

FIFTH AMENDED AND RESTATED CONTRACT FOR COLLECTION AND DISPOSAL OF SOLID WASTE AND RECYCLABLE MATERIALS

This Fifth Amended and Restated Contract (the "Contract") is made between the City of San Marcos, Texas (the "City"), 630 East Hopkins, San Marcos, Texas 78666 and Texas Disposal Systems, Inc. (the "Contractor"), P.O. Box 17126, Austin, TX 78760-7126, and amends the Fourth Amended and Restated contract approved by City Council through Resolution No. 2013-152R on October 2, 2013 for the provision of solid waste, recyclable and green waste collection and disposal services.

The City and the Contractor agree as follows:

ARTICLE 1 CONTRACTOR'S SERVICES AND RESPONSIBILITIES

Section 1.1 Standards of Performance

1.1.1 The Contractor is responsible for providing solid waste collection and disposal services within the City of San Marcos, including but not limited to, residential solid waste collection and disposal, residential and multifamily recycling collection and disposal and residential Green Waste materials collection and disposal all in accordance with the terms and conditions of this Contract, and in a good and workmanlike manner. These services will include furnishing all labor, equipment, tools, materials, insurance, supervision, and all other items necessary to complete the work as specified. No work under this Contract will be subcontracted by the Contractor without prior written approval from the City. Any subcontracts will be in writing and will be subject to each provision of this Contract.

1.1.2 The Contractor certifies that it has fully acquainted itself with all conditions related to this Contract and will complete its services in and under any conditions it may encounter or create, without additional cost to the City or to residential solid waste, recycling, and Green Waste customers, except for material changes in conditions or requirements of the work occurring during the term of this Contract without the fault of the Contractor.

1.1.3 The Contractor certifies that it is not now nor will it become delinquent in the payment of taxes to any governmental entity, unless the payments are in dispute.

Section 1.2 Definitions

In this Contract, the following terms will have the following meanings:

1.2.1 *Bag* – A plastic sack designed to store solid waste with sufficient wall strength to maintain physical integrity under normal loading when lifted by the top.

1.2.2 *Bulky Waste* – Waste that included sofas, stoves, refrigerators, water tanks, washing machines, dryers, air conditioners, sinks, toilets, furniture, and other waste materials and appliances (certified where applicable as Freon-free), and like items other than construction debris, or stable matter with weight or volumes greater than allowed in approved bins or containers, as the case may be or that can be loaded by one (1) person at curbside.

1.2.3 *Bundle* - Tree, shrub and brush trimmings or newspapers and magazines securely tied together forming an easily handled package not exceeding four feet in length or 4035 lbs. in weight.

1.2.4 *Cart* – A 35, 65, or 96 gallon capacity plastic container with attached lid and wheels designed to

be lifted and emptied mechanically.

1.2.5 *Collection* - The removal and transportation of materials from the pickup point to the approved processing or disposal site.

1.2.6 *Green Waste Material* - Green waste, yard waste, soiled paper and tree limbs no longer than 4 feet and up to 5 inches in diameter. Garbage or rubbish material that still has useful physical or chemical properties after serving its original purpose and that can be reused or remanufactured into other products.

1.2.7 *Container* – A Receptacle used to store solid waste.

1.2.8 *Contract or Contract Documents* - Includes the following: This Contract, the request for proposals, the Contractor's proposal, addenda, the performance bond, contract area maps, insurance certificates, and supplemental agreements or amendments. The terms *Contract* and *Contract Documents* have the same meaning.

1.2.9 *Contract Area* - The San Marcos city limits, as they now exist or may be amended in the future.

1.2.10 *Construction Debris* - Waste resulting from residential construction and/ or demolition projects; including all materials that are directly or indirectly the by-products of residential construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, rubber, concrete and plastics. This does not include debris from projects performed by a contractor.

1.2.11 *Curbside Collection* - Collection service rendered at a residence or duplex not served by an alley, public utility easement or other public way in the rear or alongside thereof, involving the placement of containers for collection at or near the curb of the street abutting such property.

1.2.12 *Dead animals* - Any dead animal or part of an animal greater than ten lbs. in weight, other than those processed for human use.

1.2.13 *Director* - The Director of ~~Community Services~~ *Neighborhood Enhancement* or a person authorized to act for the Director.

1.2.14 *Disposal Site* - A solid waste depository, including but not limited to sanitary landfills, transfer stations, incinerators, and waste processing/separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction, and requiring such licenses, permits or approvals to receive for processing or final disposal of solid waste or dead animals.

