

**AGREEMENT FOR
CITYWIDE SOLID WASTE COLLECTION AND RECYCLING SERVICES**

THE STATE OF TEXAS §

THE COUNTY OF TARRANT §

THIS FRANCHISE AGREEMENT FOR CITYWIDE SOLID WASTE COLLECTION AND RECYCLING SERVICES (THE “AGREEMENT”) IS MADE BY AND BETWEEN City of Keller, a municipal corporation of Tarrant County, Texas (“City”), acting by and through its duly authorized City Manager, and Community Waste Disposal (“Contractor”).

W I T N E S S E T H

WHEREAS, City and Contractor desire to enter into a contract for Contractor to provide full service Refuse collection and disposal services of Garbage, Recycling, Brush, and Solid Waste from residential and Commercial Premises within the corporate limits of City and all future annexation to City;

NOW, THEREFORE, for and in consideration of the Premises and mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, City and Contractor do agree as follows:

A G R E E M E N T

Article 1. Term

Subject to earlier termination as provided in this Agreement, the term of this Agreement shall be for a period of five (5) years, beginning September 1, 2020 and terminating August 31, 2025, with one (1) five-year renewal option upon the mutual agreement of both parties on or before May 31, 2025.

Article 2. Exclusivity of Contract Rights

Contractor shall have the sole and exclusive franchise, license, and privilege to provide any and all solid waste collection and residential recycling collection to include, but not limited to, the following services within the corporate limits of City:

- Residential Curbside Service
- Residential Backdoor Service
- Residential Senior Citizen Curbside Service
- Residential Senior Citizen Backdoor Service
- Residential Recycling Service
- Residential Door side Household Hazardous Waste and Electronics Waste Collection Service
- Special On-Call Brush Collection Service
- Commercial Curbside/Hand-load Service

- Commercial Front-Load Container Service
- Commercial Roll-Off Schedule Service
- Commercial Roll-Off Temporary Service
- Commercial Compactor Service
- Optional Small Business Recycling Service
- Construction Debris

In addition, Contractor shall at all times have the right of first refusal to the collection of Unacceptable Waste, dead animals, Stable Matter, and Hazardous Waste from Residential, Commercial, and Industrial Premises. Keller Independent School District campuses and facilities shall not be subject to this franchise agreement.

Article 3. Definitions

The following words, terms, and phrases, when used in this Agreement, shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning:

Acceptable brush: Tree, shrub, and bush trimmings that are bundled in lengths no more than four (4) feet and no more than fifty (50) pounds in weight.

Acceptable waste: Any and all waste that is solid waste, refuse, or residential garbage including acceptable brush, garbage, yard waste, and trash, as solid waste is defined under the laws of the United States and/or the State of Texas and/or the regulations promulgated thereunder, and that is acceptable for disposal in a Landfill, except for Unacceptable Waste, as defined herein. No garbage that produces noxious odors is allowed.

Agreement: The contractual agreement made and entered into by the city and the contractor for the collection, transportation, and/or disposal of solid waste, and/or the collection, transportation, and/or processing of recyclable materials.

Backdoor service: All handicapped or disabled customers, who have provided verification to the contractor from a physician as to their inability to carry containers to the curbside, may place containers at their front doorstep to be visible from the street, or at a location as may be determined by the contractor. The contractor shall not be responsible for entering garages or behind enclosed fences.

Biodegradable bag: bags, including brown paper kraft bags often used for Yard Waste, that can be decomposed by bacteria or the action of living organisms.

Brush: Tree, shrub, and bush trimmings.

Bulky waste: Solid waste that is too large, heavy, or bulky to be collected during normal garbage collection, including, but not limited to, acceptable brush, stoves, refrigerators (with verification that CFC components have been removed by a certified technician),

water tanks, hot water heaters, washing machines, other large household appliances, furniture, and materials resulting from minor remodeling; but, excluding construction debris, unbundled brush, dead animals, hazardous waste, or stable matter with weights or volumes greater than those allowed for containers. Nothing that constitutes unacceptable waste shall be considered bulky waste.

Bundle: Tree, shrub, and brush trimmings securely tied together forming an easily handled package not exceeding four (4) feet in length and/or fifty (50) pounds in weight.

City: The City of Keller.

Commercial hand collect unit: A retail or light commercial type of business that generates no more than one (1) cubic yard, or not more than six (6) plastic bags, of refuse per week.

Commercial premises: All premises, locations, or entities, public or private, including industrial premises, requiring refuse collection within the corporate limits of the city, that are not residential premises.

Commercial refuse: All bulky waste, construction debris, garbage, rubbish, and stable matter generated by a customer at a commercial premise; nothing that constitutes unacceptable waste shall be considered commercial refuse.

Community Clean-up Program: A program whereby the City assesses a monthly fee to residential customers to be applied towards clean-up programs within the community to include, but not limited to, storm debris pick-up, city-wide clean-ups, and educational and promotional activities.

Consumer Price Index (CPI-DFW): The revised Consumer Price Index for the Dallas/Fort Worth Metropolitan Area (CPI-DFW), twelve-month average for all items as published by the United States Department of Labor, Bureau of Labor Statistics, Region 6. In the event the United States Department of Labor Statistics ceases to publish the CPI, the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the United States dollar as may then be available so as to carry out the intent of this provision.

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

Container: A receptacle constructed of plastic, metal, or fiberglass; and having handles of adequate strength for lifting. The mouth of the container shall have a diameter greater than, or equal to, that of the base. Container may also be a plastic garbage bag or sack.

Contract documents: The request for qualifications and proposals, instruction to the contractors, the contractor's proposal, general specifications, the contract performance

bond, and any addenda or changes to the foregoing document agreed to by the City and the Contractor, and the agreement signed by the Contractor and City.

Contractor: Such private firm designated by the City for the collection, transportation, and/or disposal of the solid waste and recyclable material collection and processing.

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

Debris: Dirt, concrete, rocks, bricks, lumber, plaster, sand or gravel, other waste building materials, automobile frames, or large, uncut dead trees.

Disposal site: See landfill (sanitary).

Electronics Waste (E-Waste): Used consumer electronic equipment that is near or at the end of its useful life.

Garbage: 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.

Hazardous waste: Any waste characterized, identified, listed, or regulated as hazardous by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. Section 1002, et seq., as amended, or regulated as toxic under the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, et seq., and regulations promulgated thereunder, or applicable by state law concerning the regulation of hazardous or toxic wastes.

Household Hazardous Waste: Household products that contain corrosive, toxic, ignitable or reactive ingredients, including paints, cleaners, oils, batteries, pesticides, CFS, fluorescent batteries, etc. that is near or at the end of its useful life.

Landfill: A lawfully permitted facility where solid waste is lawfully disposed of by the Contractor.

Medical waste: Solid waste generated by healthcare-related facilities and associated with healthcare activities, not including garbage or rubbish generated from offices, kitchens, or other non-healthcare activities. The term includes special waste from healthcare-related facilities, which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps, as those terms are defined in 25 TAC §1.132 or any successor. The term does not include waste produced on farmland and rangeland as defined in Agricultural Code, § 252.001(6) or any successor, nor does the term include artificial, nonhuman materials removed from a

patient and/or requested by a patient, including, but not limited to, orthopedic devices and implants.

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

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

Recyclable materials: Commodities collected by the contractor, which can be sold for processing and use or reuse including, but not limited to, newsprint, magazines, catalogs, copy paper, office paper, plastic containers (#1, #2, #3, #4, #5, and #7 PET and HDPE), glass containers, aluminum cans, metal (tin) cans, and household paper products to include junk mail, envelopes, cereal boxes, cardboard, chipboard, and telephone books. Recyclable materials are not solid waste; however, recyclable materials may become solid waste at such time, if any, as abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

Recycling: A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete, are collected, separated, ground, or processed and returned to use in the form of raw materials used in the production of new products or for any beneficial purpose. 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.

Recycling container: A plastic receptacle with an attached waterproof lid, imprinted with the Contractor's logo, and with a minimum capacity of sixty-five (65) gallons, for the purpose of curbside collection of recycling commodities.

Refuse: Residential and commercial bulky waste, construction debris, and stable matter generated at residential or commercial premises. Refuse excludes debris not included in definitions construction debris and unacceptable waste.

