whether the company that owns and/or operates the processing facility is the same as the Proposer, a related-party entity, or subcontractor.
 - iii. Contact name and phone number of the site manager.
 - iv. Term of the Proposer's contract with the facility.
 - v. If the facility is owned and operated by the Proposer, provide a guarantee to provide the processing services proposed and guaranteeing the capacity required over the term of the Agreement. If the facility is not owned and operated by the Proposer, provide a letter from the facility owner and operator that documents their commitment to provide the processing

services proposed and guaranteeing the capacity required over the term of the Agreement. If the capacity guaranteed to the City relies on development of a new facility or expansion of an existing facility, describe the development or expansion plans, additional capacity to be constructed, schedule for development/expansion, and permitting status of the development/expansion plan.

- j. **Description of Customer Service.** Proposers shall include a description of customer service policies and procedures. Proposers shall include the following:
 - i. Description of customer complaint resolution procedures.
 - ii. Proposed customer call center information.
 - iii. Description of proposed policies for set-outs that exceed set-out limits.
 - k. **Description of Customer Billing Policies and Procedures.** Proposer shall describe the policies and procedures to be used for billing services (excluding base services for residential services). Proposer shall include a description of proposed non-payment procedures.
 - l. **Description of Transition Plan.** Proposer shall describe its proposed strategies to ensure a smooth transition from the current contractor to the successful Proposer. The proposed transition plan is of critical importance to the City. In the transition plan, Proposer must describe the following:
 - i. Individual or group of individuals that will oversee the execution of the transition plan.
 - ii. Proposed approach, including equipment, personnel, and schedule, for delivering carts to Residential Service Units. Proposers shall also describe how the delivery of carts will be conducted.
 - iii. Proposed approach for commercial container delivery, including a proposed date for the completed transition.
 - iv. Overall schedule for the transition.
 - v. Proposed strategies for customer communication regarding the transition of service providers, including Residential Service Units and Commercial Service Units.
 - m. **Description of Exceptions to Agreement.** Proposer shall identify any and all exception(s) to this RFP and the Agreement. If Proposer identifies an exception(s), Proposer shall clearly identify the exception(s) and state the reason for such exception(s). For each exception noted, Proposer shall provide alternative language for the City's consideration. Any exceptions to the RFP or the Agreement will be considered and included in the City's evaluation. If Proposer fails to list any exceptions, Proposer shall not raise any exception later if selected for award.
3. **Section 3 – Experience and References**
- a. **Experience of Key Personnel.** Proposer shall provide an organization chart for key personnel and job descriptions indicating the qualifications and experience of key personnel the Proposer would assign to the transition team and to the ongoing management of the services provided under the Agreement. For positions that are currently unfilled, identify minimum qualifications for that position. Specify the amount of time each individual will be dedicated to work on the contract. At a minimum, key personnel shall include general manager, operations manager, and maintenance manager and any other personnel that will have regular contact with the City.

- b. **References.** Proposers shall provide a minimum of three references for other communities, preferably in the Dallas-Fort Worth Metroplex, for which the Proposer is currently providing similar services. For each reference, Proposer shall provide the following:
 - i. Name of community and description of services provided including number of Residential Service Units and Commercial Service Units.
 - ii. Contact person, including name, title, phone number, and email address.
 - iii. Number of years of service and year in which services began.
4. **Section 4 – Insurance, Performance Bond, and Financial History**
- a. Proposal shall include a statement that Proposer agrees to comply with the performance bond and insurance requirements set forth in the Agreement.
 - b. Proposer shall furnish a copy of the Proposer’s most recent audit financial statement. In the event the Proposer does not have an audited financial statement, Proposer may substitute non-audited financial statement and complete federal tax return for the last two (2) years.
5. **Section 5 – Other Forms**
- a. Proposers shall complete Form 2 – Conflict of Interests
 - b. Proposers shall complete Form 3 – Pricing Information

SECTION 4: PROPOSAL EVALUATION

Award of an Agreement will be based upon the best value for the City. The Proposals will be evaluated using the criteria and scoring system set forth in this section. The following table shows the maximum points and relevant Proposal content that will be considered for each scoring criteria.

Criteria	Proposal Content Considered	Maximum Points
Letter of Intent, Company Overview, and Method of Approach	Sections 1 and 2	30
Experience, References, Insurance, Performance Bond and Financial History	Section 3 and 4	20
Conflict of Interest and Pricing Information	Section 5	50

The City may elect to conduct interviews of Proposers. If the City conducts interviews, the presentation shall be led by the Proposer’s proposed day-to-day contact person for the City. Interviews are tentatively scheduled for October 21, 2020.

FORM 1: Company Information

Company Name: _____

Address: _____

Phone Number: _____

Fax Number: _____

Contact Person: _____

E-mail Address: _____

FORM 2: Conflict of Interest

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY <hr/> Date Received	
1 Name of vendor who has a business relationship with local governmental entity.		
2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information in this section is being disclosed.		
<hr style="width: 30%; margin: 0 auto;"/> Name of Officer		
This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.		
A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?		
<input type="checkbox"/> Yes <input type="checkbox"/> No		
B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?		
<input type="checkbox"/> Yes <input type="checkbox"/> No		
C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more?		
<input type="checkbox"/> Yes <input type="checkbox"/> No		
D. Describe each employment or business and family relationship with the local government officer named in this section.		
<hr style="width: 30%; margin: 0 auto;"/>		
4		
<hr style="width: 50%; margin: 0 auto;"/> Signature of vendor doing business with the governmental entity	<hr style="width: 50%; margin: 0 auto;"/> Date	

Adopted 8/7/2015

FORM 3: PRICING INFORMATION
Form 3.1: Proposed Fees for Residential Service Option 1
and Proposer Provides All Disposal Services

Form 3.1.1: Proposed Fees for Base Residential Service Option 1
and Proposer Provides All Disposal Services
with Once Per Week Program Recycling Services

Description	Monthly Fee per Residential Service Unit ^{1,2,3}
Acceptable Solid Waste	per month
Program Recyclable Materials – ONCE PER WEEK	per month
Bulky Waste	per month
Yard Trimmings (included with Solid Waste)	NA
Program Household Hazardous Waste and Electronics	per month
Total Proposed Service Base Fee ⁵	per month

1. Proposed fee exclude 10% franchise fee.
2. Includes disposal of collected material.
3. Includes processing of collected material.

Form 3.1.2: Proposed Fees for Base Residential Service Option 1
and Proposer Provides All Disposal Services
with Once Per Every Other Week Program Recycling Services

Description	Monthly Fee per Residential Service Unit ^{1,2,3}
Acceptable Solid Waste	per month
Program Recyclable Materials – ONCE PER EVERY OTHER WEEK	per month
Bulky Waste	per month
Yard Trimmings (included with Solid Waste)	NA
Program Household Hazardous Waste and Electronics	per month
Total Proposed Service Base Fee ⁵	per month

1. Proposed fee exclude 10% franchise fee.
2. Includes disposal of collected material.
3. Includes processing of collected material.

Form 3.2: Proposed Fees for Commercial and Roll-off Services
Form 3.2.1 – Proposed Monthly Fees for Dumpster Services

Dumpster Type and Size	Weekly Collection Frequency ¹					
	1	2	3	4	5	6
2 CY Dumpster						
3 CY Dumpster						
4 CY Dumpster						
6 CY Dumpster						
8 CY Dumpster						
10 CY Dumpster						
2 CY Dumpster Compactor						
3 CY Dumpster Compactor						
4 CY Dumpster Compactor						
6 CY Dumpster Compactor						
8 CY Dumpster Compactor						

1. Proposed fee excludes 10% franchise fee.
2. Includes disposal of collected material.

Form 3.2.2 – Proposed Fees for Extra Pick Ups for Dumpster Services

Dumpster Type and Size	Fee ^{1,2} (Per Pickup)
2 CY Dumpster	
3 CY Dumpster	
4 CY Dumpster	
6 CY Dumpster	
8 CY Dumpster	
10 CY Dumpster	
2 CY Dumpster Compactor	
3 CY Dumpster Compactor	
4 CY Dumpster Compactor	
6 CY Dumpster Compactor	
8 CY Dumpster Compactor	

1. Proposed fee excludes 10% franchise fee.
2. Includes disposal of collected material.

Form 3.2.3– Proposed Fees for Roll-Off Services

Roll-off Type and Size ¹	Container Rental Fee ² (Per Month)	Initial Delivery Fee ² (One-time)	Collection Fee ² (Per Pull)	Disposal Fee ² (Per Ton)
10 CY Roll-off				
20 CY Roll-off				
30 CY Roll-off				
40 CY Roll-off				
25 CY Roll-off Compactor				
30 CY Roll-off Compactor				
40 CY Roll-off Compactor				

1. Identify other Roll-off types and sizes to be provided, including proposed fees, if awarded the Agreement.
2. Proposed fee excludes 10% franchise fee.

Form 3.2.4 – Proposed Other Fees for Commercial and Roll-off Services

Description of Service	Fee ¹
Lock	per month
Set of Casters	per month
Opening and Closing of Enclosures	per month
	per _____
	per _____
	per _____
	per _____

1. Proposed fee excludes 10% franchise fee.

APPENDIX A: Agreement

SOLID WASTE AND RECYCLING SERVICES AGREEMENT

This Solid Waste and Recycling Services Agreement (“Agreement”) is entered into as of the _____ day of _____, 2021, between the City of Forney, Texas (“City”), acting by and through its duly authorized City Manager, and _____ (“Contractor”), a _____, acting by and through its duly authorized representative.

WITNESSETH:

WHEREAS, City issued a Request for Proposals for Solid Waste and Recycling Services (“the RFP”); and

WHEREAS, Contractor submitted a proposal in response to the RFP on or before October 7, 2020; and

WHEREAS, City received and evaluated proposals from vendors in response to the RFP; and

WHEREAS, City has the power under the State Constitution and the powers of a home-rule city to execute this Agreement; and

WHEREAS, Contractor has the power to execute this Agreement; and

WHEREAS, City desires to hire Contractor to provide those services specified hereinafter; and

WHEREAS, Contractor desires to provide those services specified hereinafter; and

NOW, THEREFORE, in consideration of the premises and of the mutual obligations undertaken herein, the Parties hereby agree as follows:

1. DEFINITIONS:

As used herein, the capitalized terms, phrases, words, and their derivations shall have the meanings as set forth herein.