1.2.15 *Dwelling Unit* - Any group of rooms located within a dwelling and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking and eating. A Dwelling Unit will be deemed to be occupied and will be assessed a charge for services if any city utility service is provided to the Dwelling Unit, or if any city utility is not provided to a Dwelling Unit, if the unit is served by city solid waste service or Single-stream Recycling Service.

1.2.16 *Garbage* - Readily decayable solid waste, including dead animals, animal and vegetable waste, food containers, and all other waste matter which is likely to attract flies or vermin, except any matter included in the definitions of bulky waste, construction debris, dead animals exceeding 10 lbs., hazardous waste, rubbish or stable matter.

1.2.17 *Green Waste Cart*- a 35- or 96-gallon cart furnished by the Contractor to each Residential Unit for the collection of green waste material on a single stream basis.

1.2.18 *Hazardous Waste* - any chemical, compound, mixture, substance or article designated as a “hazardous waste” under state or federal law.

1.2.19 *Multi-family Complex* - A ~~townhouse complex~~, apartment complex, condominium complex or other multifamily complex that contains 5 or more ~~D~~dwelling ~~U~~units under common management.

1.2.20 *Producer or Customer* - An occupant of a ~~R~~residential or ~~M~~multi-~~F~~family ~~U~~unit who generates solid waste or ~~R~~recyclable or ~~G~~green ~~W~~waste ~~M~~materials.

1.2.21 *Receptacle* - A container used to store solid waste designed to accept liners that are to be emptied manually.

1.2.22 *Recyclable Materials* - Materials that still have useful physical or chemical properties after serving its original purpose and that can be reused or remanufactured into other products.

1.2.23 *Recyclable Materials Processing Facility* – A full service multi-materials recycling facility which accepts bulk delivery of recyclable materials and processes, sorts, and prepares the materials for shipment to raw materials commodity end users for manufacture into new products.

1.2.24 *Recycling Cart* - A 35- or 96-gallon cart furnished by the Contractor to each Residential or Multi-Family Unit for use in the collection of recyclable materials on a single stream basis.

1.2.25 *Recycling Dumpster* - a container designed to receive, transport and dump Recyclable Materials of not less than 2 cubic yard capacity used in conjunction with Single Stream Recycling collection at a Multi-family Unit which may be emptied or dumped by specially equipped trucks which either lift, tilt or dump the contents through the use of a mechanical arm lift or other device into the collection container of the truck.

1.2.26 *Residential Service Charge* – The monthly per customer charge to be paid by City to Contractor as compensation for providing residential solid waste collection services and/or single stream recycling collection services.

1.2.27 *Residential Solid Waste* – Solid waste generated by a producer at a Residential Unit.

1.2.28 *Residential Unit* - A single family dwelling, townhouse, apartment, or condominium complex that contains 4 or fewer units.

1.2.29 *Rubbish* – Non-putrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials; combustible rubbish includes all waste wood, wood products, tree trimmings, grass cuttings, dead plants, weeds, leaves, dead trees or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, excelsior, furniture, straw, used and discarded mattresses, used and discarded clothing, used and discarded shoes and boots, combustible pulp, ashes, cinders, floor sweepings, and other products, such as are used for packaging, or wrapping; noncombustible rubbish includes crockery, glass, tin cans, aluminum cans, metal furniture, mineral or metallic substance, and any and all other waste materials which will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit) or not included in the definition of bulky waste, construction debris, dead animals, garbage, hazardous waste or stable matter.

1.2.30 *Single-Stream Recycling* - Co-mingled collection, transportation, and processing of recyclable materials. All classes of materials (i.e. glass, paper, metals and plastics) that are collected in one container either by mechanical or manual means for transport to a recyclable materials processing facility for automated sorting and processing.

1.2.31 *Solid Waste* - Garbage, rubbish, Bulk~~y~~ Waste, Construction Debris, Stable Matter, tree trimmings and Yard Waste.

1.2.32 *Special Events* – City-sponsored activities such as fairs, special gatherings, rallies, and parades which occur at infrequent intervals.

1.2.33 *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.