Residential solid waste: All acceptable waste generated by a customer at a residential premise, excluding unacceptable waste and debris, but including acceptable brush and bulky waste.

Residential premises: A dwelling within the corporate limits of the city occupied by a person or group of persons comprising not more than four (4) families. A residential premise 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, consisting of more than four (4) units, shall be treated as a residential

premise, except that each single-family dwelling within any such residential premises shall be billed separately as a residential premises.

Rubbish: 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, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and the like materials which will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit.)

Special waste: Waste that is defined as such by applicable state or federal regulation and which because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or environment. Special waste shall include (a) waste from a non-residential source, (b) dead animals, (c) containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.), (d) waste transported in a bulk tanker, (e) liquid waste, (f) sludge waste, (g) stable matter, (h) waste from an industrial process, (i) waste from a pollution control process, (j) residue and debris from the cleanup of a spill or release of a chemical, and (k) any other waste which because of its quantity, concentration, frequency of disposal, required disposal procedures, regulatory status, or physical, chemical, infectious, or other characteristics jeopardizes or may jeopardize the environmentally sound operation of the landfill, as determined by the contractor in its sole discretion.

Solid waste: All non-hazardous (as defined by the Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA] and other applicable laws) and non-special (see Special Waste definition) solid waste material including any unwanted or discarded waste material in a solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, and community and institutional activities; including, but not limited to: garbage, ashes, refuse, rubbish, yard waste (including brush, tree trimmings, Christmas trees), discarded appliances, and home furniture and furnishings. The term does not include: (a) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Water Code, Chapter 26; (b) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; (c) 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 the Natural Resources Code; (d) special waste, (e) medical waste, or (f) hazardous waste; provided that such material must be of the type and consistency to be lawfully accepted at the landfill under the applicable Federal, State, and local laws, regulations, and permits governing each.

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

Yard Waste: Grass, leaves and brush from general yard maintenance.

Unacceptable waste: Any and all waste, the acceptance and handling of which by the contractor or the disposal of which in a landfill would cause a violation of any landfill permit or applicable law or which is prohibited by applicable laws, cause substantial damage to all or any portion of the landfill or any improvements thereon or equipment used in connection therewith, the contractor's equipment or facilities, or present a substantial danger to the health or safety of the public or the contractor's or city's representatives, agents, or employees, including (without limitation) hazardous waste, medical waste, special waste, asbestos, brush which is not considered acceptable brush (tree, shrub, and bush trimmings that are bundled in lengths no more than four (4) feet and no more than fifty (50) pounds in weight), and refrigeration appliances that have not had CFC's removed by a certified technician. Unacceptable waste also includes waste which is prohibited from disposal at the landfill by the contractor including tires, concrete, and bulk petroleum or chemical products or by-products; liquid waste, as defined herein, and septic tank pumping and grease and grit trap wastes, sludge waste, including water supply treatment plant sludges and stabilized and/or unstablized sludges from municipal or industrial wastewater treatment plants, or dead animals and/or slaughterhouse waste, except for animals euthanized under authority and direction of the city.

Article 4. Implementation Plan

Contractor shall submit a written Implementation Plan no later than July 1, 2020 to the City for review (email submission acceptable). City staff shall work with Contractor to approve informational materials to Residential and Commercial Customers. Contractor shall make a representative available to meet with City as requested to discuss implementation logistics and communications.

Article 5. Types of Collection

1. Residential Collection: Contractor shall provide curbside or backdoor collection service for residential Solid Waste (including Acceptable Brush) twice per week on a schedule to be presented by the Contractor in writing for review and consideration by the City. Such schedule must not include weekends and must include recycling to occur on the same day as a regular solid waste collection day. Residential collection shall begin no earlier than 7:00 a.m. and shall not extend beyond 7 p.m. without notification to the City.

Contractor shall collect up to four (4) 95-gallon resident-provided containers and/or twenty (20) bags of trash per collection. On residents' second collection day of each week Contractor shall also collect up to two (2) cubic yards of bulky waste or bundled brush.

The residential collection schedule shall include a Yard Waste program where Contractor shall collect up to twenty (20) total bundles or biodegradable bags of Yard Waste and deliver them to a composting facility. Yard Waste collection shall occur on Mondays and Tuesdays and must coincide with a regular solid waste collection day. City agrees to not unreasonably withhold approval of such schedule.

Acceptable brush, including Yard Waste placed in biodegradable bags, placed out for collection on Thursdays and Fridays shall be picked up as part of regular garbage service and disposed of at the landfill.

Residential collection shall include seasonal curbside collection of Christmas trees. The City will encourage resident with live trees to remove all lights, tinsel and other decorations so that the trees may be collected as part of the Yard Waste collection. All other trees shall be collected as part of normal garbage services.

City shall bill Residential Customers according to the approved rates, retain all franchise fees, and remit all appropriate sales tax to the State Comptroller's Office. See Exhibit A – Rate Table for rate detail. City shall pay Contractor based on the set rate received on a monthly basis. Contractor shall be entitled to payment on all collections directly relating to services provided.

Contractor shall be required to pick up all Acceptable Waste generated from a Residential Premise, provided the same is properly prepared, bagged, or stored for collection in Garbage Containers, or properly bundled, although Bulky Waste will not be required to be in Garbage Containers. Contractor shall also be required to pick up all Acceptable Brush and tree stumps during the regular residential collection frequency provided that they are prepared according to specifications. At Customer's request, Rubbish, Brush and tree stumps that are not contained in Garbage Containers or are not prepared as Acceptable Brush and placed for collection in a Bundle or a boxed Bundle, may be collected and disposed of by Contractor for a special haul fee mutually agreed upon by Contractor and such Customer. The special haul fee will be defined as a specific cubic yard measurement. See Exhibit A – Rate Table for fee information.

2. Commercial Collection: Contractor shall provide for the collection of Commercial Solid Waste from Commercial Premises and, in certain instances from residential premises when commercial activities including, but not limited to, new construction or re-modeling are occurring, according to requirements of City and at rates approved by City. Collection must be conducted in accordance with all City codes and regulations and shall occur no earlier than 6 a.m. at commercial or industrial premises that are adjacent to residential areas.

Commercial service charges will be determined by size of Container requested and frequency of pick up. Tonnage or weight has no bearing in charges for collection of Commercial waste serviced in front load containers. Where Contractor determines that hauling an individual roll off container will cause the gross vehicle weight to exceed maximum license limits as approved by the State of Texas, Contractor shall give notice

to the Customer and adjust size of container and/or frequency of service to achieve compliance with GVW limits. Customer shall be responsible for charges for such changes.

Collection service shall be at least once per week to maintain the Commercial Premises free of accumulation of waste. If collection is from a Commercial Container, that Container should be located on a concrete pad to accommodate collection equipment. City shall be the sole determinant of acceptable dumpster pads, locations, and screening, excluding roll-off's. Contractor shall bill regular and temporary Commercial front-load Customers, roll-off Customers and Commercial hand load Customers, remit all franchise fees to City on a monthly basis with a report on billings and collections, and remit all appropriate sales tax to the State Comptroller's Office. Contractor shall pay franchise fees to City based on the set rate received on a monthly basis. City shall be entitled to franchise payments on all collections directly relating to services provided. Contractor may, with prior notification to City Manager, discontinue service for failure to pay delinquent accounts. City shall pursue all legal means, including the disconnection of water service, to ensure payment to Contractor and in an effort to maintain the health and safety of the community. Contractor agrees to collect and remit all appropriate sales taxes on services to all regular Commercial front-load and roll-off Customers to the State Comptroller's Office.

City may require additional capacity or frequency of collections to ensure sanitary conditions are maintained on Commercial Premises. In the event City deems current frequency does not ensure sanitary conditions and the Commercial Customer is asked to alter its Container size and/or frequency of pick up, Contractor shall be compensated additional charges by Commercial Customer for additional capacity or frequency at rates approved by City.