1.1. **Acceptable Solid Waste:** Acceptable Solid Waste shall mean Solid Waste that is not Unacceptable Waste and that is Collected within the City pursuant to this Agreement.

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

1.3. **Agreement Year:** Agreement Year shall mean the period beginning March 1 of each year and ending on February 28th of the subsequent year for the

term of the Agreement.

- 1.4. **Applicable Law:** Applicable Law shall mean any permits, licenses and approvals issued for or with respect to Contractor, equipment utilized by Contractor, properties (or any component thereof) utilized by Contractor, or the performance of Contractor's obligations hereunder, and any statute, law constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority, which in any case, shall be enacted, adopted, promulgated, issued or enforced by a governmental body, regulatory agency and/or court of competent jurisdiction that relates to or affects City, Contractor, any of their equipment or any properties (or any component thereof) utilized by Contractor or the performance of Contractor's obligations hereunder.
- 1.5. **Basic Service:** For Residential Services, Basic Service shall mean (1) once per week Solid Waste Services; (2) once per every other week Program Recyclable Materials Services; (3) once per week Bulky Waste Services; and (4) on-call Program Household Hazardous Waste and Electronics Services.
- 1.6. **Brush:** Brush shall mean Yard Trimmings that cannot be easily contained in a Yard Trimmings Can, Yard Trimmings Bag or Bundle.
- 1.7. **Bulky Waste:** Bulky Waste shall mean Acceptable Solid Waste composed of materials not easily contained in a Solid Waste Bag or Can such as, but not limited to, White Goods, furniture, Brush, carpet, large electronics, and other Acceptable Solid Waste not easily contained in a Solid Waste Bag or Can.
- 1.8. **Bulky Waste Services:** Bulky Waste Services shall mean the Collection and Disposal of Bulky Waste.
- 1.9. **Bundle or Bundles:** Bundle or Bundles shall mean Yard Trimmings securely tied together forming a package that may be easily handled, not to exceed four (4) feet in length or fifty (50) lbs. in weight.
- 1.10. **Business Day:** Business Day shall mean any day, Monday through Friday, from 8:00 AM, Central Time until 5:00 PM, Central Time, which is not a holiday designated as such in the Agreement.
- 1.11. **Can:** Can shall mean a receptacle owned by the Customer used for Solid Waste and Set-outs, including Yard Trimmings.
- 1.12. **Cart:** Cart shall mean a receptacle purchased by the Contractor, equipped with wheels and a bar, with a capacity of approximately ninety-five (96) gallons designed to be mechanically dumped into a loader-packer type truck purchased with a ten (10) year manufacturer's warranty, and approved for

use by City.

- 1.13. **CFCs:** Chlorofluorocarbon refrigerants that are usually contained in refrigerators, window air conditioners, icemakers and freezers.
- 1.14. **City:** City shall mean the City of Forney, Texas.
- 1.15. **City Contact:** Contractor shall assign one employee as the main contact with City of Forney staff. The City Contact shall be available to respond to any complaints made by City staff within 24 hours of being contacted.
- 1.16. **City Facility:** City Facility shall mean any City owned or operated facility designated by the Contract Administrator as a City Facility to receive City Services. The City has the sole authority to add or eliminate City Facilities to receive City Services.
- 1.17. **Collect or Collection:** Collect or Collection shall mean the act of removing Acceptable Solid Waste or Bulky Waste for transport to a Disposal Site or the act of removing Program Recyclable Materials for transport to a Processing Facility.
- 1.18. **Commencement Date:** Commencement Date shall mean March 1, 2021, the date on which the Contractor shall begin performing Solid Waste Services and Recycling Services in accordance with this Agreement.
- 1.19. **Commercial Container:** Commercial Container shall mean a Cart, Dumpster, Dumpster Compactor, Roll-off, or Roll-off Compactor.
- 1.20. **Commercial Cart Service Unit:** Commercial Cart Service Unit shall mean a Commercial Service Unit that uses no more than one (1) Solid Waste Carts per calendar week.
- 1.21. **Commercial Service Unit:** Commercial Service Unit shall mean all establishments other than Residential Service Units within the corporate limits of the City.
- 1.22. **Construction and Demolition Debris:** Construction and Demolition Debris shall mean waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.
- 1.23. **Contamination:** Contamination shall mean the existence of any material or substance on or contained in Program Recyclable Materials other than Program Recyclable Materials.

- 1.24. **Contract Administrator:** Contract Administrator shall mean the person, or his designee, designated by the City to administer and monitor the provisions of this Agreement.
- 1.25. **Contractor:** Contractor shall mean _____.
- 1.26. **Contractor's Representative:** Contractor's Representative shall mean an employee of the Contractor designated in charge of Contractor's operations under the Agreement and who is authorized to make decisions and act on Contractor's behalf.
- 1.27. **Curbside:** Curbside shall mean a location designated by the Contract Administrator for Collection of Solid Waste and Recyclable Materials from a Residential Service Unit. The location shall be within four (4) feet of the curb or traveled portion of any roadway and outside any fence.
- 1.28. **Customer:** Customer shall mean (i) the City or (ii) owner or tenant of a Residential Service Unit or Commercial Service Unit, as the case may be, located within the City, and identified by the City as being eligible for and in need of the services provided by the Contractor under this Agreement.
- 1.29. **Dead Animals:** Dead Animals shall mean animals or portions thereof that have expired from any cause except those slaughtered or killed for human use.
- 1.30. **Dispose or Disposal:** Dispose or Disposal shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any Solid Waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such Solid Waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater. Contractor shall Dispose of materials at a Disposal Site.
- 1.31. **Disposal Site:** Disposal Site shall mean a Landfill or other Solid Waste management facility permitted under all applicable local, state, and federal laws and regulations for Disposal of Solid Waste. The Disposal Site shall be selected by Contractor.
- 1.32. **Dumpster:** Dumpster shall mean a metal receptacle with a tight-fitting lid and a minimum capacity of two (2) cubic yard, a maximum capacity of ten (10) cubic yards, and designed to be lifted and emptied mechanically.
- 1.33. **Dumpster Compactor:** Dumpster Compactor shall mean any Dumpster, regardless of size, which has a compaction mechanism, whether stationary or mobile.
- 1.34. **Effective Date:** Effective Date shall mean the date set forth in the first

sentence of this Agreement.

- 1.35. **Eligible Disaster Debris:** Eligible Disaster Debris shall mean Solid Waste qualifying for and meeting the most current stipulated requirements for debris removal reimbursement as stipulated by Federal Emergency Management Agency.
- 1.36. **Garbage:** Garbage shall mean Solid Waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.
- 1.37. **Hazardous Waste:** Hazardous Waste shall mean any Solid Waste identified or listed as a hazardous waste by the administrator of the Environmental Protection Agency under the Federal Solid Waste Disposal Act as amended by RCRA, 42 U.S.C. §6901, *et. seq.*, as amended.
- 1.38. **Landfill:** Landfill shall mean a Solid Waste management unit where Solid Waste is placed in or on land and which is not a pile, a land treatment unit, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.
- 1.39. **Missed Collection:** Missed Collection shall mean a Collection that was not provided as scheduled.
- 1.40. **Medical Waste:** Medical Waste shall mean treated and untreated special waste from health care-related facilities that is comprised of animal waste, bulk blood, bulk human blood, bulk human body fluids, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions) from the sources specified in 25 TAC §1.134 (relating to Application), as well as regulated medical waste as defined in 49 Code of Federal Regulations §173.134(a)(5), except that the term does not include medical waste produced on a farm or ranch as defined in 34 TAC §3.296(f) (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants. Health care-related facilities do not include: (A) single or multi-family dwellings; and (B) hotels, motels, or other establishments that provide lodging and related services for the public.
- 1.41. **Multi-family Property:** Multi-family Property shall mean a property (A) located within the City; (B) with more than four separate units for residential dwellings; and (C) designated by the City to receive Solid Waste collection via Dumpster or Roll-off.

- 1.42. **Party:** Party shall mean Contractor or City.
- 1.43. **Process or Processed or Processing:** Recovery of Recyclable Materials, treatment into Recovered Materials, and marketing of Recovered Materials to end markets. Recovery of Program Household Hazardous Waste and Electronics, treatment of Program Household Hazardous Waste and Electronics, and marketing of Recovered Materials to end markets.
- 1.44. **Processing Facility:** Processing Facility shall mean a facility permitted under all applicable local, state, and federal laws and regulations for Processing of Recyclable Materials and/or Program Household Hazardous Waste and Electronics. The Processing Facility shall be selected by the Contractor.
- 1.45. **Program Household Hazardous Waste and Electronics:** Program Household Hazardous Waste and Electronics shall include the following Solid Waste:
- a) Aerosols containing flammable or hazardous material such as paint
 - b) Lubricant - Automotive/Household Compressor Oil, Cutting Oil, etc.
 - c) Electronics - CPU's (computers) Laptop and handheld computers; CRT's (Computer Monitors); Telephones, Cell Phones, Portable Phones, Keyboards, Mice, CD-ROM's (other disc drives), including cables
 - d) Televisions, VCR's, CD Players, Stereos
 - e) Art/Hobby Supplies — Adhesive, Paint, Cleaners, Correction Fluid, Photography Chemicals
 - f) Other Household — Fluorescent Tubes/Bulbs, Compact Fluorescent Lamps (CFLs), Thermostats, Thermometers
 - g) Automotive Products—Cleaners, Lubricant, Solvent, Fuel, Brake Fluid, Antifreeze, Carburetor Cleaner, Metal Conditioner, Engine Degreaser, Fuel Additives, Used Motor Oil, Used Oil Filters, windshield washer fluid, transmission fluid, batteries, oily rags, polishes, waxes
 - h) Paint - Aerosols, Hobby/Automotive/Household Latex and Oil-Base Paint Products including Thinner, Lacquer, Linseed Oil, Primer, Stain, Varnish, stripper caulking, glue, wood preservative
 - i) Cooking Oil
 - j) Microwave Ovens
 - k) Batteries — Automotive and Household
 - l) Personal Products — Nail Polish, Polish Remover, Rubbing Alcohol, Shoe Polish, Spot Remover
 - m) Scanners, Printers (desk top, non-commercial)
 - n) Household Cleaners – bleach, cleaning compounds, floor stripper, drain cleaner, tile remover, tile cleaner, rust remover
 - o) Household/Auto Polish, Degreaser, Rug/Upholstery Cleaner, etc.