1.2.34 *Unacceptable Waste* - Any and all waste that is either:

- A. Waste which is now or in the future prohibited from disposal at a sanitary landfill by state or federal laws or the regulations promulgated thereunder;
- B. hazardous waste, as defined herein;
- C. special waste, as defined by the laws of the United States or the State of Texas or the regulations promulgated thereunder;
- D. tires, concrete, and bulk petroleum or chemical products or by-products;
- E. septic tank pumping and grease and grit trap wastes;
- F. sludge waste, including water supply treatment plant sludges and stabilized and/or unstabilized sludges from municipal or industrial wastewater treatment plants;
- G. medical waste, including infectious or pathological waste from laboratories, research facilities, and health and veterinary facilities, and sharp objects such as syringes that are not in a protective sealed container;
- H. liquid waste, which for the purposes of this Contract means any waste material that is determined to be or contain “free liquid” by the paint filter test (EPA Method 9095);
- I. waste from an industrial process;
- J. waste from a pollution control process;
- K. waste transported in a bulk tanker;
- L. friable and/or nonfriable asbestos waste;
- M. empty containers which have been used for pesticides, herbicides, fungicides, or rodenticides; or containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in this definition;
- N. residue or debris from the cleanup of a spill or release of chemical substances, commercial products

or other wastes listed in this definition;

O. soil, water, residue, debris or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in this definition, including soil contaminated from underground storage tanks used or formerly used for the storage of petroleum products;

P. any waste that requires other than normal handling, storage, management and/or disposal, as determined by the Director;

Q. dead animals (including commercially collected animals in our services) and/or slaughterhouse waste, except for animals euthanized under the authority and direction of the City; or

R. any 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 a disposal site, as determined by the Director.

1.2.35 *Work* - The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the Contract and the carrying out of all duties and obligations imposed by this Contract on the Contractor.

1.2.36 *Yard Waste* - Tree limbs, grass and plant clippings, and tree or brush trimmings that are bagged or bundled for curbside yard waste collection.

Section 1.3 Solid Waste and Single Stream Collection

1.3.1 Residential Unit Solid Waste Collection

A. The Contractor will pick up the contents of the trash cart on each service day. The contents must be contained in the cart preferably with the lid completely closed, or left to the discretion of the driver due to safety. If the Residential Unit generates additional bags or bundles, there will be an additional charge for each 30-gallon bag or bundle. If the cart is overloaded such that the cart overflow interferes with mechanical loading into the truck, there will be an additional bag/bundle charge for each 30-gallon bag or bundle that over-flows a closed Cart. The extra bag/bundle charge is listed in "Attachment A". ~~The contractor will furnish to the City extra bag tags for sale to customers.~~ The Contractor will furnish each Residential Unit with one new, or like new, 65 gallon Cart or, if a smaller cart is requested by customer, a 35 gallon Cart or if a larger cart is requested by customer, a 96 gallon Cart. City will track change of cart exchange. If a Cart is in need of repair, the Contractor will make all repairs. If the cart is not repairable, Contractor will replace the cart with a new cart or like new at no additional cost. If a customer requests an additional cart due to waste volume, the Contractor will deliver the Cart to the customer. The extra cart charge is listed in "Attachment A". ~~The Contractor will supply a dumpster (for townhomes), if requested by the City, and provide casters when necessary. The director and contractor will verify through a site visit if the property requires casters.~~

B. Any resident that requests a service upgrade from the standard 65-gallon cart to a 96-gallon cart, can simply request this upgrade from the City. The Contractor will deliver the requested 96-gallon cart to the customer. ~~The Contractor will collect from the customer a one-time delivery fee as outlined in Schedule A.~~

C. The Contractor will propose and implement measures to prevent spillage with the mode of

collection (automated/semi-automated) used by the Contractor (See section 1.4.1, Quality).

D. The cost for once a week trash service, once every-other week recycle and once every-other week ~~E~~green ~~W~~waste material waste service is listed in “Attachment A”.

~~E. The City has the option in the first twelve (12) months of the contract to expand the services in the contract to include exclusive Multi family Solid Waste services. If the City chooses this option in this timeframe, the rates for both, Residential and Multi family services in “Attachment A” apply.~~

1.3.2 Residential and Multi-Family Single Stream Collection

A. The Contractor will collect ~~the following R~~recyclable ~~M~~materials listed in Attachment B from each ~~R~~residential ~~U~~unit in the contract area on a one time every-other-week basis and from each ~~M~~multi-~~F~~family ~~U~~unit one time per week. ~~Contamination fee may apply (See Attachment A).~~

~~Metal Containers~~

~~Aluminum cans~~

~~Ferrous cans~~

~~Clear glass~~

~~Colored glass~~

~~Box Board~~

~~Newsprint/magazines~~

~~Mail~~

~~Direct mail advertisements~~

~~Old corrugated containers~~

~~Plastic containers #s 1-7 (no Styrofoam)~~

~~Gable Top Carton~~

~~Aseptic Containers~~

For ~~R~~residential ~~U~~units this service will be on the same day as the regularly scheduled solid waste collection. With the Director's approval, the Contractor will have the right to add or delete material types from time to time based upon the commercial markets for the materials. Customers will not be required to separate materials by type prior to collection. All ~~R~~recyclable ~~M~~materials collected by the Contractor will become its property. Such ~~R~~recyclable ~~M~~material will not be comingled with ~~M~~municipal ~~S~~solid ~~W~~waste by the Contractor. Notwithstanding, the Contractor will not discard any portion of the collected single stream recyclables unless they make up a de minimus amount included within the nonrecyclable residual remaining after being sorted through a recyclables sorting system. Unauthorized disposal of ~~R~~recyclable ~~M~~materials, which were collected as ~~R~~recyclable ~~M~~materials, is strictly prohibited.