Contractor may lease Containers for waste storage to the owner or occupant of Contractor's Commercial, institutional, and industrial Customers. In the event any such lease agreement is entered into, Contractor shall lease the Container at the rate approved by City. Such Containers shall be equipped with suitable covers to prevent blowing or scattering of waste and shall be maintained in a sanitary and safe condition. Such Containers shall be clearly marked with Contractor's name and telephone number in letters not less than two inches (2") in height. Such Containers shall be maintained in City approved single color or color scheme.

It is specifically understood and agreed that Contractor shall make lease Containers available to the owner or occupant of any Premises within the corporate limits of City, excluding Residential Premises and Commercial hand-load Customers, for waste storage and collection of Acceptable Waste at the rates established for same by ordinance, and subject to the following requirements:

- All Contractor-supplied Containers shall be equipped with suitable covers to prevent blowing or scattering of waste while being transported for disposal of their contents.

- All such Containers shall be cleaned and maintained regularly by Contractor so as to be in good repair, and of a good appearance.
- All such Containers shall be clearly marked with Contractor's name and telephone number in letters not less than two (2) inches in height.
- Contractor shall reimburse the owner of any Premises where such Containers are placed for any damage caused by Contractor's employees to screening fences, buildings, gates, or other improvements on property served by Contractor so long as the Commercial Customer does not create a condition that makes damage unavoidable; provided however, that Contractor shall not be responsible for damage to curbs, sidewalks or paved surfaces caused by the weight of Contractor's vehicle.
- Containers and enclosures for Containers shall be located in a manner that allows for safe access and sufficient ingress and egress to such enclosure or Container. City is responsible for designating where Containers will sit at Commercial Premises and must ensure that such location allows such safe access and sufficient ingress and egress by Contractor.

3. Residential Curbside Recycling: Contractor shall provide each Residential Premise up to two (2) Recycling containers with attached lid for Recyclable Materials. The charge for collecting up to two (2) Recycling Bins shall be the same as for the collection from a single Recycling Bin. Contractor shall provide City a supply of 18-gallon Recycling bins and lids for distribution at Town Hall and shall make weekly deliveries of 65-gallon recycling containers to residents upon request.

Contractor shall provide a single-stream recyclable collection service. Residents will not be required to separate recyclable materials by type of material. Contractor shall provide Recycling service to each Residential Premise once per week based on a mutually agreeable schedule that includes recycling pick-up to occur on the same day as a regular solid waste collection day. City agrees to not unreasonably withhold approval of such schedule. The collection of the Recyclable Materials shall occur at the curb. Contractor shall collect Recyclable Materials set out for collection outside the normal Recycling Bin when necessary. An example includes extra newspapers bundled and/or bagged where volume is greater than Recycling Bin size. Contractor shall also provide City a Recycling report detailing volume collected on a monthly basis. City will accept percent of diversion for reporting.

At a minimum, residential recycling collection should include all materials listed under the definition of Recyclable Materials under this Agreement.

4. Household Hazardous Waste (HHW) and Electronics Waste (E-Waste) Collection: Contractor shall offer residential monthly door side pickup of Household Hazardous Waste and Electronics Waste on an on-call basis, at a frequency of no more than once per month per household. Contractor shall deliver the necessary collection bags for HHW and E-Waste materials directly to the resident via mail or other courier service. Collection shall be limited to acceptable HHW and E-Waste items listed in Exhibit B of this agreement.

5. Optional Small Business Recycling: Contractor shall offer optional recycling services to small businesses. Collection shall be made on a schedule agreed upon by Contractor and Commercial customer, not to exceed once per week. Businesses that elect to participate in recycling services will be required to place recycling containers for curbside collection within twenty feet (20') of where the collection truck can pull up. See Exhibit A – Rate Table.

At a minimum, recycling services for businesses that elect to pay for and receive said service should include all materials listed under the definition of Recyclable Materials under this Agreement.

Contractor shall be responsible for transporting the Recyclable Materials to a processing site and must have established buyers or markets for the Recyclable Materials. Contractor shall identify the buyers of the Recyclable Materials upon request by City. Contractor shall be totally responsible for the processing and marketing of all Recyclable Materials collected pursuant to this Agreement and shall participate in recycling revenue sharing with the City.

The Contractor's revenue sharing program factors market value of material, a known component percentage of the materials, and the per ton processing fee. The commodities pricing is determined by highly respected national journals that regularly determine the value of each material to be collected from the City of Keller residents. This price is applied to the model in Exhibit C of this Agreement to determine the overall value of the tonnage collected from within the City of Keller. Under this revenue sharing program the City will never be required to pay the Contractor regardless of how low the material values may go. All calculations will be contract-to-date taking into account any accumulated shortfalls. Remittance to City will be on a quarterly basis. See Exhibit C – Recycle Revenue Sharing Model for detailed calculation methodology.

- **Non-Collection of Recyclable Materials**

If Contractor's employees determine that the Recyclable Materials set out by the Customer fall outside the definition in this Agreement of what is acceptable Recycling Materials or include Unacceptable Waste, Contractor may leave the inappropriate materials in the Recycling bin or, if Customer left the materials outside the Recycling Bin, outside the Recycling Bin. A sticker shall be attached to the Recycling bin or the materials explaining the reason the materials were rejected. Contractor will not be required to collect Recyclable Materials mixed with Solid Waste normally collected by Solid Waste collecting crews.

Article 6. Duties and Obligations of Customers

City agrees to establish or retain by ordinance requirements as follows:

- All Residential Waste shall be placed in a receptacle constructed of plastic, metal, or fiberglass; and having handles of adequate strength for lifting. The

mouth of the container shall have a diameter greater than, or equal to, that of the base. Container may also be a plastic garbage bag or sack. Containers and/or Recycling bins shall be placed either at the curbside on the street bearing the Customer's address or, for Backdoor Service, at their front doorstep to be visible from the street, or at a location as may be determined by Contractor and accessible without entering a gate. Contractor shall not, or be responsible for, entering garages or behind enclosed fences. Contractor must be notified by the residential Customer prior to any change in acceptable locations.

- Waste, Recycling bins, Bulky Waste, Yard Waste and/or Acceptable Brush shall be placed at curbside not later than 7:00 a.m. on the day of scheduled collection, if they are to be picked up; however, no materials shall be placed at curbside prior to 7 p.m. the evening before the day of pickup.
- Yard Waste must be placed in biodegradable bags or bundled according to the guidelines for Acceptable Brush for collection on weekly Yard Waste Days.
- No waste shall include Unacceptable Waste.
- All waste mixed with water or other liquids shall be drained before being placed into a Container.
- To the fullest extent possible, Recyclable Materials should be protected by the Customer against contaminants that require disposal at a landfill rather than Recycling.
- If any Brush cannot be placed in disposable Containers, it shall be cut in lengths no more than four feet (4'), bundled and stacked at curbside. Weight of each individual bundle should not exceed fifty (50) pounds.

Article 7. Duties and Obligations of Contractor

It is expressly understood and agreed that Contractor shall collect and dispose of all Acceptable Waste, Recyclable Materials, Bulky Waste, and/or Acceptable Brush accumulated on Premises within the corporate limits of City where a charge for such service is made by City. Contractor shall, at its own expense, furnish the Landfill site, personnel, and equipment to collect and dispose of waste as described herein and shall establish and maintain in an efficient and businesslike manner such daily routes and special schedules as may be necessary to fulfill the waste service requirements set forth in this Agreement.

The holidays listed below shall be observed by the Contractor, at Contractor's choice, and no collection shall be made on those holidays. On or before Contractor's Annual Review, which shall be held no later than the last day of February each year, Contractor shall submit to City staff a written plan or schedule for addressing missed collections due to holidays for the upcoming year to allow time for notification to Residential and Commercial Customers. The following days are typical legal holidays for the purposes of this Agreement:

- New Year's Day
- Independence Day
- Thanksgiving Day

- Christmas Day

Contractor shall present an Annual Review of operations to a committee of Council Members and City staff, no later than the last day of February beginning in 2021.

All materials Contractor creates that reference City policies or events relating to services defined in this Agreement, including, but not limited to, brochures, award applications, community presentations, electronic and hard copy mass-notifications shall be approved by City prior to distribution.