- p) Poison — Household/Garden Poison (insecticide, herbicide, fungicide), Bait, Fertilizer, etc.
- q) Fax Machines
- r) Copiers (noncommercial, desk top units only)
- s) Flammables — Automotive/Household Solvent, Fuel, Paint, Lubricant, Kerosene, Charcoal Lighter Fluid, Mineral Spirit
- t) Thermostats/Thermometers containing mercury
- u) Sharps — Including needles and lancets placed into a sealed rigid plastic Container prior to placing inside the bag.
- v) Swimming Pool chemicals – pool acid; chlorine – tablets, liquid
- w) Other solid waste agreed upon in writing by the Contractor and the City

The definition for Program Household Hazardous Waste and Electronics will be updated based on successful Proposer proposal.

- 1.46. **Program Household Hazardous Waste and Electronics Services:** Program Household Hazardous Waste and Electronics Services shall mean the Collection and Processing of and Program Household Hazardous Waste and Electronics.
- 1.47. **Program Introduction Notice:** Program Introduction Notice shall mean a public education notice developed by the Contractor, approved by City, and printed and distributed by the Contractor.
- 1.48. **Program Recyclable Materials:** Program Recyclable Materials shall include the following Recyclable Materials:
 - a) **Paper:** Kraft paper; corrugated containers that have liners of Kraft, jute, or test liner including dry food boxes, beer and soda carriers, shoe boxes; old newspaper including slick paper inserts; magazines, catalogs; telephone books and Yellow Pages; chipboard; and other mixed paper including but not limited to junk mail, junk mail inserts, residential mixed paper, bagged shredded paper, high-grade paper, white and colored ledger, copier paper, office paper, laser printer paper, computer paper including continuous-formed perforated white bond or green bar paper, book paper, cotton fiber content paper, duplicator paper, form bond, manifold business forms, mimeo paper, note pad paper (no backing), loose leaf fillers, stationery, writing paper, paper envelopes without plastic windows, carbonless (NCR) paper, tabulating cards, facsimile paper, manila folders, and paperback books.
 - b) **Plastic:** #1 through #7 rigid plastic bottles, containers, jugs, jars, or other rigid plastics. Excludes plastic bags and Styrofoam.
 - c) **Aluminum and Other Metal:** Beverage container, food can, empty paint cans, bi-metal Container, or lid with or without paper

labels, rings, and lids composed primarily of whole iron, aluminum, steel, or other Recyclable Materials of a similar nature. Excludes aluminum foil.

- d) **Glass:** Any glass food and beverage bottles, containers, or jars with or without paper labels, rings, and lids. Excludes window glass, porcelain, china, or ceramics.

The definition for Program Recyclable Materials will be updated based on successful Proposer proposal.

- 1.49. **Recovered Materials:** Recovered Materials shall mean Recyclable Materials.
- 1.50. **Recyclable Material:** Recyclable Material shall mean a material that has been recovered or diverted from the non-hazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable Material is not Solid Waste. However, Recyclable Material may become Solid Waste at such time, if any, as it is abandoned or Disposed of rather than recycled, whereupon it will be Solid Waste, with respect to the person actually abandoning or Disposing of such material.
- 1.51. **Recycling:** Recycling shall mean a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or Processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use.
- 1.52. **Recycling Services:** Recycling Services shall mean the Collection and Processing of Program Recyclable Materials and Program Household Hazardous Waste and Electronics.
- 1.53. **Refuse:** Refuse shall mean Rubbish.
- 1.54. **Residential Service Unit:** Residential Service Unit shall mean a residential dwelling within the service area of the City occupied by a person or group of persons excluding separate units on Multi-Family Properties. A Residential Service Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of single or multi-level construction, not on a Multi-Family Property, shall be treated as a Residential Service Unit, except that each single-family dwelling within any such Residential Service

Unit shall be billed separately as a Residential Service Unit.

- 1.55. **Roll-off:** Roll-off shall mean a metal receptacle with a minimum capacity of approximately ten (10) and a maximum capacity of forty (40) cubic yards, intended for high-volume generation of Solid Waste, and designed to be transported to a Disposal Site by loading of receptacle onto rear of transporting vehicle.
- 1.56. **Roll-off Compactor:** Roll-off Compactor shall mean any Roll-off, regardless of size, which has a compaction mechanism, whether stationary or mobile.
- 1.57. **Rubbish:** Rubbish shall mean non-putrescible Solid Waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible Rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, Yard Trimmings, leaves, or similar materials; noncombustible Rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).
- 1.58. **Scheduled Collection Day:** Scheduled Collection Day shall mean the specific day or days of the week on which Collection shall be provided by Contractor to Customer.
- 1.59. **Services:** Services shall mean Solid Waste Services and Recycling Services.
- 1.60. **Set-out:** Set-out shall mean material(s) placed by a Customer for Collection by Contractor.
- 1.61. **Single Stream:** Single Stream shall mean commingled and not required to be subdivided by the Customer prior to Collection.
- 1.62. **Solid Waste:** Solid Waste shall mean Garbage, Rubbish, Refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:
 - a) Solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;
 - b) Solid, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvement; or

- c) Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 USC, §§6901 *et seq.*).
- 1.63. **Solid Waste Bag:** Solid Waste Bag shall mean Non-dissolvable plastic sack with a capacity of up to approximately thirty-five (35) gallons designed or intended to store Solid Waste with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a Solid Waste Bag and its contents shall not exceed fifty (50) pounds.
- 1.64. **Solid Waste Services:** Solid Waste Services shall mean the Collection and Disposal of Acceptable Solid Waste, including Yard Trimmings, and Bulky Waste.
- 1.65. **Special Waste:** Special Waste shall mean waste that requires special handling and management due to the nature of the waste, including, but not limited to, the following: (A) Containerized waste (e.g. a drum, barrel, portable tank, box, pail, etc.), (B) waste transported in bulk tanker, (C) liquid waste, (D) sludge waste, (E) waste from an industrial process, (F) waste from a pollution control process, (G) Residue and debris from the cleanup of a spill or release of chemical, or (H) any other waste defined by Texas law, rule or regulation as “Special Waste.”
- 1.66. **Unacceptable Set-out:** Unacceptable Set-out shall mean a Set-out for Collection that does not comply with the requirements of the Agreement.
- 1.67. **Unacceptable Set-out Notice:** Unacceptable Set-out Notice shall mean a public education notice developed by the Contractor, approved by City, and printed and distributed by the Contractor.
- 1.68. **Unacceptable Waste:** Unacceptable Waste shall mean any Solid Waste, the acceptance and handling of which by Contractor would cause a violation of any permit or regulatory requirement, including, but not limited to, Special Waste (except as otherwise provided herein), untreated Medical Waste, Dead Animals weighing fifty pounds (50 lbs.) or greater from Customers other than the City Facility, solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit.
- 1.69. **White Goods:** White Goods shall mean refrigerators which have CFCs

removed by a certified technician, stoves and ranges, water heaters, freezers, swing sets, bicycles (without tires) scrap metal, copper, and other similar domestic and commercial large appliances.

1.70. **Yard Trimmings:** Yard Trimmings shall mean any cuttings or trimmings from trees, shrubs, or lawns, and similar materials. Yard Trimmings specifically excludes Eligible Disaster Debris.

1.71. **Yard Trimmings Bag:** Yard Trimmings Bag shall mean Kraft bag or other sack authorized by the Yard Trimmings Processing Facility, designed to store Yard Trimmings with sufficient wall strength to maintain physical integrity when lifted. Total weight of a Yard Trimmings Bag and its contents shall not exceed fifty (50) pounds.

2. **GRANT OF EXCLUSIVE FRANCHISE:**

Contractor is hereby granted for the term of this Agreement, as defined in Section 3 unless sooner terminated, the exclusive right and privilege and sole obligation within the corporate limits of the City to operate and conduct business for the following:

- (a) Collection and Disposal of Acceptable Solid Waste for Residential Service Units;
- (b) Collection and Processing of Program Recyclable Materials for Residential Service Units; and
- (c) Collection and Disposal of Solid Waste for Commercial Service Units.

Contractor is hereby granted for the term of this Agreement, as defined in Section 3 unless sooner terminated, a nonexclusive right and privilege within the corporate limits of the City to conduct business for the following:

- (a) Collection and Processing of Program Household Hazardous Waste and Electronics for Residential Service Units; and
- (b) Collection and Processing of Program Recyclable Materials for Commercial Service Units.
- (c) Collection and disposal of Special Waste.

This Agreement does not include the Smurfit Kappa facility at 855 E. U.S. Highway 80. Service to that property is provided by a separate Agreement with the City.

3. **TERM:**

3.1. **Initial Term:** Unless sooner terminated in accordance with the Agreement, the initial term of this Agreement shall commence March 1, 2021 at 12:00 AM, Central Time, (“Commencement Date”) and shall continue in effect until February 28, 2026 at 11:59 PM, Central Time.