B. The Contractor will furnish each ~~R~~residential ~~U~~unit with a 35, 65 or 96- gallon cart, ~~or by request of the City a dumpster~~, for recycling materials. These carts ~~or dumpsters~~ will be serviced on an every-other-week basis. ~~The contractor will provide casters for dumpsters when necessary and requested by the City. The director and contractor will verify through a site visit if the property requires casters.~~

C. The Contractor will ~~not limit, except as may otherwise be noted in this Contract, the amount of~~ collect up to three (3) cardboard boxes or paper bags with loose recyclable materials that will fit inside the cart designated for ~~R~~recyclable ~~M~~materials residents place out for removal. ~~Recyclable materials placed outside cart must be in paper or cardboard container.~~ There is no extra charge for materials in excess of the cart's capacity.

D. The Contractor will notify the City of all instances where the Contractor declines to collect ~~R~~recyclable ~~M~~materials and the reason for it. The Director will investigate all instances of “no pickups,” whether reported by the Contractor or by customers, and advise the customer of the reasons, or require the Contractor to collect the material. The Director will act in reasonable manner in deciding these issues, and the Director’s decision will be final.

E. The Contractor will discontinue ~~R~~recyclable ~~M~~materials collection services to any location as set forth in a written notice sent to the Contractor by the City. The Contractor will resume collection service at the location on the next regularly scheduled collection day upon written notice from the City.

F. The Contractor will have all recyclable materials collected ~~by it and~~ processed at a recyclable materials separation/processing site. The Contractor will ensure that any such site used by it is properly licensed or permitted by the State of Texas and other governmental entities having jurisdiction. The Contractor may dispose of any contaminated recyclable materials collected.

G. The Contractor will furnish 96 gallon recycle carts to ~~M~~multi-family ~~U~~units or, upon request by the ~~M~~multi-family ~~U~~unit owner or manager, a recycling dumpster at no extra charge. The Contractor will offer recycling service on a weekly basis. The number of ~~C~~carts provided will be of sufficient number to service the needs of the residents of the multi-family community. ~~Contractor will provide educational material (including downloads) on Texas Disposal Systems website. The contractor will provide casters for dumpsters when necessary and requested by the City. The Director and Contractor will verify through site visit if the property requires casters.~~

H. The cost for Single-stream recycling service is listed in “Attachment A”.

1.3.3 Residential Green Waste Collection

A. The Contractor will collect ~~the following~~ ~~G~~green ~~W~~waste Materials ~~listed in Attachment B~~ from each ~~R~~residential ~~U~~unit in the contract area one time every-other week basis

~~Branches up to 4” in diameter, 4’ in length~~
~~Grass Clippings~~
~~Leaves~~
~~Soiled Paper~~

With a mutual agreement between Director and Contractor, the Contractor will have the right to add or delete material types from time to time based upon the commercial markets for the materials. Customers will not be required to separate materials by type prior to collection. All ~~G~~green ~~W~~waste materials collected by the Contractor will become its property. Green ~~W~~waste ~~M~~materials consist of green waste, yard waste, soiled paper, tree limbs no longer than four (4) ~~feet and up to five (5) inches in diameter~~. Such ~~G~~green ~~W~~waste ~~M~~material will not be comingled with ~~M~~municipal ~~S~~solid ~~W~~waste by the Contractor. Notwithstanding, the Contractor will not discard any portion of the collected ~~G~~green ~~W~~waste ~~M~~materials unless they make up a de minimus amount included within the non-recyclable residual remaining. Unauthorized disposal of ~~G~~green ~~W~~waste ~~M~~materials, which were collected as ~~G~~green ~~W~~waste ~~M~~materials, is strictly prohibited.