Article 8. Special Provisions

1. Regular Service for City Owned or Operated Facilities (included in base rate): Contractor shall make, at no charge to City, the collection, transportation, and disposal of waste accumulated by City at City owned or operated facilities. Regular service shall include the free provision, collection, and hauling of dumpsters and/or roll-off Containers as requested by City for special events and ongoing or special projects. Contractor shall furnish temporary 80-100 gallon garbage containers for city-sponsored special events at no charge. In the event that City's Containers are full and are in need of a special disposal, Contractor shall accommodate City when possible. See Exhibit D for City Facilities locations and service table and list of annual special events.

2. Recycling Services at City facilities: Contractor shall provide carts (minimum 65 gallon; approximately twenty (20) carts total) for each City building for employee participation in single stream recycling equivalent to residential service with once a week pick-up by Contractor.

3. Storm Debris Management Program: In the event of a major storm or other natural disaster beyond the City's control, the Contractor shall have the right of first refusal to provide storm debris management at the request of the Office of the City Manager as presented in Exhibit A – Rate Table.

Contractor and the City agree that Contractor does not have the exclusive right to clean up the material generated within the City as a result of a Storm Event as the City may choose to augment the collection by the use of City forces and/or another contractor to expedite the removal of Storm Event debris.

4. Open Landfill/Transfer Station: Contractor shall provide free Landfill/Transfer Station disposal to all City residential Customers on the first Saturday of each month, excluding legal holidays, upon presentation by such Customers of their most current water bill and a valid driver's license. City shall have free dumping privileges at Contractor's transfer station during the term of this Agreement. All materials to be disposed of must not fall outside of any regulations pertaining to hauling/disposal of waste.

5. Annual Leaf Collection: Contractor shall coordinate a seasonal leaf collection program each year to address the high volume of leaves generated on residential

premises. The annual program should include access for Residential Customers to Contractor's Transfer Station for the purpose of dropping off unlimited amounts of yard waste upon presentation of Customer's most current water bill and a valid driver's license. Yard waste dropped off at Contractor's Transfer Station as part of the annual leaf program shall be delivered to a composting facility. Contractor should provide city staff a written plan for the annual leaf collection each year during the Annual Review and shall work with city staff each year to evaluate the success of the program in meeting the community's collection needs. The annual written plan should include, at minimum:

- Six (6) special Saturday collection dates in late fall/early winter designated for curbside leaf collection from residents who sign up via the city website by the deadline agreed upon by City and Contractor. During each of the weeks preceding the Saturday collections residents shall, in addition to the quantities and volumes described under Article 4, Section 1 of this agreement, be allowed to place out for collection ten (10) bags of leaves on their first collection day of the week and twenty (20) bags of leaves on their second collection day of the week.
- Specific dates on which residential customers may drop off Yard Waste at Contractor's Transfer Station. During this time period all Yard Waste delivered by City's residential customers shall be composted.

Article 9. Routes of Collection

Collection routes shall be established by Contractor and approved by City. City shall approve all routes of residential and Commercial collection. City shall not unreasonably withhold approval. Contractor shall provide City a copy of maps indicating the routes used in the collection of waste from all residential Customers. City has the right to reasonably reject and request modification of routes, and updates on routes, of Contractor if the need arises.

Article 10. Customer Service & Complaints

Contractor must have an office within the Dallas-Fort Worth Metropolitan area. Contractor agrees, at its own expense, to keep a toll-free local (817 area code) telephone number answered (mechanical answering machine is not acceptable) from 7:30 A.M. to 5:30 P.M., Monday through Friday; and 8:00 A.M. to 2:00 P.M., on Saturday, excluding legal holidays, for the purpose of handling complaints and other calls regarding Solid Waste and/or recyclable collection service. This number shall be answered by at least two (2) customer service representatives dedicated to the City of Keller who shall be the only representatives answering and responding to calls from Keller residential customers. These representatives shall have authority to represent Contractor in its relations with the public and shall maintain a service guideline document that shall be shared with City of Keller staff to maintain uniform communication with residents. Any desired changes to this document shall be agreed to by both parties in writing. Contractor shall also maintain voicemail and website access for complaints after 5:30 p.m.

Contractor shall also provide City the phone numbers of at least three (3) Contractor representatives who can be contacted for after-hours emergencies. Complaints received from residential or commercial customers prior to 12 p.m. on any day for a missed or incomplete pickup shall be collected that same day. Complaints received after 12 p.m. on any day for a missed or incomplete pickup shall receive priority and such garbage, recyclables, Household Hazardous Waste or Electronics Waste which are the subject of the complaint shall be collected by 12 p.m. the following day.

Contractor agrees to designate and maintain a route supervisor for the City, who may be reached for after-hours emergencies and other special circumstances and shall have authority over residential and commercial routes. The route supervisor shall be required to check in with City of Keller staff at an in-person meeting not less than twice per month to review any concerns or ongoing issues.

Should a dispute arise between City, Contractor, and/or Customer as to whether Contractor actually failed to make a collection (missed a pick up) the decision of City shall be final, and Contractor shall abide by such decision. City, upon request, shall be given access to Residential and Commercial Customers' billing history and transactions and any other records relating thereto.

It is specifically understood and agreed that if the Customer fails to timely place a Container out, maintains improper or inadequate Containers for the nature, volume, or weight of Acceptable Waste to be removed from the Premises, or places improper Bundles or volumes of waste for collection, or places Hazardous Waste, Special Waste, or other Refuse in violation of this Agreement, Contractor may refrain from collection of all or a portion of such Refuse that is rendered not collectable due to any of the aforementioned circumstances. Contractor shall notify both City and the Customer of the reason for any such non-collection (unless such non-collection is due to the Customer's failure to timely place the waste for collection). Contractor's notice to the Customer shall be in writing, attached to the Container or the front door of the residence or Commercial establishment, so that it is highly visible to the customer, and shall indicate the nature of the violation and the correction required in order that such Solid Waste may then be collected at the next regular collection date.

Article 11. Charges for Non-Performance

In the event Contractor shall fail to perform any of the obligations set forth, then, in addition to any and all of the remedies set forth in this Agreement, Contractor agrees to pay to the City the following liquidated damages:

- i. A charge of \$50 shall be made for each missed collection at a single address when a Residential or Commercial Customer reports a missed collection provided that:
 - a. The missed collection is reported not later than 48 hours following the end of the scheduled collection date;

- b. Two or more missed collections have been reported at the same address within the 90-day period prior to the missed collection for which the charge is to be assessed.
- ii. A charge of \$100 shall be made if Contractor fails to clean up any spill or leak of Waste Material caused by Contractor, Contractor's vehicles or Contractor's employees or subcontractors within twenty-four (24) hours of receipt of written notice from City of such spill or leak; provided, however if the nature of the leak or spill is such that completion of the cleanup cannot reasonably be completed within 24 hours of notification, or inclement weather prevents proceeding with the cleanup, Contractor shall be provided reasonable additional time to complete the clean up properly.
- iii. A charge of \$50 per call shall be assessed for residential complaint calls received by City in excess of 50 per month
- iv. The City may levy penalties against the Contractor for not providing records to the City as required by this Agreement. The penalty shall be \$100.00 per week, per record that is not provided to the City in accordance with this Agreement.

Contractor shall remit payment to City for all charges incurred and invoiced by the City under this Article 11 within thirty (30) days of the date of the City's invoice. The Parties agree that the City may deliver the foregoing invoices through email or other electronic means as agreed to by the Parties.

To prevent misunderstanding and litigation, City Manager, or designee, shall decide any and all questions which may arise concerning the quality and acceptability of the work and services performed, the sufficiency of the performance, and the acceptable fulfillment of this Agreement on the part of Contractor; and City Manager, or designee, shall determine whether or not the amount, quantity, character, and quality of the work performed is satisfactory. City Manager, or designee, shall make such explanation as may be necessary to complete, explain, or make definite the provisions of this Agreement and his reasonable findings and conclusions shall be final and binding on both parties. If at any time during the term of this Agreement performance of Contractor does not meet the standards set forth herein, Contractor, upon notification by City, shall increase the forces, tools, or equipment as needed to properly perform the Contract. The failure of City to give such notification shall not relieve Contractor of the obligation to perform the work at the time and in the manner specified by this Agreement. Contractor and City agree that City Manager, or designee, will be the final authority for the approval of charges for any service not contemplated by this Agreement and for the disposition of any dispute regarding performance between City, Contractor, and any Customer.