3.2. **Optional Renewal Terms:** City may renew this Agreement for up to two (2) additional one (1) year optional renewal terms. Contractor may prohibit City from exercising an optional renewal term by providing written notice to the Contract Administrator of Contractor's election to reject a renewal term on or before twelve (12) months preceding the scheduled date of expiration of the initial term or the then current optional renewal term of this Agreement. If Contractor does not provide such written notice to the Contract Administrator on or before twelve (12) months preceding the scheduled date of expiration of the initial term or the then current optional renewal term of this Agreement prohibiting City from exercising the optional renewal term, City may upon written notice to Contractor not later than ninety (90) calendar days preceding the scheduled date of expiration of the initial term or the then current optional renewal term of this Agreement exercise such optional renewal term by such notice. This provision in no way limits City's right to terminate this Agreement at any time during the initial term or any optional renewal term thereof pursuant to the provisions in this Agreement.

4. **RESIDENTIAL SERVICE UNIT COLLECTION:**

4.1. **Acceptable Solid Waste Collection:** Contractor shall Collect from each Residential Service Unit, each _____ day, all Acceptable Solid Waste, including Yard Trimmings, contained in Solid Waste Bags and Cans and all Yard Trimmings contained in Yard Trimmings Bags, Bundles, and Cans.

4.2. **Program Recyclable Materials Collection:** Contractor shall Collect from each Residential Service Unit, on the Scheduled Collection Day such Residential Unit receives Solid Waste Collection, all Program Recyclable Materials in, under, or adjacent to that Residential Service Unit's Recycling Cart per Scheduled Collection Day.

4.3. **Bulky Waste Collection:** Contractor shall Collect from each Residential Service Unit, one day per week on a Scheduled Collection Day, the greater of one item or two (2) cubic yards of Bulky Waste per Scheduled Collection Day. Contractor shall Collect additional Bulky Waste per request of a Residential Service Unit Customer.

4.4. **Program Household Hazardous Waste and Electronics Collection:** Upon request of a City Program Residential Unit Customer, the Contractor shall Collect from such Residential Unit, not to exceed one day per calendar month, all Program Household Hazardous Waste and Electronics set-out in accordance with Program Household Hazardous Waste and Electronics Collection Procedures developed by Contractor and approved by Contract Administrator.

4.5. **Roll-off Collection:** Upon request of a Residential Service Unit Customer,

Contractor shall provide Roll-off Collection in accordance with Commercial Service Unit Collection described in Section 5.1(c).

5. **COMMERCIAL SERVICE UNIT COLLECTION:**

5.1. **Acceptable Solid Waste Collection:**

1. Commercial Cart Service Unit: Contractor shall Collect from each Commercial Hand Collect Service Unit, one day per week on a Scheduled Collection Day, all Acceptable Solid Waste contained in one (1) Solid Waste Cart per Scheduled Collection Day.
2. Commercial Service Units Dumpster Collection: For Commercial Service Units requesting Acceptable Solid Waste Collection via Dumpster(s), Contractor shall Collect, on a Scheduled Collection Day(s), all Acceptable Solid Waste in Dumpsters per Scheduled Collection Day. Contractor and Customer shall mutually decide on the number, size, and location of Dumpsters. In addition, Contractor and the Customer shall mutually decide on the frequency of Collection and Scheduled Collection Days.
3. Commercial Service Units Roll-off Collection: For Commercial Service Units requesting Acceptable Solid Waste Collection via Roll-off(s), Contractor shall Collect, on a Scheduled Collection Day(s) or upon request of Customer, all Acceptable Solid Waste in Roll-off. Contractor and Customer shall mutually decide on the number, size, and location of Roll-offs.

- 5.2 **Program Recyclable Material Collection:** Upon Request of a Multi-family Property Customer, Contractor shall Collect, on a Scheduled Collection Day(s), all Program Recyclable Materials in or adjacent to Recycling Carts or Recycling Commercial Containers. Contractor shall provide such services at a rate equal to or less than the rate for Solid Waste Collection at the same service level (i.e. receptacle size, Collection frequency). Contractor and Customer shall mutually decide on the number, size, and location of Recycling Carts, Dumpsters and/or Roll-offs. In addition, Contractor and the Customer shall mutually decide on the frequency of Collection and Scheduled Collection Days.

6. **CITY SERVICES**

The Contractor shall provide City Services at the sole cost of Contractor and shall not bill the City or other person for City Service unless explicitly authorized in this Section.

- 6.1 **City Facilities Solid Waste Collection:** For all City Facilities, Contractor shall Collect, on a Scheduled Collection Day(s), all Acceptable Solid Waste in Commercial Containers per Scheduled Collection Day. Contractor and

Customer shall mutually decide on the number, size, and location of Dumpsters or Roll-offs. In addition, Contractor and the Customer shall mutually decide on the frequency of Collection and Scheduled Collection Days.

6.2 **City Facilities Program Recyclable Material Collection:** For all City Facilities, Contractor shall Collect, on a Scheduled Collection Day(s), all Program Recyclable Materials in, under, or adjacent to Recycling Carts or Recycling Commercial Containers per Scheduled Collection Day. Contractor and Customer shall mutually decide on the number, size, and location of Recycling Carts, Dumpsters and/or Roll-offs. In addition, Contractor and the Customer shall mutually decide on the frequency of Collection and Scheduled Collection Days.

6.3 **City Roll-off Services:** Upon request of Contract Administrator, Contractor shall provide a Roll-off for Collection of Acceptable Solid Waste and Program Recyclable Materials. Contractor shall Collect the Roll-off upon request of the Contract Administrator. City shall solely decide the type, size and location of the Roll-off. City shall pay the Collection Fee and Disposal Fee for any pulls, at a 25% discount off the then-current rate schedule as reflected in Exhibit 1. Contractor shall be solely responsible for all other costs including, but not limited to, Container Rental Fee and Initial Delivery Fee.

6.4 **City Special Events:** For a maximum of four (4) times per year, the Contractor shall provide a Roll-off for Collection of Acceptable Solid Waste and Program Recyclable Materials collected during a City of Forney Special Event (i.e. 4th of July Celebration). Contractor shall be solely responsible for all costs, including Container Rental Fee, Initial Delivery Fee, and the Collection Fee and Disposal Fee. Only one pull will be provided at no cost. If additional pulls are needed, the City shall pay the Collection Fee and Disposal Fee at a 25% discount off the then-current rate schedule as reflected in Exhibit 1.

7. **EXCEPTION TO RESIDENTIAL SERVICES SET-OUT RESTRICTIONS:**

The Contractor shall Collect all Acceptable Solid Waste, including excess Solid Waste Bags, from each Residential Service Unit for the following days:

- a) first Collection following a holiday as defined by Section 17.2;
- b) first Collection following a move-out or move-in; and
- c) Monday of last full week in December to Saturday of first full week in January.

8. **COLLECTION LOCATIONS:**

- 8.1. **Residential Service Unit Collection:** Contractor shall Collect Solid Waste, Program Recyclable Materials, and Bulky Waste Curbside for Residential Service Units excluding Residential Service Units that qualify for special service. For Residential Service Units that qualify for special service, Contractor shall provide Collect Solid Waste and Program Recyclable Materials at a location designated by the Contract Administrator. For special service, Contractor's employees shall not be required to enter any gated areas for Collection of Solid Waste and Program Recyclable Materials. Contractor shall return all Cans and Carts to approximately original location.
- 8.2. **Commercial Service Unit Collection:** The Commercial Container shall be located on at a location reasonably acceptable to Contractor and Customer and subject to approval by Contract Administrator. Contractor shall open the enclosure for the Commercial Container and unlock the Commercial Container prior to Collection. Upon completion of Collection, Contractor shall return all Commercial Containers to approximately original location, lock the Commercial Containers, and close the enclosure for such Commercial Containers.

9. **DISPOSAL AND PROCESSING SERVICES:**

- 9.1. **Disposal of Contractor Collected Materials.** Excluding Roll-off, Contractor agrees that the then-current rate schedule as reflected in Exhibit 1 includes the costs for Disposal of Acceptable Solid Waste and Bulky Waste Collected by Contractor. Disposal of material Collected via Roll-off shall be in accordance with the then current Disposal Fee as reflected in Exhibit 1.
- 9.2. **Processing of Contractor Collected Materials.**
- a) Program Recyclable Materials. Customers may Set-out Single Stream Program Recyclable Materials for Collection. Contractor agrees that the then-current rate schedule as reflected in Exhibit 1 includes the costs for Processing of Program Recyclable Materials, including Single Stream Program Recyclable Materials, Collected by Contractor.
 - b) Other Materials. Contractor agrees that the then-current rate schedule as reflected in Exhibit 1 includes the cost for Processing Program Household Hazardous Waste and Electronics Collected by Contractor.
- 9.3. **Disposal and Processing Capacity:** Contractor shall have and maintain during the term hereof, adequate Disposal and Processing capacity for the

City's needs.

10. **DISPOSAL AND PROCESSING LOCATIONS:**

The Contractor shall deliver materials Collected to the following locations selected by Contractor and operated in compliance with Applicable Law including rules stipulated by the local, state, and federal laws and regulations including Texas Commission of Environmental Quality and/or the U.S. Environmental Protection Agency:

- a) Solid Waste to a Disposal Site;
- b) Program Recyclable Materials Collected to a Processing Facility for Program Recyclable Materials; and
- c) Program Household Hazardous Waste and Electronics to a Processing Facility for Program Household Hazardous Waste and Electronics.

Contractor shall operate and maintain adequately sized truck scales and computerized record-keeping systems for weighing and recording all incoming vehicles at the Disposal Sites and Processing Facilities. Contractor shall maintain a record containing the gross weight, tare weight, net weight, date, time, and vehicle identification of each vehicle entering and exiting the Disposal Site and Processing Facility. Contractor shall weigh, record, and tabulate materials from the City and other generators separately. Contractor shall test the scales as required by Applicable Law. At a minimum, Contractor shall test the scales every six (6) months. If the scales are unavailable during hours of operation, Contractor shall use the average weight for the route and load of the day from the previous calendar month. Failure of Contractor to meet the requirements set forth in this section of the Agreement is a breach of this Agreement and may result in termination by City of this Agreement with Contractor.