B. The Contractor will furnish each ~~R~~residential ~~U~~unit with a 35- or 96- gallon cart for ~~G~~green ~~W~~waste materials. ~~The Contractor will supply a dumpster, if requested by the City (for townhomes only).~~ These carts ~~or dumpsters~~ will be serviced on an every-other-week basis. ~~The contractor will provide casters for dumpsters when necessary and requested by the City. The director and contractor will verify through site visit if the property requires casters.~~

- C. The Contractor will ~~not limit, except as may otherwise be noted in this Contract, the amount~~ collect up to 12 paper yard bags of ~~G~~green ~~W~~waste ~~M~~materials residents place out for removal ~~with the green waste cart. There is no extra charge for materials in excess of the cart's capacity if placed in a craft paper yard bag at the curb.~~
- D. The Contractor will notify the City of all instances where the Contractor declines to collect Green Waste Materials and the reason for it. The Director will investigate all instances of “no pickups,” whether reported by the Contractor or by customers, and advise the customer of the reasons, or require the Contractor to collect the material. The Director will act in reasonable manner in deciding these issues, and the Director’s decision will be final.
- E. The Contractor will discontinue Green Waste Materials collection services to any location as set forth in a written notice sent to the Contractor by the City. The Contractor will resume collection service at the location on the next regularly scheduled collection day upon written notice from the City.
- F. The Contractor will have all Green Waste Materials collected by it processed at a Green Waste site. The Contractor will ensure that any such site used by it is properly licensed or permitted by the State of Texas and other governmental entities having jurisdiction. The Contractor may dispose of any contaminated recyclable materials collected.
- G. The Contractor will provide three (3) compost dumpsters for to go pizza boxes to pilot at designated multifamily complexes. If the pilot is successful, the compost dumpster for to go pizza boxes will expand to all multifamily complexes. This will require additional cost.

~~—G. Green Waste Cart—A 96-gallon green waste cart will be delivered to each resident at the beginning of this contract. The City will purchase these carts for the initial launch of this green waste program. After the distribution and launching the green waste program, the Contractor will be responsible to deliver, maintain, repair, replace, and change out all compost carts. Additionally, the Contractor will be responsible to purchase new carts for new accounts after the launching of this program and keep an inventory for the operation of this contract. At the end of the initial term of this contract, the carts will be the property of the Contractor.~~

1.3.4 Residential Unit Bulky Waste and Yard Waste Collection

- A. The Contractor will collect ~~B~~bulky ~~W~~waste and ~~Y~~yard ~~W~~waste from each ~~R~~residential ~~U~~unit four (4) times per year. Each collection will restrict the volume collected to ~~three (3) cubic yards per Residential Unit. The residential unit can combine bulk/yard waste. They can put up to six (6) cubic yards at a time.~~ Construction debris generated from residential and commercial remodel and demolition is excluded.
- B. Yard ~~W~~waste must be bundled and tied and cut into 4’ lengths not to exceed ~~40~~35 pounds per bundle ~~and must be able to fit into a 96-gallon cart.~~
- C. Scheduled collection will be on the basis of advance customer calls to the Contractor or the City. The cost for this service will be included in the cost per month per ~~R~~residential ~~U~~unit for basic residential service as listed in “Attachment A”.
- D. The Contractor will make available one day per month for residential Customers to transport and deposit ~~five (5) cubic yards of Y~~yard ~~W~~waste at the Contractor’s landfill facility for no additional fee

(materials must be tarped/tied down). Residents must present a driver's license, ~~coupon provided by TDS~~ and City of San Marcos utility bill in order to utilize this service. ~~and the~~The address on the driver's license and the utility bill must match. Contractor will verify eligible customers by utility bill or other means acceptable to the City. If qualified residents have a different address on their driver's license from their utility bill, they can present a voucher obtained from the City to drop off at the Contractor's landfill. The Contractor may refuse to accept any ~~Y~~yard ~~W~~waste contaminated with other solid waste debris, in which case they will notify the City of reasons for rejection.

1.3.5 Newly Annexed Areas

For ~~R~~residential and ~~M~~multi-family ~~U~~units in portions of the contract area that have been newly annexed to the City, the customers will have the choice of either immediately switching to the Contractor, or continuing to use solid waste and recycling collection contractors other than the Contractor for a period of up to two (2) years after the annexation. For such areas, the City will notify the Contractor of the address of ~~R~~residential or ~~M~~multi-family ~~U~~unit to add for services under this Contract during the two year period. After the two year period, the Contractor will provide solid waste, single stream recycling and Green Waste material services under this Contract for all ~~R~~residential ~~U~~units and single stream recycling services for all ~~M~~multi-family ~~U~~units in such areas.

1.3.6 City Services

The Contractor will provide solid waste collection services to all City buildings in Attachment C. ~~The following are lists of current City uses to be served.~~ All cart or dumpster service will be at least once per week. The City and Contractor will work cooperatively to determine the locations, container sizes and number of containers per location without additional charge to the city.