Article 12. Collection-Equipment

Contractor, at its sole cost and expense, agrees to furnish all trucks, equipment, machines, and labor which are reasonably necessary to adequately, efficiently, and properly collect and transport waste from accounts serviced by Contractor in accordance with this Agreement. No trucks assigned to this Agreement shall be older than an age of ten (10) years.

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

Due to street size variations in City, Contractor shall provide equipment that will accommodate such public streets and alleys. Special collections shall be made using appropriate equipment. Contractor shall, if necessary, hand-clean all spillage resulting from its collection activities. Damage caused by collection equipment such as spillage, broken curbs or sidewalks, and ruts off pavement shall promptly be repaired or replaced at Contractor's expense in the case of negligence. Contractor shall be responsible for damage to curbs, sidewalks or paved surfaces caused by the weight of Contractor's vehicles.

All motor vehicles used in performance of the obligations herein created shall be clearly marked with Contractor's name, telephone number, and unit number legible from one hundred fifty feet (150'). No advertising, except the company logo, shall be permitted on vehicles without prior City approval. All collection equipment shall be maintained in a safe and working condition throughout the term of this Agreement. Such vehicles shall be maintained through a regular preventative maintenance program and painted as often as necessary to preserve and present a well-kept appearance. Contractor shall furnish City a list of all equipment to be used fulfilling this Agreement and shall update that list as may be requested by City. City may inspect Contractor's vehicles at any reasonable time that does not interfere with Contractor's operations ensure compliance of equipment with this Agreement; provided, however, that Contractor shall have no obligation to assemble vehicles for any such inspection. Vehicles are to be washed on the inside and sanitized with a suitable disinfectant and deodorant a minimum of once a month. Such vehicles shall be washed and painted or repainted as often as necessary to keep them in a neat and sanitary condition.

Contractor may lease Containers for waste storage. In the event any such lease agreement is entered into, Contractor shall lease the Container at the rate approved by City. Such Containers shall be equipped with suitable covers to prevent blowing or

scattering of waste and shall be maintained in a sanitary and safe condition. Such Containers shall be clearly marked with Contractor's name and telephone number in letters not less than two inches (2") in height. Such Containers shall be maintained in City approved single color or color scheme.

Article 13. Spillage

Contractor shall not be responsible for scattered Refuse unless the same has been caused by its acts or those of any of its employees; in which case, all scattered Refuse shall be picked up immediately by Contractor. A fork, push broom, and a scoop-type shovel shall be maintained on each truck for cleanup activity. Contractor shall, if necessary, hand clean all spillage resulting from its collection activities. City, at its discretion, may require Contractor to pressure wash a particular area following a spillage event, with a water reclaiming system. City may also inspect Contractor's vehicles at any time with reasonable notice, to ensure compliance of the equipment with this Agreement, or require equipment replacement schedules to be submitted to City. Contractor will not be required to clean up or collect loose Refuse or spillage not caused by the acts of its employees, but shall report the location of such conditions to the designated contact of City so that proper notice can be given to the Customer at the Premises to properly contain Refuse.

Contractor shall not be required to clean up extra Refuse surrounding a Commercial container, or placed within a Commercial container enclosure, provided that the extra Refuse is not the result of a missed collection. Should such Commercial spillage occur, City may require the Commercial Customer and Contractor to increase the frequency of collection of the Commercial Customer's Refuse or require the Customer to utilize a Commercial Container with a larger capacity, and Contractor shall be compensated for such additional services.

Article 14. Vicious Animals

Employees of Contractor shall not be required to expose themselves to the dangers of vicious animals in order to accomplish Refuse collection in any case where the owner or tenants have animals at large, but Contractor shall immediately notify City, in writing, of such condition and of his inability to make collection.

Article 15. Disposal of Refuse

It is specifically understood and agreed that Contractor shall be responsible for disposing of all acceptable waste collected, in accordance with the terms and conditions of this Agreement, from Premises in the corporate limits of City, and shall not in any event dispose of same within the corporate limits of City. All disposal practices shall be done in compliance with rules stipulated by the Texas Commission on Environmental Quality (TCEQ) and/or the Environmental Protection Agency (EPA). Contractor shall deliver all Household Hazardous Waste to a facility legally permitted to accept such waste.

Article 16. Reporting Requirements

Contractor shall provide the reports listed below to the city on a daily basis. Reports shall include the property address, date reported by customer and date resolved.

- Commercial Open and Outstanding Grievances
- Residential Open and Outstanding Grievances
- Commercial Recurring Grievances
- Residential Recurring Grievances
- Residential Non-compliant list

The Commercial and Recurring Grievances reports shall include all addresses that report more than one (1) grievances within the 90-day period preceding the report date. Daily reports should include any inquiries or complaints reported by the city to Contractor, including those regarding the city facilities listed in Exhibit C.

Contractor shall provide City with monthly reports for Residential Garbage Collection, Recycling, Yard Waste, Household Hazardous Waste and Electronics Waste Collection within two (2) weeks of the end of the reporting period. This report should include the tonnage of all materials collected for the month. Recycling reports should include a percent of diversion.

Contractor shall provide the City with a monthly report of residential and commercial customer contacts regarding service issues within two (2) weeks of the end of the reporting period. This report shall also include the city facilities listed in Exhibit C. Customer complaint reports should include the total number of complaints, number of complaints based on service provided, and percentage of complaints received in relation to total number of customers.

All reports should provide monthly as well as annual cumulative totals. A summary of all required reports should be presented by Contractor during the Annual Review.

Article 17. Compliance with Laws

Contractor, its officers, agents, employees, contractors, and subcontractors shall abide by, and comply with, all federal, state, and local laws. It is agreed and understood that, if City calls the attention of Contractor to any such violations on the part of Contractor, its officers, agents, employees, contractors, or subcontractors, then Contractor shall immediately desist from and correct each violation.

Article 18. Discrimination Prohibited

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

Article 19. Bond

1. Performance Bond: As security for the services as stated herein, Contractor shall provide City a Two Hundred Fifty Thousand Dollar (\$250,000) performance bond that is annually renewed prior to the end of each covered year. Contractor shall pay any and all premiums for the performance bond described above. A certificate from the surety showing that the bond premiums are paid in full shall accompany the bond. Such certificate shall be submitted to City with the bond on an annual basis. The surety on the bond shall be a duly authorized corporate surety to do business in the State of Texas.

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

Article 20. Insurance

SECTION A. Prior to the approval of this Agreement by City, Contractor shall furnish a completed Insurance Certificate to City, which shall be completed by an agent authorized to bind the named underwriters/insurance carriers to the coverages, limits, and termination provisions shown thereon. City shall have no duty to pay or perform under this Agreement until such certificate has been delivered to City.

SECTION B. The City reserves the right to review the insurance requirements of this section during the effective period of the Contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

SECTION C. Subject to Contractor’s right to maintain reasonable deductibles, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor’s sole expense, insurance coverage written by companies licensed or approved by the State of Texas, in the following types and amounts:

| | TYPE | AMOUNT |
|----|---|--|
| 1. | Workers’ Compensation and Employer’s Liability | Statutory \$100,000/500,000/100,000 |

| | TYPE | AMOUNT |
|----|---|--|
| 2. | Commercial General (Public) Liability insurance including coverage | Combined single limit for bodily injury and property damage in the amount of |

| | |
|---|---|
| for the following: a. Premises Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Medical Payments | \$2,000,000 per occurrence or its equivalent. |
|---|---|

| | TYPE | AMOUNT |
|----|--|--|
| 3. | Comprehensive Automobile insurance, including coverage for loading and unloading hazards, for: a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles | Combined single limit for bodily injury and property damage in the amount of \$5,000,000 per accident or its equivalent. |

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

- A. Show City and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- B. Provide for thirty (30) days notice to City for cancellation, non-renewal, or material change; and ten (10) days' notice for workers' compensation coverage;
- C. Contractor agrees to waive subrogation against City, and its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance, except to the extent arising out of the negligence of City or its officers, employees;
- D. For coverages that are only available with claims made policies, the required period of coverage will be determined by the following formula: Continuous coverage for the life of the contract, plus one (1) year (to provide coverage for the warranty period) and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period; and
- E. Provide for notice to City at the address shown below by registered or regular mail:

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

Office of the City Manager

City of Keller
P.O. Box 770
Keller, TX 76244-0770

SECTION C. Approval, disapproval, or failure to act by City regarding any insurance supplied by Contractor shall not relieve Contractor of full responsibility or liability for damages and accidents as set forth in this Agreement. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate Contractor from liability.