11. **PROCESSING REQUIREMENTS:**

Contractor shall utilize Processing subsystems at the Processing Facility capable of complying with product specifications of secondary materials buyers including, but not limited to, product form, size, weight, density, and degree of Contamination. Failure of Contractor to meet the requirements set forth in this section of the Agreement is a breach of this Agreement and may result in termination by City of this Agreement.

11.1. **Program Recyclable Materials Processing Requirements:** Contractor shall utilize processing subsystems at the Processing Facility capable of Processing a minimum of ninety-five percent (95.0%) by weight of Program Recyclable Materials into Recovered Materials monthly.

11.2. **Program Household Hazardous Waste and Electronics Processing**

Requirements: Contractor shall process a minimum of ninety-two percent (92.0%) by weight of Program Household Hazardous Waste and Electronics into Recovered Materials annually.

12. **ADDITION AND DELETION OF PROGRAM RECYCLABLE MATERIALS**

City reserves the right to add other Recyclable Materials to the program or delete Recyclable Materials from the program if the Parties agree it is economically and technically feasible. An increase or decrease in fees, if any, for addition or deletion of Recyclable Materials may be negotiated and implemented as a change in rate schedule by an amendment to this Agreement.

13. **COMMINGLING OF MATERIALS PROHIBITED:**

Except, when approved in writing by the Contract Administrator, Contractor shall not commingle the following materials:

- (a) Program Recyclable Materials from Residential Service Units Collected under this Agreement with other materials;
- (b) Program Recyclable Materials with other materials; or
- (c) Program Household Hazardous Waste and Electronics from Residential Service Units Collected under this Agreement with other materials.

Commingling of materials in violation of this section of the Agreement is a breach of this Agreement and may result at City's option in administrative charges and/or termination by City of this Agreement.

14. **DISPOSAL OF PROGRAM RECYCLABLE MATERIALS:**

Contractor shall not Dispose of any Program Recyclable Materials to markets that Contractor knows or reasonably should have anticipated will Dispose of the Program Recyclable Materials except when approved in writing by the Contract Administrator. Disposal of such materials or marketing of such materials to markets that Contractor knows or reasonably should have anticipated will Dispose of such materials, except when approved in writing by the Contract Administrator, is a breach of this Agreement and may result in termination by City of this Agreement with Contractor. Failure of Contractor to meet the requirements set forth in this section of the Agreement is a breach of this Agreement and may result at City's option in administrative charges and/or termination by City of this Agreement.

15. **INSPECTION OF SET-OUTS AND UNACCEPTABLE SET-OUTS:**

15.1. **Contractor's Right to Inspect Set-Outs:** Contractor may inspect each Set-out prior to Collection for compliance with the requirements of this

Agreement.

15.2. **Unacceptable Set-outs:** Prior to Collection of the Set-out, Contractor may designate a Set-out as an Unacceptable Set-out for the following reasons:

- (a) A Set-out exceeds the Set-out limits as established in this Agreement;
- (b) A Set-out of Program Recyclable Materials contains more than twenty-five percent (25%) of non-Recyclable Materials by weight;
or
- (c) A Set-out contains Unacceptable Waste that cannot be easily separated, such as by manual efforts.

Contractor may not designate a Set-out as an Unacceptable Set-out for any reason other than those identified in this section. If Contractor designates a Set-out or a portion of a Set-out as an Unacceptable Set-out for any of the reasons set forth in this section, Contractor shall:

- (a) Collect the portion of the Set-out that is properly Set-out; and
- (b) Immediately provide an Unacceptable Set-out Notice to the Customer stating the reason the Set-out or portion of the Set-out was designated as an Unaccepted Set-out.

For all Unacceptable Set-outs, Contractor shall provide a written report of the Unacceptable Set-outs including the address, reason Set-out was an Unacceptable Set-out, and other information as requested by Contract Administrator to the Contract Administrator by 10:00 AM, Central Time the next Business Day. If Contractor fails to provide a written report in accordance with this section, Contractor shall be subject to administrative charges as set forth in this Agreement.

16. **RESIDENTIAL SERVICE UNITS COLLECTION ROUTES:**

Contractor shall submit Residential Service Units Collection routes to the Contract Administrator for approval a minimum of ninety (90) calendar days prior to the Commencement Date. Contractor shall not amend, change, or alter the route without Contract Administrator's approval.

17. **HOURS OF OPERATION AND HOLIDAYS:**

17.1. **Hours of Operation:** Contractor shall provide Collection to Residential Service Units from Monday through Thursday. Collection from Residential Service Units and all other Customers adjacent to Residential Service Units shall begin no earlier than 7:00 AM, Central Time and shall not extend beyond 7:00 PM, Central Time. Collection from Commercial Service Units not adjacent to Residential Service Units shall be Collected at such hours as may be determined by Contractor. No Collection shall be made on Sunday,

unless requested by a Customer and agreed to by Contractor and City. Contractor Administrator reserves the right to restrict the hours of operation based on customer complaints.

17.2. **Holidays:** The following shall be holidays for purposes of this Agreement: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Contractor shall observe all of the above-mentioned holidays by suspension of Collection on the holiday. If a holiday occurs on a Scheduled Collection Day for a Residential Service Unit, Contractor shall perform the Collection for the holiday and the remainder of the week ending on Thursday on the next calendar day after the Scheduled Collection Day. If a holiday occurs on a Scheduled Collection Day for a Commercial Service Unit, the Contractor shall perform the Collection for such Customer at the sole discretion of each Customer on the holiday or the next calendar day after the holiday.

18. **DAMAGE TO PROPERTY:**

Contractor shall take all necessary precautions to protect public and private property during the performance of this Agreement. Contractor shall repair or replace any private or public property which is damaged by Contractor. Such property damages shall be resolved by Contractor either by repair or replacement, at no charge to the property owner, within forty-eight (48) hours of the earlier of knowledge or notice to Contractor of such damage unless a longer period of time is approved in writing by the Contract Administrator, and any replacement of property shall be accomplished with property of the same or equivalent value at the time of the damage.

If Contractor fails to address the repair or replacement of damaged property within forty-eight (48) hours of the earlier of knowledge or notice to Contractor of such damage or the longer period of time approved in writing by the Contract Administrator, the Contract Administrator may, but shall not be obligated to, repair or replace such damaged property, and the cost of doing so shall be deducted from any payment to be made to Contractor by City.

Within fifteen (15) Business Days of the Effective Date, Contractor shall submit for approval to the Contract Administrator a procedure for management of property damage consistent with the requirements set forth in this Agreement.

19. **COMPLAINTS AND OFFICE:**

19.1. **Complaints:** Customer complaints shall be directed to Contractor, and Contractor shall promptly resolve such complaint based on the nature of the complaint. Contractor shall be responsible for maintaining a log of complaints and shall provide the City, on a monthly basis, with copies of all complaints indicating the date and hour of the complaint, nature of the complaint, and the manner and timing of its resolution. Any alleged missed

pickups will be investigated and, if such allegations cannot be disproved, Contractor shall arrange for Collection on the next Business Day after receipt of such complaint.

- 19.2. **Local Office:** Contractor shall maintain an office within sixty (60) street miles of City Hall. Contractor shall ensure the local office may be contacted by telephone without charge. Such office shall be equipped with sufficient telephones and shall have a responsible person in charge between the hours of 8:00 AM, Central Time and the later of 5:00 PM, Central Time or completion of Collection from Residential Service Units, Monday through Friday. For after office hours, local office must have a voicemail system. Voicemails from Customers shall be returned on the next Business Day.

20. **CITY CONTACT**

Contractor shall assign one person as the primary contact for the City of Forney. This person shall respond to any service complaints made by City of Forney staff. The City has the right to request and receive a replacement City Contact at any time during the term of this Agreement.

21. **EQUIPMENT AND LABOR:**

- 21.1. **Recycling Carts for Residential Service Units:** Contractor shall, at its sole cost and expense, agree to purchase all new Recycling Carts necessary to adequately, efficiently, and properly provide the services to Residential Service Units in accordance with this Agreement. Recycling Carts for Customers, including new Customers and existing Customers, shall meet the following requirements:

- (a) Approximate capacity of 96 gallons;
- (b) Uniform and blue in color (as approved by Contract Administrator);
- (c) Full-color in-mold label (as approved by Contract Administrator) of Program Recyclable Materials and non-Program Recyclable Materials, with a minimum size of area of 100 square inches;
- (d) Comply with ANSI Standards Z245.30 and Z245.60 (shall be both Type B and Type G complaint);
- (e) Either injection model with high density polyethylene (HDPE) or rotational molded with linear medium density polyethylene (MDPE). All plastic resin must be UV stabilized;
- (f) Metal lift bar (replaceable if damaged);
- (g) RFID is not required; and
- (h) Any logos shall be approved by the City.

Contractor shall store all additional and replacement Recycling Carts at Contractor's local office to ensure that extra or replacement Carts can be provided upon the request of Contract Administrator.

Contractor shall, at its sole cost and expense, assemble and distribute Recycling Cart(s) to Residential Service Units prior to the Commencement Date and within two (2) Business Day(s) of the request of the Customer or Contract Administrator.

For Recycling Carts delivered by Contractor, Contractor shall attach a Program Introduction Notice to each Recycling Cart prior to delivery to Residential Service Unit.

Contractor's employees shall take care to prevent damage to Recycling Carts by unnecessary rough treatment.

Contractor shall be solely responsible for the maintenance, including warranty issues, of Recycling Carts.

Upon the request of a Customer, Contractor shall deliver, at Contractor's sole cost, (i) an additional Recycling Cart or (ii) replacement Cart if the assigned Cart is stolen or damaged beyond repair for any reason.

Contractor shall provide a monthly report to Contract Administrator detailing the Recycling Carts delivered and maintenance provided to Recycling Carts and provide a monthly report to Contract Administrator for the term of the Agreement.

The Contractor shall maintain ownership of all Recycling Carts in the possession of Residential Service Units upon the expiration or termination of the Agreement. The Contractor shall be responsible for the collection of all Recycling Carts at the expiration or termination of this Agreement.