<u>Facility:</u>	<u>Container number, size</u>	<u>Frequency</u>
City Hall Complex 630 E Hopkins	2 8 cubic yard	once per week
Public Library	1 8 cubic yard	once per week
Grant Harris Building Trash	1 8 cubic yard	once per week
Green Waste	1 4 cubic yard	once per week
Central Fire Station	1 8 cubic yard	once per week
3 Fire substations	2 96 gal at each	once per week
Fire Station #5	1 8 cubic yard	once per week
Firing Range	1 8 cubic yard	once per week
Electric Utility	1 6 cubic yard	once per week
Code Enforcement	2 96 gal	once per week
Activity Center	2 10 cubic yard	three times per week
Nature Center Trash	1 4 cubic yard	once per week
Green Waste	1 4 cubic yard	once per week
Animal Shelter	1 4 cubic yard	six times per week
(Swap Quarterly)		
Wastewater Treatment Plant	1 8 cubic yard	once per week
750 River Rd	2 40 cubic yard	twice per week
Old Army Reserve	1 30 cubic yard	once per week
Annual Parks:		
Softball Fields	4 8 cubic yard	twice per week
Soccer Fields	2 8 cubic yard	twice per week

~~Baseball Fields 1 8 cubic yard twice per week~~

1.3.7 Special Events (See attachment ~~A C~~ ~~for rates for any events, number and size of containers outside of events below~~)

Special events consist of the following:	Container/number/size
Sights and Sounds of Christmas	40 x frames with bags for trash
	40 x frames with bags for Green Waste
	2 20 cubic yard for trash
	2 20 cubic yard for Green Waste
Lion's Club	1 8 cubic yard (March thru September)
River Cleanup once per year	1 30 cubic yard

1.3.8 Community Cleanup Program

A. The Contractor will provide up to ~~36~~40 - 40 cubic yard containers per year (which means 40 hauls) for community cleanups as scheduled by the City. The Contractor will deliver and remove the containers as requested by the City. Additional containers and/or hauls will be provided to the City at an additional cost according to the schedule of charges listed in "Attachment A." The allotted containers will be utilized per the City's discretion.

Section 1.4 Operation of Collection Services

1.4.1 Quality

A. The Contractor will not spill or leave residential solid waste remaining (that is allowed contractually) when making pickups. If the Contractor spills residential solid waste, green waste or recyclables, spill will be contained, and a special crew will be dispatched to clean up the spill. If a spill leaves a stain on a roadway, building, or other similar surface, the Contractor will use all reasonable means available to remove the stain and restore the facility to the satisfaction of the Director.

B. The Contractor will be responsible for injuries to any person and damage to any property, including City-owned property caused by willful wrongful or negligent acts related to the Contractor's operations and activities under this Contract.

C. The Contractor will replace or repair all Carts damaged by normal wear and tear or damaged by the Contractor free of charge. The Contractor will replace up to one ~~S~~solid ~~W~~waste, one ~~R~~recycle ~~C~~art, and one ~~G~~green ~~W~~waste ~~M~~material ~~C~~art, lost or stolen at no charge per customer per year. The customer is responsible for ~~C~~carts lost or stolen in excess of the free replacement or damaged or destroyed by abuse at a cost per cart ~~of \$65.00 including delivery~~ listed in Attachment A. This fee is applied to contamination cart swaps, verified by the City, and destructed carts.

1.4.2 Collection Routes

A. Starting one year from the effective date of this Contract as established in Section 6.1.1. The

Contractor will establish ~~R~~residential and ~~M~~multi-family ~~U~~unit collection routes. A map will be submitted to Director whenever there is a change to the route. The Contractor may propose changes in routes or days of collection affecting ~~R~~residential and ~~M~~multi-family ~~U~~units by submitting a written request at least 30 calendar days in advance, unless a shorter period of time is approved by the Director. Any change in routes or scheduling will be subject to approval by the Director prior to implementation. The Contractor will deliver a written notice of approved changes to the City at least 30 calendar days prior to the change, unless a shorter period of notice is approved by the Director.

B. The Contractor will not commence any residential collection prior to 7:00 a.m. or after 7:00 p.m., unless otherwise approved by the Director.

1.4.3 Holidays

The Contractor may observe six legal holidays in each calendar year (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). If a holiday is to be observed, the Contractor will notify the City of the change in the schedule. A decision to observe any of the above holidays does not relieve the Contractor of its obligation to provide the same frequency of collection service for that week of the holiday, as stated in this contract, for ~~R~~residential and ~~M~~multi-family ~~U~~units. The Contractor will perform required collections on an alternate day, approved by the Director, on each week in which a holiday falls.