Article 21. Consideration

City shall provide billing and collection services to and from all residential accounts, and shall transmit funds collected (city billings less accounts written off), less the 8.28% franchise fee, to Contractor on a monthly basis, commencing within thirty (30) days after the effective date of this Agreement. City agrees to collect and remit all appropriate sales taxes on residential collection services to the State Comptroller's Office. City agrees to use reasonable diligence in the collection of each account, but does not guarantee its collection. Accounts may be written off as uncollectible after remaining unpaid for six (6) months or longer. Contractor reserves the right to collect those accounts deemed uncollectible by City. City will provide this information to Contractor monthly. After an account is unpaid for two (2) months, service is not required. City shall have the right to credit accounts in the appropriate amount, if the Customer's regularly scheduled pick up is missed, upon the final decision of City Manager, or his designee.

Contractor shall bill regular and temporary Commercial front-load, roll-off and hand-load customers and remit all franchise fees to City on a monthly basis with a report on billings and collections. City shall have the right to audit Contractor's list(s) of Commercial Customers and the fees being charged. Contractor agrees to collect and remit all appropriate sales taxes on Commercial front-load and roll-off collection services to the State Comptroller's Office. Contractor agrees to use reasonable diligence in the collection of each account, but does not guarantee its collection. Accounts may be written off as uncollectible after remaining unpaid for six (6) months or longer. City reserves the right to collect those accounts deemed uncollectible by Contractor. Contractor will provide this information to City monthly.

Article 22. Remuneration

All rates charged by Community Waste Disposal (Contractor) will be subject to an Annual CPI/Fuel/Disposal Cost Adjustment. The first annual adjustment will be effective twenty-four (24) months from the contract start date, and subsequent adjustments may be made each year through the term of the contract. The Annual Adjustment will be applicable to all charges for Trash, Recycling, and other services for both residential and commercial customers as contained in the contract. Rates and fees will be adjusted by the contractor for the third and subsequent Contract years for the term of the contract, based on the methodology described below. Contractor may request one

increase per year that shall be submitted in writing no later than sixty (60) days prior to the contract anniversary date.

Contractor shall provide documentation for requested increase, including the impact of CPI, fuel and disposal fees on contractor's operations in Keller. Annual increases must be limited to no more than 5% on the overall rate to the customer, unless contractor seeks and is given approval by a majority vote of the City Council.

The basis for the CPI component of the annual increase will be the increase in the "Consumer Price Index – All Urban Consumers", all items (not seasonally adjusted) **less Motor Fuel**, for the Dallas-Fort Worth, TX Area as published by the U.S. Department of Labor Bureau of Labor Statistics. The Fuel portion of the Annual Adjustment will be determined using the Henry Hub Natural Gas Spot Price. The Disposal portion of the Annual Adjustment will be determined using the increase in the published gate rate prices for the Arlington Landfill.

Article 23. Termination of Agreement

If, at any time, either party shall fail to substantially perform terms, covenants, or conditions herein set forth, the non-breaching party shall notify the breaching party of specific reasons in support of non-breaching party's claim that breaching party has materially breached the terms and provisions of this Agreement. The breaching party shall be allowed thirty (30) days from the date of receipt of notice to remedy any failure to perform. Should the breaching party not remedy its performance within such period, the non-breaching party may terminate this Agreement and the rights and privileges granted to the breaching party herein.

Relative to the Contractor's performance of, and obligations under, this Contract only, City shall have full power to examine or to cause to be examined at any time, and at all times the records of Contractor, with relation to the operation of the waste collection system within City. City shall be allowed only to review and examine but not copy or retain records, other than the reports and other documentation specified in this Agreement. In this connection, City shall have the right, through City Council or its designee, to take testimony and to compel the attendance of witnesses or the production of records and to examine witnesses under oath and under such rules and regulations as it may adopt. If Contractor or any officer or agent or employee of Contractor does not give testimony, City Council shall have the power to declare this Agreement in default and to terminate it in accordance with the provisions set forth in the section above.

Should Contractor not remedy its performance, after a hearing described herein, City may terminate this Agreement and the rights and privileges granted to the Contractor herein. A notice shall be sent to Contractor no earlier than ten (10) days before a hearing is scheduled. The notice shall specify the time and place of the hearing, and shall include the specific reasons in support of City's claim that Contractor has substantially breached the terms and provisions of the Agreement. Should City still

deem Contractor to have failed in its performance, said hearing shall be conducted in public by the City Council and Contractor shall be allowed to be present, and shall be given the full opportunity to answer such claims that are set out against Contractor. If the City Council makes a finding that Contractor has failed to provide adequate refuse and/or collection services for the City, or has otherwise substantially failed to perform its duties as specified in the Agreement, the City Council may terminate said Agreement.

Article 24. Interruption in Service

In the event the collection and disposal of Solid Waste collection and Recycling services should be interrupted for any reason for more than forty-eight (48) hours, City shall have the right to make temporary independent arrangements for the purpose of continuing the services to its residents in order to provide and protect the public health and safety.

If the interruption in service mentioned in the above paragraph continues for a period of seventy-two (72) hours, and is not caused by a catastrophe, riot, war, act of terrorism, governmental order or regulation, strike, fire, act of God, accident, changes in laws, statutes, regulations or ordinances of other similar or different contingency beyond the reasonable control of Contractor, then City shall have the right to terminate this Agreement and the rights and privileges granted to Contractor herein.

Article 25. Force Majeure

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

Article 26. Indemnification; Limits of Liability

Contractor shall defend, indemnify, and hold City and all of its officers, agents, employees, and elected officials whole and harmless against any and all claims for damages, costs, and expenses of persons or property that may arise out of, or be occasioned by, or from any negligent act, or negligent omission of Contractor, or any agent, servant, or employee of Contractor in the execution of the performance of this Agreement, without regard to whether such persons are under the direction of City agents or employees. Notwithstanding the foregoing or any other provision in this Agreement, however, Contractor shall have no obligation to collect and no liability for, relating to, or arising out of any collected, Hazardous Waste or other waste that does not constitute acceptable waste.

In no event shall either party be liable to the other or obligated in any manner to pay to the other party any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations under this Agreement, or the material falseness or inaccuracy of any

representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

Article 27. Notices

Any notices, consents, demands, requests, approvals, and other communications to be given under this Agreement by any party to the other shall be deemed to have been duly given if given in writing and personally delivered, sent by nationally recognized overnight courier, or sent by mail, registered or certified, postage prepaid with return receipt requested, at the address specified below:

All notices shall be given to City at the following address:

Office of City Manager
City of Keller
P.O. Box 770
Keller, TX 76244-0770

All notices shall be given to Contractor at the following address:

General Manager
Community Waste Disposal
2010 California Crossing
Dallas, Texas 75220-2310

Notices delivered personally or by courier shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of 10:00 a.m. on the third business day after mailing. Any party may change its address for notice hereunder by giving notice of such change in the manner provided in this paragraph.

Article 28. Miscellaneous

- This agreement and any and all rights and obligation of Contractor hereunder may be assigned by Contractor to any parent company, affiliate, or subsidiary of Contractor without the consent of City, but may be assigned to any third party only with the prior written consent of the Keller City Council.
- Contractor and City agree that City Manager will be the final authority for the approval of charges not contemplated by this agreement and for the disposition of any dispute between a Customer and Contractor. City Manager may designate a City employee to act as an enforcement officer hereunder and to act as a liaison between City and Contractor.
- City and Contractor shall comply with all rules and regulations of the Texas Department of Health, the Texas Water Quality Board, and the Environmental Protection Agency. Contractor further agrees to comply with all state and applicable federal laws, regulating the collection and disposal of Garbage, Household Hazardous Waste, Electronics Waste and Recycling..