- 21.2. **Other Equipment:** Contractor, at its sole cost and expense, agrees to furnish, all equipment, excluding equipment explicitly stated in this Agreement to be provided by City. Equipment shall include, but is not limited to, trucks, machines, and labor which are reasonably necessary to adequately, efficiently, and properly provide the services in accordance with this Agreement.

Excluding Roll-off Collection, Contractor shall provide Collection using sealed packer-type trucks, and such equipment shall not be allowed to leak nor scatter any materials. For Roll-off Collection, Contractor shall provide Collection using vehicles equipped with a cover which may be net with mesh not greater than one and one-half (1-1/2) inches, or tarpaulin, or fully enclosed metal top to prevent leakage, blowing or scattering of materials. Contractor shall maintain such cover in good order and use such cover when going to and from the Disposal Site, during loading operations, or when parked if contents are likely to be scattered. Contractor shall not overload

Collection vehicles as to scatter material.

Contractor shall maintain all vehicles and Collection equipment in a first class, safe, and efficient working condition throughout the term of this Agreement. Contractor shall maintain, including sanitizing and painting, all vehicles and Collection equipment as often as necessary to preserve and present a well-kept appearance, and Contractor shall have a regular preventative maintenance program. No third-party advertising shall be permitted on Contractor's vehicles or Collection equipment.

All Collection vehicles used in performance of the obligations herein created shall be less than eight (8) years old and clearly marked with the Contractor's name, telephone number and unit number legible from 150 feet. Contractor shall maintain Collection vehicles in a neat and sanitary condition and are to be washed on the inside and sanitized with a suitable disinfectant and deodorant a minimum of once a month.

City may inspect Contractor's equipment at any time to insure compliance with this Agreement. Upon notification from the City, Contractor shall be required to repair or replace equipment that is no longer in acceptable condition for their intended purpose.

22. **SPILLAGE AND LEAKAGE, LITTER, AND ODOR**

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

22.2. **Litter:** Contractor shall be required to pick up any and all litter caused by the provision of services in connection with this Agreement.

22.3. **Odor:** Contractor shall maintain equipment used for purposes of this Agreement in a manner that eliminates odors. Contractor shall routinely clean equipment used for purposes of this Agreement by Contractor in a manner that eliminates odors.

23. **RECORDS AND REPORTS:**

Contractor agrees to maintain at the local office, see Section 19.2, adequate records relating to the performance of their respective duties under this Agreement. Such

records shall be made available at any time during reasonable business hours for inspection by the City. At a minimum, Contractor shall create, maintain, and make available records as defined herein and/or required by Applicable Law, and any reports as are reasonably necessary to:

- (a) Document services provided by type of service, Container type, Container size, Collection frequency, fees charges, and other information as requested by Contract Administrator.
- (b) Document number of Residential Service Units Set-outs by Program Recyclable Materials and Program Household Hazardous Waste and other information as requested by Contract Administrator.
- (c) Document deliveries of materials by type of material, time delivered to facility, tonnage of material delivered, and other information as requested by Contract Administrator.
- (d) Document Missed Collections and Unacceptable Set-outs on a daily basis by address, time and date for each and the reason and notice for Unacceptable Set-outs.
- (e) Document ownership and maintenance records of all vehicles used to perform the services provided under this Agreement.
- (f) Document public education contribution and franchise fee calculation and payment.
- (g) Such other documents and reports as City may reasonably require to verify compliance with the Agreement or to meet City's reporting requirements.

Contractor shall provide the City with a monthly report within seven (7) calendar days following the end of the month and an annual report within thirty (30) calendar days following the end of the calendar year summarizing the above information and identifying the number of Residential Service Units serviced in the previous time period.

24. **INSPECTION RIGHTS:**

24.1. **City's Right to Inspect Records, Books, Data and Documents:** City shall have access, within one Business Day of advanced written notification to Contractor, to all books, records, data and documents of Contractor for inspection, and audit, at City's own expense.

24.2. **City's Rights to Inspect Facilities and Equipment and Audit Performance:** City shall have access, within twenty-four (24) hours of advanced written notification to Contractor, to inspect Contractor's facilities and equipment as City deems reasonably necessary to determine whether the services required to be provided by Contractor under this Agreement conform to the terms hereof. Additionally, City may perform field audits, including but not limited to route audits, without prior notice to Contractor, to assure that services required to be provided by Contractor under this Agreement are conducted in compliance with the terms of this

Agreement, if applicable. City shall conduct the inspection of facilities and equipment and field audits, including route audits, during regular hours of operation. Contractor shall make available to City all reasonable facilities and assistance to facilitate the performance of inspections of facilities and equipment and field audits by City.

25. **RECYCLABLE MATERIALS REVENUES, PUBLIC EDUCATION CONTRIBUTION, AND FRANCHISE FEE:**

25.1. **Recyclable Materials Revenues:** Contractor shall retain all revenues from the sale of Recyclable Materials.

25.2. **Public Education Contribution:** The City shall be entitled to receive \$0.50 per Residential Service Unit per month for public education and outreach. The City may increase or decrease the Public Education and Outreach Contribution with ninety (90) days written notice to the Contractor.

25.3. **Franchise Fee:** The City shall be entitled to receive a ten percent (10%) franchise fee (the "Franchise Fee") for all services rendered by Contractor hereunder including Residential Services, Commercial Services, and Roll-off Services. Contractor shall pay the City the Franchise Fee based on gross billings for services provided via the Agreement within the City within thirty (30) calendar days after the last day of the month Contractor provided such services. The franchise rights do not include Special Waste.

26. **BILLING:**

(a) A minimum of thirty (30) calendar days prior to the Commencement Date, Contract Administrator will provide Contractor with a then-current Customer List for Residential Service Units identifying each by address. City shall update the list each month from the Commencement Date until expiration or termination of the Agreement. Within five (5) Business Day(s) of receipt of a Customer List, Contractor will report in writing to the Contract Administrator the address of a Residential Service Unit where materials are placed at the curbside and that is not on the then current Customer List. Contract Administrator will thereafter update the Customer List as applicable. Regardless of the Customer List, Contractor shall provide services to all Residential Service Units in accordance with this Agreement.

(b) City shall provide billing and bill Base Services for Residential Service Units during the term of this Agreement. Contractor shall provide billing and bill services for all services to Commercial Service Units and services other than Base Services to Residential Service Units, such as additional Bulky Waste services and Roll-off Services.

- (c) Contractor shall bill City and Customers in accordance with Agreement and then-current rate schedule as reflected in Exhibit 1. Contractor agrees senior citizens shall receive a ten percent (10%) discount on the then-current rate schedule for Base Services for Residential Service Units. Contractor shall not bill City or Customers for any fees other than those specifically authorized in this Agreement.
- (d) Within thirty (30) calendar days of the end of each month during which services are provided by Contractor hereunder, Contractor shall submit to the City an invoice setting forth sums due by the City to Contractor for Base Services for Residential Service Units for the prior month. The City shall remit to the Contractor payment, less any Public Education Contribution, Franchise Fees, disputed amounts, administrative charges, and payments withheld in accordance with this Agreement, for services rendered by Contractor to Residential Service Unit within thirty (30) calendar days after receipt of invoice.
- (e) Within thirty (30) calendar days of the end of each month during which services are provided by Contractor hereunder, Contractor shall remit to the City payment for any Franchise Fees, and other payments in accordance with this Agreement, for services rendered by Contractor or payments due within thirty (30) calendar days after receipt of invoice.

27. **MODIFICATION TO RATES:**

The Contractor shall submit a written request for modification to fees on or before July 1, 2022 and every July 1st thereafter. If Contractor fails to submit a written request for modification to rates on or before July 1st, Contractor waives the right for a modification to rates.

All fees in Exhibit 1 shall remain fixed from the execution of this Contract through October 1, 2022. The adjustment shall be a composite of two indices, including the Consumer Price Index (“CPI”) Adjustment and the Fuel Adjustment as set forth herein. The Contractor agrees the annual modifications, the sum of the CPI Adjustment and Fuel Adjustment, shall not exceed five percent (5%) for any single year.

- 27.1. **CPI Adjustment.** Rates will remain fixed as set forth in Exhibit 1, and will not be adjusted for changes in the CPI (as hereinafter defined), until October 1, 2022. Commencing on October 1, 2022 and continuing annually on each October 1, Rates, excluding Franchise Fee, shall be adjusted by eighty percent (80.0%) of the Consumer Price Index, Dallas/Fort Worth Region for All Urban Consumers, less energy, Not Seasonally Adjusted, Base Period December 1983 = 100 (published by the United States Bureau of Labor Statistics, Consumer Price Index) (the “C.P.I.”) increase or decrease from the most recent October to the preceding October. In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the C.P.I., the parties hereto agree to substitute another equally authoritative

measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision.

27.2. **Fuel Adjustment.** Rates will remain fixed as set forth in Exhibit 1, and will not be adjusted for changes in fuel price (as hereinafter defined), until October 1, 2022. Commencing on October 1, 2022, and continuing annually on each October 1, Recyclable Revenue Rebate and Rates, excluding Public Education Contribution and Franchise Fee, shall be adjusted by twenty percent (20.0%) of the US Department of Energy (“EIA/DOE”)’s Weekly Retail On Highway Diesel Prices for the Gulf Coast increase or decrease during the preceding twelve months. The EIA/DOE currently publishes these prices on their website at the following location: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>. The Fuel Adjustment shall be based on the change in the index from the most recent price as of October 1st and the price as of the previous October 1.

28. **LICENSE AND TAXES:**

Contractor shall obtain at its sole expense all licenses and permits required by the local, state, and federal government, and shall maintain same in full force and effect.

29. **COMPLIANCE WITH LAWS:**

Contractor, its officers, agents, employees, contractors, and subcontractors, shall abide by and comply with Applicable Law including all existing laws and laws which may be enacted by the federal, state, and local governments. It is expressly agreed that nothing in this Agreement shall be construed in any manner to abridge the right of City to pass or enforce necessary police and health regulation for the protection of its inhabitants. It is further agreed and understood that, if the City calls the attention of Contractor to any such violations on the part of the Contractor, its officers, agents, employees, contractors, or subcontractors, then Contractor shall immediately desist from such activity and correct such violation.