1.4.4 Complaints

A. The City and Contractor will serve as the contact point for all customer complaints about the Contractor's services. The City will provide the Contractor with contact information for this purpose. If the Contractor receives a complaint directly from a customer, the Contractor will respond courteously and direct the customer to the contact point identified for this purpose by the City.

B. The Contractor will provide communication to all trucks from its base of operations.

C. The Contractor will respond promptly and courteously to investigate and provide resolution to all complaints it receives from the City. The Contractor will respond promptly to City telephone or email inquiries regarding the status of complaints and complaint resolution.

D. The Contractor will investigate all alleged missed scheduled collections, and if such allegations are verified by the Contractor or by the City, the Contractor will arrange for the collection of the uncollected solid waste within ~~24-48 hours~~ 1-2 business days after the complaint is received.

E. The Contractor will notify the City of all residential solid waste, recyclables and ~~G~~green ~~W~~waste ~~M~~materials the Contractor declines to collect and the reason for it. The Director may investigate "no pickup" complaints and advise the customer of the reasons, or require the Contractor to collect the material.

F. The City will keep a record of the dates and times complaints are received and the dates and times the complaints were resolved by the Contractor.

1.4.5 Complaint Resolution and Penalties

A. The Contractor will be charged an administrative penalty of not less than \$25.00 or more than

\$1,000 for each customer complaint or other violation of this contract that is not resolved within two business days of receipt of complaint by Contractor and to the **reasonable** satisfaction of the City Manager. The Contractor may appeal a penalty assessment to the City Council by filing a written notice with the City Manager within ten (10) calendar days of the date of the City Manager's decision. The City Council will hear the appeal at its next regular meeting that is ten (10) days or more after the date the appeal notice is filed. The City Council's decision will be final.

B. Administrative penalties will be deducted from the City's payment to the Contractor for the billing cycle following the City Manager's determination (or the City Council's determination if appealed). Twenty-five (25) or more unresolved complaints for which penalties are assessed during the term of this contract are grounds for contract termination by the City Council.

1.4.6 Equipment

A. The Contractor will operate only enclosed packer type trucks suitable to keep the solid waste ~~or~~ recyclable **or green waste** materials from falling or blowing from the trucks. Solid waste or recyclable materials hauled by the Contractor will be contained, tied or enclosed so that leaking, spilling and blowing is prevented. All of the Contractor's equipment will be in good mechanical condition and possess current federal and TXDOT certifications.

B. The Contractor will provide communication to all trucks.

C. The Contractor will keep all equipment clean and in a good state of repair.

D. The Contractor will not allow the noise level for the collection vehicles during the stationary collection or compaction process to exceed the current city noise ordinances, **or State guidelines**.

E. The Contractor will identify its vehicles on each of its passenger doors, as required by the Federal Motor Carrier Safety Administration, Section 390.21, **so that the information is clearly readable from a distance of 50 feet**.

F. The Contractor will provide access at any time for the City to inspect the equipment to ensure that all equipment meets the requirements of this Contract and has the proper TXDOT certification. Unless otherwise approved by the Director, the Contractor will not use **equipment-trucks** which is more than seven years old to provide the services required under this Contract. The Contractor will use only equipment manufactured by a nationally known manufacturer.

1.4.7 Personnel

A. The Contractor will provide properly trained, capable drivers with current class "B" drivers' licenses.

B. The Contractor will ensure that all of its employees, permanent or temporary, present a neat appearance and can be easily recognized while performing work under this contract. All of its employees will wear appropriate identification badges or uniforms.

C. The Contractor will ensure that any persons employed who are not United States citizens have work permits.

D. The Contractor will remove from service under this Contract and replace any of its employees for just cause as requested by the City.

1.4.8 Customer Service/Office Facilities

The Contractor will provide a facility through which it can be contacted. The Contractor will provide sufficient local or toll free telephones and office staff in order to provide necessary services from 8:00 a.m. to 5:00 p.m. on regular collection days. In addition, the Contractor will provide for voice mail receipt of after-hours inquiries and communications.

1.4.9 Disposal

The Contractor will haul and dispose of all solid waste collected by it in the contract area at a disposal site licensed by the State of Texas for that purpose. The disposal site will have adequate capacity to accommodate the requirements of this Contract. The Contractor is responsible for payment of all costs of disposal, including without limitation, tipping, environmental, inspection or other fees charged by disposal site operators or governmental authorities in connection with disposal activities.

1.4.10 Ownership of Collected Solid Waste

The Contractor accepts title to all solid waste, recyclable ~~materials~~ and green waste materials other than ~~Unacceptable W~~waste, placed in the Contractor's collection vehicles, removed by the Contractor from a cart, ~~recycling bin or container~~or dumpster, or removed by the Contractor from the customer's premises. ~~The Contractor permits city staff to audit carts for contamination.~~ The City does not accept ownership or title to any such items.