- City agrees to pass or retain such ordinances as are necessary to effectuate all terms of this Agreement, including all duties and obligations required of residential Customers.
- This Agreement may be executed in any number of counterparts, each of which will, for all purposes, be deemed to be an original, and all of which are identical.
- If any provision or portion of this Agreement is for any reason unenforceable, inapplicable, or invalidated, then such provision or portion shall be reformed in accordance with applicable laws. The invalidity, inapplicability, or unenforceability of any provision of this Agreement shall not affect the validity, applicability or enforceability of the other provisions or portions of this Agreement.
- If a dispute arises with respect to this Agreement, the parties to the dispute shall first attempt to resolve it through direct discussions in the spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiation fail, the dispute shall be mediated by a mutually acceptable third-party to be chosen by the disputing parties within thirty (30) days after written notice by one of them demanding mediation. The disputing parties shall share the costs of the mediation equally. By mutual agreement the parties may postpone mediation until each has completed some specified but limited discovery about the dispute. By mutual agreement, the parties may use a nonbinding form of dispute resolution other than mediation. Any nonbinding dispute resolution process conducted under the Article shall be confidential within the meaning of Section 154.053 of the Texas Civil Practice and Remedies Code and any successor statute thereto. If either a negotiated settlement or mediated resolution is not obtained within the time periods provided by this Article, the parties may pursue any available legal or equitable remedy; provided, however, that this Article shall not preclude either party from exercising any remedy available to them under the Agreement.
- This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect thereto.
- This Agreement does not create, and shall not be construed as creating, any right enforceable by any person not a party to this Agreement.
- No change or modification of this Agreement shall be valid or binding upon the parties hereto unless such change or modification shall be in writing and signed by all the parties hereto. No waiver of any term or condition of this Agreement shall be enforceable unless it shall be in writing signed by the party against which it is sought to be charged. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by such other party.
- The headings in this Agreement are inserted for convenience only, and shall not constitute a part of this Agreement or be used to construe or interpret any of its provisions. The parties have participated jointly in negotiating and drafting this Agreement. If a question or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of

any provision of this Agreement. Any reference to any statute shall be deemed to refer to the statute, as amended, and to all rules and regulations promulgated thereunder, as amended, unless the context requires otherwise. The word "include" or "including" means include or including, without limitation.

SIGNED AND EXECUTED this the 16th day of June, A.D., 2020, at Tarrant County, Texas.

COMMUNITY WASTE DISPOSAL

BY:

Greg A. Roemer, President

CITY OF KELLER

BY:

Mark Hafner, City Manager

ATTEST:

Kelly Ballard, City Secretary

Approved as to Form and Legality:

L. Stanton Lowry, City Attorney

**COMMUNITY WASTE DISPOSAL
CITY OF KELLER - FRANCHISE CITY RATES**

September 1, 2020

EXHIBIT "A"

COMMERCIAL FRONT-LOAD RATES (Includes Franchise Fee - 8.28%)

Pickups per Week

| Size | 1x | 2x | 3X | 4X | 5X | 6X | Extra |
|-------------|-----------|-----------|-----------|-----------|-----------|-----------|----------|
| 2 YD | \$ 86.76 | \$ 201.52 | \$ 281.05 | \$ 392.55 | \$ 510.10 | \$ 630.01 | \$ 59.56 |
| 3 YD | \$ 98.77 | \$ 221.88 | \$ 306.92 | \$ 423.08 | \$ 572.75 | \$ 725.99 | \$ 61.72 |
| 4 YD | \$ 110.75 | \$ 215.82 | \$ 327.29 | \$ 455.60 | \$ 586.12 | \$ 725.99 | \$ 64.97 |
| 6 YD | \$ 135.08 | \$ 261.71 | \$ 389.69 | \$ 514.59 | \$ 668.96 | \$ 826.86 | \$ 69.30 |
| 8 YD | \$ 157.77 | \$ 305.76 | \$ 457.95 | \$ 615.82 | \$ 758.06 | \$ 925.36 | \$ 70.39 |

Container inside four sided enclosure - \$ 14.08 per pick up - per container

Casters - \$ 14.08 per pick up - per container

Locks - \$ 14.08 per pick up - per container

ARTICLE EIGHT of The Unified Development Code states: *Service areas and trash receptacles shall be located at the rear of the property and shall not face a street. The dumpster shall be screened with a masonry wall compatible in material and color with the primary building. Solid metal doors shall be utilized for dumpster screening closure. A pedestrian access point shall be provided for access to a dumpster location to facilitate access without opening the gate. Unless otherwise noted, the screening requirement shall be masonry screening. The following uses shall be screened: Trash compactors and bins*

COMMERCIAL ROLLOFF RATES (Includes Franchise Fee - 8.28%)

| SIZE | TYPE | DELIVERY | RENT PER MONTH | TOTAL PER LOAD (1) | DEPOSIT PER CONTAINER |
|--------------|-----------|------------|----------------|--------------------|-----------------------|
| 20 YD | OPEN TOP | \$ 230.22 | \$ 236.94 | \$ 364.53 | NEGOTIABLE |
| 30 YD | OPEN TOP | \$ 230.22 | \$ 236.94 | \$ 493.89 | NEGOTIABLE |
| 40 YD | OPEN TOP | \$ 230.22 | \$ 236.94 | \$ 544.90 | NEGOTIABLE |
| 28 YD | COMPACTOR | NEGOTIABLE | NEGOTIABLE | \$ 650.96 | N/A |
| 30 YD | COMPACTOR | NEGOTIABLE | NEGOTIABLE | \$ 650.96 | N/A |
| 35 YD | COMPACTOR | NEGOTIABLE | NEGOTIABLE | \$ 680.84 | N/A |
| 40 YD | COMPACTOR | NEGOTIABLE | NEGOTIABLE | \$ 708.78 | N/A |
| 42 YD | COMPACTOR | NEGOTIABLE | NEGOTIABLE | \$ 708.78 | N/A |

(1) Disposal rates based on four (4) tons. Additional tons are billed at \$58.52 per ton. Loads with a Gross Vehicle Weight (GVW) over 54,000 pounds will be billed \$146.32 per ton for weight in excess of 54,000 pounds. All rates are weekday rates.

COMMERCIAL HANDLOAD PICK UP (Includes Franchise Fee - 8.28%)

1 X PER WEEK \$23.63 PER MONTH (4 bag limit)

2 X PER WEEK \$39.30 PER MONTH (4 bag limit)

COMMERCIAL RECYCLING - 95 gallon cart (Includes Franchise Fee - 8.28%)

1 X PER WEEK \$6.64 PER MONTH (for the first 100 businesses)

1 X PER WEEK \$25.80 PER MONTH

SPECIAL HAUL FEE for Residential and Commercial Hand Pick Up Service (Includes Franchise Fee - 8.28%)

| 1-4 Yards | 5 Yards | 6 Yards | 7 Yards | 8 Yards | 9 Yards | 10 Yards |
|-----------|----------|-----------|-----------|-----------|-----------|-----------|
| \$ 82.38 | \$ 97.38 | \$ 112.37 | \$ 127.36 | \$ 142.33 | \$ 157.30 | \$ 172.31 |

RESIDENTIAL SERVICES

| | | |
|-------------------------------------|-----------|--------------|
| RESIDENTIAL CURBSIDE TRASH | \$ | 12.42 |
| RESIDENTIAL RECYCLING | \$ | 2.59 |
| RESIDENTIAL HHW & E-WASTE | \$ | 0.67 |
| FRANCHISE FEE (8.28%) | \$ | 1.31 |
| TOTAL | \$ | 16.99 |
| RESIDENTIAL CURBSIDE TRASH | \$ | 12.42 |
| SENIOR RESIDENTIAL RECYCLING | \$ | 1.30 |
| RESIDENTIAL HHW & E-WASTE | \$ | 0.67 |
| FRANCHISE FEE (8.28%) | \$ | 1.20 |
| SENIOR TOTAL | \$ | 15.59 |
| RESIDENTIAL BACKDOOR SERVICE | \$ | 23.01 |

EXHIBIT B
Door Side HHW and E-Waste Program
Acceptable Material List - City of Keller

Household Hazardous Waste and Electronics Waste shall include the following Solid Waste:

- Aerosols containing flammable or hazardous material, such as paint
- Lubricant - Automotive/Household Compressor Oil, Cutting Oil, etc.
- Electronics - CPUs (computers); Laptop and handheld computers; CRTs (Computer Monitors); Telephones, Cell Phones, Portable Phones, Keyboards, Mice, CD-ROMs (other disc drives), including cables
- Televisions, VCRs, CD Players, Stereos, Remote Controls, Calculators
- Art/Hobby Supplies - Adhesive, Paint, Cleaners, Correction Fluid, Photography Chemicals
- Other Household - Fluorescent Tubes/Bulbs, Compact Fluorescent Lamps (CFLs), Thermostats, Thermometers (no mercury)
Automotive Products - Cleaners, Lubricant, Solvent, Gasoline, 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
- Moth balls, Creosote
- Paint - Aerosols, Hobby/Automotive/Household Latex and Oil-Based Paint Products, including Thinner, Lacquer, Linseed Oil, Primer, Stain, Varnish, stripper, caulking, glue, wood preservative
- Cooking Oil
- Microwave Ovens
- Batteries - Automotive and Household
- Personal Products - Nail Polish, Polish Remover, Rubbing Alcohol, Shoe Polish, Spot Remover
- Scanners, Printers (desk top, non-commercial)
- Household Cleaners - bleach, cleaning compounds, floor stripper, drain cleaner, tile remover, tile cleaner, rust remover
- Household/Auto Polish, Degreaser, Rug/Upholstery Cleaner, etc.
- Poison - Household/Garden Poison (insecticide, herbicide, fungicide), Bait, Fertilizer, etc.
- Fax Machines
- Copiers (non-commercial, desk-top units only)
- Flammables - Automotive/Household Solvent, Fuel, Paint, Lubricant, Kerosene, Charcoal Lighter Fluid, Mineral Spirit
- Swimming Pool chemicals -pool acid; chlorine-tablets, liquid

A bag or item of Program Household Hazardous Waste and Electronics shall not exceed fifty (50) pounds in weight.

EXHIBIT C

Community Waste Disposal
CITY OF KELLER
Recycle Revenue Sharing Calculations

| | | |
|--|---------------|--------------|
| Total Tons Received by CWD | 4,000 | |
| Per Ton Processing Fee & Transportation Fee (Note 1) | \$ 76.81 | Adj Annually |
| Total Processing Fee | \$ 307,240.00 | |

| Commodity | Adj Annually | Note 3 | Note 4 | Total \$ | Tons |
|----------------|--------------|---------------------------------|--|----------------|----------|
| | Component % | Pricing Structure | Adjusted Monthly Published Value Dollars Per Ton | | |
| ONP | 14.00% | PPI - #8 Southwest Hi | \$ 10.00 | \$ 5,600.00 | 560.00 |
| OCC | 19.71% | PPI #11 Southwest Hi | \$ 45.00 | \$ 35,478.00 | 788.40 |
| Mixed Paper | 9.87% | PPI Mixed Paper #2 Hi | \$ - | \$ - | 394.80 |
| Aluminum | 0.77% | SMP - Region 8 Houston High | \$ 600.00 | \$ 18,480.00 | 30.80 |
| Steel/Tin | 1.52% | SMP - Region 8 Houston High | \$ 5.00 | \$ 304.00 | 60.80 |
| PETE | 3.43% | SMP - Region 8 Houston High | \$ 240.00 | \$ 32,928.00 | 137.20 |
| HDPE - Natural | 1.15% | SMP - Region 8 Houston High | \$ 900.00 | \$ 41,400.00 | 46.00 |
| HDPE - Colored | 0.90% | SMP - Region 8 Houston High | \$ 160.00 | \$ 5,760.00 | 36.00 |
| Mixed Plastic | 0.19% | SMP - Region 8 Houston High | \$ - | \$ - | 7.60 |
| Mixed Glass | 14.67% | SMP - Region 8 Houston (Note 5) | \$ (22.00) | \$ (12,909.60) | 586.80 |
| Residue | 33.79% | | \$ (24.79) | \$ (33,506.16) | 1,351.60 |
| | 100.00% | | \$ 23.38 | \$ 93,534.24 | 4,000.00 |

| | |
|--|-----------------|
| Total Gross Recycle Revenue | \$ 93,534.24 |
| Less Total Processing Fees | \$ (307,240.00) |
| Net Revenue | \$ (213,705.76) |
| 60% City Share of Net Positive Revenue | NA |
| Revenue Share Per Ton | - |

Note 2

- NOTE 1** Processing & Transportation Fees will be adjusted annually based on CPIU, Disposal, and Fuel increases
- NOTE 2** Per ton rebate cannot exceed \$40 per ton. City will never be required to pay contractor for negative revenue values. Any negative values will carry forward and must be brought back to zero before compensation to the city begins or resumes.
- NOTE 3** SMP = Secondary Materials Pricing, PPI = Pulp & Paper Week
- NOTE 4** Published Value Dollars Per Ton current as of 1-1-2020
- NOTE 5** Published Value Dollars Per Ton includes Index price plus \$17.00 per ton transportation.

Recyclable Material List:

- Loss of Sustainable Market** – If a sustainable market is no longer available for a recycle commodity, CWD will inform the City/Town to have it removed from the accepted materials list. Example: There is one glass buyer based in Midlothian Texas, if they will no longer accept our glass, CWD would have no sustainable market for the commodity.
- Negative Market Value** – If the value of any of the recycle commodities falls below zero dollars, CWD may petition the City/Town to have the item removed from the accepted materials list. The request to remove the item will not be unreasonably withheld by the Town.

EXHIBIT D

APPROXIMATE CITY CONTAINER LOCATIONS WHERE NO-COST SERVICES SHALL BE REQUIRED (All locations will require up to twenty (20) recycling carts to use inside each facility.)

| Name | Location | Quantity | Size | Frequency |
|--------------------------|---|----------|-----------------------|---------------------------------|
| Keller Town Hall | 1100 Bear Creek Parkway | 1 | 8 Cu Yd Front-load | 2x Week |
| Fire Station 2 | 737 Keller-Smithfield Road N. | 1 | 6 Cu Yd Front-load | 1x Week |
| Fire Station 3 | 1500 Rufe Snow Drive | 1 | 6 Cu Yd Front-load | 1x Week |
| Fire Station 4 | 455 Keller-Smithfield Road S. | 1 | 6 Cu Yd Front-load | 1x Week |
| Police Station | 330 Rufe Snow Drive | 2 | 6 Cu Yd Front-load | 2x Week |
| Public Library | 640 Johnson Road | 1 | 6 Cu Yd Front-load | 2x Week |
| Municipal Service Center | 151 Bear Creek Parkway W. | 1 | 8 Cu Yd Front-load | 1x Week |
| Keller Sports Park | 265 Golden Triangle Blvd | 1 | 6 Cu Yd Front-load | 2x Week |
| Keller Sports Park | 265 Golden Triangle Blvd | 1 | Recycle Container | 1x Week |
| Keller Sports Park | 265 Golden Triangle Blvd. | 4 | 8 Cu Yd Front-load | 1x Week |
| The Keller Pointe | 405 Rufe Snow Drive | 2 | 8 Cu Yd Front-load | 2x Week 3x Week in Summer |
| Parks & Recreation | Bear Creek Park | 1 | 30 Yd Roll-off | On call |
| Public Works | Sports Parkway & Golden Triangle Blvd. | 1 | 30 Yd Roll-off | On call |
| Municipal Service Center | 151 Bear Creek Parkway W. | 1 | 30 Yd Roll-off | On call |

NOTE: The number of pick ups may vary by season. Any city facility constructed during the term of this agreement shall receive appropriate containers and service as reasonably requested by City.

CITY-SPONSORED EVENTS FOR WHICH CONTRACTOR SHALL FURNISH TEMPORARY GARBAGE CONTAINERS AT NO CHARGE*

- Spring egg hunt event
- Spring camp out event
- Summer concerts and movies series event
- Fall date night event
- Fall Halloween event
- November BBQ event
- Fall Arts festival event
- December holiday event
- Annual community clean up events

*Event schedule subject to change