30. **ENFORCEMENT:**

City grants unto Contractor the right to seek an injunction against any third party that is believed to be infringing on the rights of Contractor to this Agreement, including Contractor’s exclusive franchise rights granted herein. Furthermore, Contractor shall have all rights and remedies available to it under Texas law to collect delinquent payment of fees by City and/or Commercial Service Unit Customers.

31. **ADMINISTRATIVE CHARGES:**

Contractor understands that if Contractor does not timely perform its obligations pursuant to the terms of this Agreement or violates any provision of this Agreement,

City will suffer damages which are difficult to determine and adequately specify. Contractor agrees, in addition to any other remedies available to City, that City may withhold payment from Contractor in the amounts specified below as administrative charges for failure of Contractor to fulfill its obligations. The following acts or omissions shall be considered a breach of this Agreement and City may require payment by Contractor of the charges set forth for each act or omission:

(a) Missed Collection.

\$50 for each Missed Collection in excess of two (2) Missed Collections per day, to be assessed at the end of each Collection month. A Missed Collection occurs when a resident reports Missed Collection, the address was not reported by Contractor as an Unacceptable Set-out, and Contractor cannot provide data demonstrating Collection vehicle traveled on street and Collections occurred on street.

(b) Missed Residential Service Unit block.

\$500 for each incident of Contractor failing to pick up material on a block containing Residential Service Units. A missed Residential Service Unit block is where three Residential Service Units on one side of a street between cross streets or an entire cul-de-sac report a Missed Collection. A missed Residential Service Unit block occurs when the addresses reporting Missed Collections were not reported by Contractor as Unacceptable Set-outs and Contractor cannot provide data demonstrating Collection vehicle traveled on street and Collections occurred on block.

(c) Failure to provide Collection from Residential Service Units during normal hours of operation.

\$250 for each Contractor vehicle providing Collection without approval of the Contract Administrator.

(d) Failure to complete 95% of the Collections on a given day.

Failure to complete 95% of Collections on a given day shall occur when Contractor fails to Collect or attempt to Collect from 95% of the total Residential Service Units to be serviced on the given day. \$2,500 each day that 95% of Collections are not made or attempted.

(e) Failure to clean up material spilled or leakage by Contractor within two (2) hours of verbal or written notification.

Failure to clean up material spilled or leakage by Contractor within two (2) hours shall commence the earlier of when Contractor becomes aware of such spillage or leakage or Contract Administrator notifies Contractor of

such spillage or leakage. \$250 each incident.

- (f) Failure to maintain vehicle in manner which prevents nuisances such as leaky seals or hydraulics.

\$100 each incident.

- (g) Failure to address damage to property in accordance with Agreement and approved procedure for management of property damage.

\$250 each incident.

- (h) Failure or neglect to Collect materials from a missed pickup location within the amount of time specified in this Agreement.

Failure to address, as required by this Agreement, a failure or neglect to Collect materials from a missed pickup location within the time specified in the Agreement shall commence the earlier of when Contractor becomes aware of such missed pick-up or Contract Administrator notifies Contractor of such missed pick-up. \$250 each incident.

- (i) Failure to provide a complete monthly or annual report.

\$250 per Business Day thereafter per incident.

- (j) Failure to return receptacles to approximately original location.

\$25 each incident.

- (k) Commingling of materials in violation of this Agreement.

\$1,000 each incident.

- (l) Disposal of Program Recyclable Materials and/or Program Household Hazardous Waste and Electronics.

\$2,000 each incident.

- (m) Failure to distribute Program Introduction Notices or Unacceptable Set-out Notices.

\$100 each incident.

- (n) Failure to respond to any Customer complaint within the amount of time specified in this Agreement.

\$100 per Business Day thereafter per incident

- (o) Failure to provide City or its designee with the required resolved Customer complaint documentation.

\$50 per Business Day thereafter per incident.

- (p) Failure to maintain scales in accordance with Agreement.

\$250 per day per scale.

- (q) Failure to be prepared to perform services on and after the Commencement Date.

\$3,000 each day.

City may impose administrative charges when the Contract Administrator determines that performance consistent with the provisions of the Agreement has not occurred. The Contract Administrator shall notify Contractor in writing or electronically of each act or omission under the terms of this Agreement reported to or discovered by City or its designee. It shall be the duty of Contractor to take whatever steps or action may be necessary to remedy the cause of the complaint.

City may deduct the full amount of any such charges from any payment due to Contractor. The remedy available to City under this paragraph shall be in addition to all other remedies which City may have under law, at equity, or pursuant to the terms of this Agreement.

For the purposes of this Agreement, Contractor shall not be deemed to be liable for such charges where its inability to perform Collection service is the result of an event of Force Majeure as set forth in this Agreement, provided however, that Contractor shall obtain approval for the delay from the Contract Administrator prior to 3:00 PM, Central Time of the Scheduled Collection Day.

Contractor's obligations to make payments for such charges under this section occurring prior to the expiration or termination of this Agreement shall survive termination or expiration of this Agreement.

32. **TERMINATION:**

City may terminate this Agreement without liability to Contractor and pursue all of its legal, contractual and equitable remedies for default upon Contractor.

- (a) The filing of a voluntary petition for bankruptcy by or on behalf of the Contractor, or the filing of an involuntary petition for bankruptcy relief against the Contractor, which is not dismissed or otherwise Disposed of to the City's satisfaction within thirty (30) days

- thereafter.
- (b) The appointment of a receiver of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) thereafter.
 - (c) Filing of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
 - (d) Committing an act of default of a provision of this Agreement.
 - (e) Failing to timely and fully pay any or all impositions pursuant to this Agreement.
 - (f) As otherwise provided by this Agreement.

This Agreement shall terminate upon any one of the following:

- (a) The written agreement of the Parties.
- (b) The expiration of this Agreement.

33. DISPUTE RESOLUTION:

- (a) The parties shall endeavor to settle all disputes under, or relating to, this Agreement by amicable negotiations. Except as otherwise provided herein, any claim, dispute, disagreement or controversy that arises among the parties under or relating to this Agreement that is not amicably settled shall be submitted to mediation. If the parties remain unable to resolve the controversy through mediation, then the claim, dispute, disagreement or controversy may be resolved by pursuing the action in the Courts. Venue for any action shall be in Kaufman County, Texas.
- (b) All attorneys' fees and costs of the arbitration shall in the first instance be borne by the respective party incurring such costs and fees, unless fees are awarded by the Court.

34. FORCE MAJEURE:

Except for any payment obligation by either Party, if the City of Forney or Contractor is unable to perform, or is delayed in its performance of any of its obligations under this Agreement by reason of an event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for City of Forney or Contractor to correct the adverse effect of such event of Force Majeure.

An event of Force Majeure shall mean the following events or circumstances to the extent that they delay the City or Contractor from performing any of its obligations (other than payment obligations) under this Agreement:

- (a) Acts of God, tornadoes, hurricanes, floods, sinkholes, fires, and explosions

(except those caused by negligence of Contractor, its agents, or assigns), landslides, earthquakes, epidemics, quarantine, and pestilence; and

- (b) Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities.

In order to be entitled to the benefit of this Section, a Party claiming an event of Force Majeure shall be required to give prompt written notice to the other Party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure the event of Force Majeure. The Parties agree that, as to this Section, time is of the essence. Notice of using this section will also require an estimate of the amount of time needed.

35. **PERFORMANCE BOND:**

Upon Contractor's execution of this Agreement, Contractor shall make, execute, and deliver to City a good and sufficient performance bond in a form approved by the Contract Administrator, to secure the full, complete and faithful performance of the terms and conditions herein. For the first Agreement Year ("Initial Agreement Year"), Contractor shall make, execute, and deliver to City a good and sufficient Performance Bond in an amount equal to or greater than Contractor's estimated amount of gross billings to the City pursuant to this Agreement from 2021 through 2026. For each Agreement Year after the Initial Agreement Year, Contractor shall make, execute, and deliver to the City of Forney a good and sufficient Performance Bond in an amount equal to or greater than the amount of Contractor's gross billings to the City, pursuant to this Agreement, from the prior Agreement Year. Contractor shall renew the Performance Bond in accordance with this Agreement each year throughout the term of the Agreement and any renewal periods. Contractor shall ensure the Performance Bond is signed by the president or authorized officer of Contractor, together with the signature of the corporate secretary and the imprint of the corporate seal. The surety shall be a surety company duly authorized to do business in the State of Texas; have an "A" or better rating by either A. M. Best Company or Standard & Poor's; be included on the list of surety companies approved by the Treasurer of the United States of America; and be acceptable to City.

36. **INSURANCE:**

- a. **No Insurance Provided by City:** Contractor shall be solely responsible for any and all insurance coverage required under the terms of this Agreement and for any additional insurance that Contractor deems necessary. City does not, shall not, and shall not be required to carry insurance policies providing coverage for or on behalf of Contractor.

b. Contractor Insurance Requirements:

(a) Specific Insurance Requirements. Contractor, and its subcontractors, shall procure and maintain, during the term of this Agreement and any extensions thereof, at its sole cost, the insurance coverage listed below. If Applicable Law requires a higher insurance limit, Contractor shall procure and maintain the policy limit as specified by the Applicable Law.

1. Workers' Compensation: With statutory limits as set forth in the Texas Workers' Compensation Act.
2. Commercial General: \$1,000,000 Each
Accident/Occurrence.
3. Liability (Public): \$1,000,000 Aggregate
\$1,000,000 Products & Completed
Operations Aggregate.
4. Owner's Protective: \$1,000,000 per occurrence
5. Liability Insurance: \$1,000,000 aggregate
6. Excess/Umbrella Liability: \$1,000,000 per occurrence
w/drop down coverage
7. Endorsement CG 2503: Amendment Aggregate Limit of
Insurance
per Project or Owner's and
Contractor's Protective Liability
Insurance for the Project.
8. Automobile Bodily Injury Liability: \$500,000 each person,
\$1,000,000 each
occurrence.
9. Automobile Property Damage Liability: \$300,000 each
occurrence.

If City elects to purchase Carts, Contractor shall procure and maintain sufficient personal property damage insurance to cover the replacement cost for any Carts damaged, lost, stolen or destroyed for the period of time from Contractor's receipt of the Carts until the Commencement Date, or provide an alternate method for replacing such Carts that has been approved in writing by City.

The policies of insurance shall be primary and written on forms

acceptable to City and placed with insurance carriers approved and licensed by the State of Texas.

The insurance policies provided herein shall be endorsed to provide that no policy shall be cancelled, changed or reduced in coverage until after prior written notice has been delivered to City through certified mail as required in this Agreement.

The cancellation clause on Contractor's insurance certificate must conform to the endorsement. Any conflict between the endorsement and the certification is a breach of this Agreement and can result in retraction by City of the award of the Agreement to Contractor or termination of this Agreement.

The policies of insurance must include an endorsement from the insurer adding City as an additional insured to the policy.

Contractor shall file proof of insurance for it and its subcontractor(s) meeting the requirements as set forth herein with City prior to execution of this Agreement. In addition, Contractor shall be solely responsible for assuring that all proofs of insurance are up to date as filed with City. Failure of Contractor to fully comply with the requirements set forth herein regarding insurance is a breach of this Agreement and may be cause for termination by City of this Agreement with Contractor.

No changes are to be made to these specifications without prior written approval by City.

Approval of the insurance by City shall not relieve or limit the liability of Contractor for any damages arising from Contractor's performance or nonperformance of services provided herein.

- (b) General Requirements. Contractor's and its subcontractors' insurers must be authorized to transact business in the State of Texas.

Contractor shall furnish City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing all required insurance before commencement of the work.

All policies required herein, unless specific approval is given by City, are to be written on an occurrence basis and the insurers shall agree to waive all right of subrogation against the City. Additionally, all policies other than Workers' Compensation policies shall name the City as an additional insured.

Contractor shall ensure that the insurance coverage required under this Agreement is obtained and maintained by Contractor or its subcontractors for its subcontractors to cover their work hereunder. Contractor shall be held responsible for any modification, deviation, or omissions in these insurance requirements as they apply to all subcontractors. Each insurance policy required by this Agreement shall meet each of the following requirements:

1. Each policy shall apply separately to each insured against whom a claim is made and suit is brought, except with respect to the limits of the insurer's liability.
2. Each policy except Workers' Compensation policy(ies) shall include an endorsement by the insurer that coverage shall not be suspended, voided or canceled by insurer or insured, reduced in coverage or in limits except after twenty (20) calendar days prior written notice by certified mail, return receipt requested, has been given to City. Workers' Compensation policy(ies) shall include an endorsement by the insurer that coverage shall not be suspended, voided or canceled by insurer or insured, reduced in coverage or in limits except after at least ten (10) calendar days prior written notice by certified mail, return receipt requested, has been given to City.
3. City shall retain the right at any time to review coverage, form and amount of insurance.
4. The procuring of each required policy or policies of insurance shall not be construed to limit Contractor's liability to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policy or policies of insurance, Contractor shall be obligated for the full and total amount of any damages, injury or loss caused by the action or inaction of Contractor or its subcontractors in connection with this Agreement.
5. Contractor shall be solely responsible for payment of all premiums for insurance contributing to the performance of this Agreement and shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not City is an insured under the policy.
6. Claims made policies will be accepted for professional and hazardous materials liability coverage and such other risks as are authorized by City. All such policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of no fewer than two (2) years. If provided an option, Contractor agrees to purchase the extended reporting

period coverage on cancellation or termination unless a new policy is effected with a retroactive date, including at least the last policy year.

7. Certificates of Insurance evidencing claims made or occurrence form coverage and conditions to this Agreement, as well as City's Agreement and description of work, are to be received and approved by City upon execution of this Agreement by Contractor and thirty (30) calendar days in advance of expiration of the insurance when applicable. All insurance certificates shall be received and approved by City before Contractor will be allowed to commence or continue work.
8. Notice of Accident (occurrence) and notice of claim shall be given to the insurance company and the Contract Administrator as soon as practicable after notice to the insured of any incident (occurrence) or claim.

The obligations of Contractor pursuant to this Section shall survive expiration or termination of this Agreement.

Failure to comply with any term of this Section is a breach of this Agreement and may result in termination by City of this Agreement at City's option.

37. INDEMNITY:

The Contractor shall indemnify City against any claims, actions, or suits, including court costs and reasonable attorneys' fees, to the extent caused by Contractor's negligent or willful misconduct in providing the services required by this Agreement. Upon obtaining knowledge of any matter giving rise to possible indemnification, the City shall notify the Contractor immediately. The Contractor shall have the right to defend or contest any such claim or demand in the name of the City. The City shall provide such cooperation in connection therewith as the Contractor may reasonably request and shall make available to the Contractor or its representatives all records and other materials reasonably required in such defense. So long as the Contractor is contesting or defending any such claim or demand in good faith, no amount shall be deemed to be due hereunder unless the City has been required by order of any court to pay any sum arising from the subject matter of the suit.

38. OWNERSHIP AND RISK OF LOSS:

Title and risk of loss to Solid Waste, Program Recyclable Materials, and Program Household Hazardous Waste and Electronics shall pass to Contractor when placed in Contractor's Collection vehicle. Title and risk of loss to Unacceptable Waste shall remain with the generator of such Unacceptable Waste.

39. **SEVERABILITY:**

Should any portion of this Agreement be deemed invalid or unenforceable to any extent, the parties hereto agree that such provision shall be amended to the minimum extent necessary to make such provision enforceable, and the remainder of this Agreement shall not be affected thereby.

40. **ATTORNEYS' FEES AND VENUE:**

In the event suit is filed by either party as a result of the performance or non-performance of the terms set forth in this Agreement, notwithstanding the provisions of Chapter 271 of the Texas Local Government Code, the prevailing party shall recover its attorney fees and court costs, with venue of any such action to be in Kaufman County, Texas.

41. **MOST FAVORED NATIONS:**

If during the term of this Agreement, Contractor enters into or amends a contract with another municipal customer providing each of the following: (i) an initial term at least as long as the initial term of this Agreement, (ii) uninterruptible service, (iii) Collection and Disposal of a volume of Solid Waste at least equal to the volume of solid waste under this Agreement, for lower than rates per this Agreement, then the City's applicable rates shall be reduced to the applicable rates of such municipal customer per request of the City.

42. **NOTICES:**

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (iv) by prepaid telegram, telex, or facsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. Notwithstanding anything contained herein to the contrary, any notice of default under this agreement must be both (i) mailed by Certified Mail, Return Receipt Requested and (ii) faxed to the alleged defaulting party to constitute proper notice hereunder. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) calendar days' notice to the other party in the manner set forth herein.

If to the City, at:

City of Forney
Director of Community Development
P.O. Box 826
Forney, Texas 75126

If to the Contractor, at:

With a copy to:

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

43. DISCRIMINATION PROHIBITED:

Contractor, in the execution, performance, or attempted performance of this Agreement, shall not discriminate against any person or persons because of sex, race, religion, color, or national origin. Contractor must be an equal opportunity employer.

44. APPROPRIATION; SOVEREIGN IMMUNITY:

The City hereby agrees and acknowledges that the non-appropriation provisions set forth in the Texas Constitution and Local Government Code are not applicable to this Agreement due to the nature of the services rendered by Contractor hereunder, and the City will not use such statute as a defense to payment hereunder. In addition, the City and Contractor acknowledge that this Agreement is subject to the provisions of Chapter 271 of the Texas Local Government Code, specifically including §§ 271.151 through 271.160 of that Code, and including the attorneys’ fees provisions of §271.159. Subject to the agreements and modifications of the parties herein with respect to the City’s waiver of immunity to suit, both parties agree that governmental or sovereign immunity is not a defense to suit or liability to enforce the terms of this Agreement, including actual, consequential and lost profit damages resulting from the City’s breach of this Agreement, and Contractor shall be entitled to sue the City for the City’s breach of this Agreement and collect all actual, consequential and/or lost profit damages arising from such breach. The parties further agree that the City waives the right to assert sovereign immunity in a breach of contract action involving the parties, and that all contractual damages, including recovery of consequential damages and/or loss profit, shall be available in litigation between the parties with the recovery of attorneys’ fees provided by TCPRC §38.01, et seq.

45. **ELIGIBLE DISASTER DEBRIS:**

Contractor and City understand and agree that also, in the event of a hurricane, tornado, major storm, natural disaster, Contractor shall have no obligation under this Agreement to Collect any Eligible Disaster Debris resulting therefrom, except as set forth in Agreement.

46. **BOYCOTT OF ISRAEL:**

Contractor represents, to the current actual knowledge of the individual signing this Agreement on behalf of Contractor as set forth on the signature page hereto (the “Contractor’s Officer”), in such Contractor’s Officer’s representative capacity on behalf of the Contractor, that, to the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable federal law, neither the Contractor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Contractor, as of the date of this Agreement, (i) boycotts Israel; or (ii) will boycott Israel during the term of this Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.

47. **FORM 1295:**

Submitted herewith is a completed Form 1295 generated by the Texas Ethics Commission’s (the “TEC”) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the “Form 1295”). The City hereby confirms receipt of the Form 1295 from the Contractor, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Parties understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Contractor; and, neither the City nor its consultants have verified such information.

[Signature Page to Follow.]

Executed as of ____ day of _____, 2020 and effective upon execution by all Parties. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument

CITY:

CONTRACTOR:

City of Forney, Texas

Anthony Carson, City Manager

By: _____

Attest:

Name: _____

Title: _____

Dorothy Brooks, City Secretary

Approved as to Form:

Jon Thatcher, City Attorney

EXHIBIT 1

CITY OF FORNEY
RATE SCHEDULE EFFECTIVE _____