1.4.11 Notifications and Disposal Site Reports

The Contractor will forward to the City at its request, copies of all Texas Commission on Environmental Quality Inspection Reports for the sites being used for the disposal of solid waste or recyclable materials collected under this Contract.

1.4.12 Interruption of Service

In the event the collection and disposal of solid waste, recyclable materials or ~~G~~green ~~W~~waste materials is interrupted for any reason within the Contractor's reasonable control for more than 48 hours, the City will have the right to make temporary independent arrangements for continuing these services to its citizens to provide and protect the public health and safety. In the event of this type of interruption, the Contractor will bear all expenses incurred for the alternate collection and disposal. Notwithstanding any other provision of this Contract, if an interruption in service continues for a period of ten (10) days, the City will have the right to immediately terminate this Contract and to seek any remedy provided by law.

1.4.13 Natural Disaster

In the case of excessive amounts of solid waste caused by a tornado, severe storm, high winds, flooding, hurricane, ice storm or other similar natural occurrence or act of God, the City may dispose of the solid waste in whatever manner it may elect; provided however, that the City will attempt in good faith to use the Contractor's services if they can be used at the same or lower cost than other methods available to the City. If the City elects to use the Contractor's services, the Contractor agrees to provide a rear-load truck and two employees and/or roll-off boxes at the designated rates listed in "Attachment A". ~~The City will notify the Contractor to be on alert when the Emergency Operation Center is activated. The City will~~

also notify the assigned TDS Representative through text, phone or email. The Contractor agrees to provide the necessary service to the City within 48 hours of the City's notice of a natural disaster. If the Contractor cannot respond within the time frame set forth above, it will notify the City immediately of such inability.

1.4.14 Place of Collection

The Contractor will perform all normal residential solid waste, recyclable materials and ~~G~~green ~~W~~waste materials collection activities at curbside, or with permission of the Director, from an alley. **Carts must be placed within three (3) feet of the curb (or the property line adjoining the roadway) in order to be serviced.**

1.4.15 Project Roll-Outs

Any changes in service provided in the term of this contract will be subject to a 30-day roll-out period, after the date of implementation.

1.4.16 Miscellaneous

A. The Contractor will discontinue collection services at any Residential or Multi-Family Unit as set forth in a written notice sent to it by the City. Upon further notification by the City, the Contractor will resume collection on the next regularly scheduled collection day. To the extent of the City's liability under applicable law and without waiving the City's governmental immunity, the City will indemnify and hold the Contractor harmless from any claims, suits, damages, liabilities or expenses resulting from the Contractor discontinuing service at any location at the direction of the City.

B. The Contractor's right to provide collection and disposal services for solid waste, recyclable and Green Waste materials from within the contract area will apply only to matters specifically addressed in this Contract. The City will use its best efforts to require customers to comply with ordinances providing for curbside placement of residential solid waste, recyclable and Green Waste materials for collection by the Contractor.

Section 1.5 Education Program

1.5.1 The Contractor will be an integral part of a continuing City service to which the residents are accustomed, and will provide a high level of cooperation with the City and its citizens in carrying out the services specified in this Contract.

~~1.5.2 The Contractor will develop and implement the Public Outreach/Education Program related to its solid waste collection, disposal and recycling activities. A schedule detailing all activities of this program for the following year will be submitted to the Director for review and approval at least 15 calendar days prior to beginning work, and annually thereafter. The Contractor will continue program development and implementation throughout the term of the Contract. The Contractor will schedule quarterly meetings with the City staff to review and evaluate the program's effectiveness. Components of the program will consist of:~~

- A. TDS facility providing up to four (4) tours for designated groups annually (**Contractor and City will establish what designated groups are allowed**). ~~TDS Contractor~~ will also provide tours for City Council Members upon request.
- B. Contractor offers the use of TDS cabins, on their site, for an all-day City Council or Executive

Team Planning Retreat for two consecutive days annually during business hours, subject to availability.

~~B. Arrange visits to one grade level in each elementary and middle school, university groups in the San Marcos service area to present educational programs and information yearly.~~

~~1.5.3 The Contractor will pay all costs of the public information programs.~~

1.5.4 C. The Contractor will make every reasonable effort to serve the Customers regardless of errors in customer materials preparation or placement. The Contractor will notify the City of repeated or gross mistakes on the part of the customers. The City will take such actions or implement such procedures as are reasonably necessary to ensure compliance by its residents with the provisions of this Contract.

~~1.5.5 At the beginning of contract, the Contractor will develop and distribute literature in Spanish and English to inform affected customers on all aspects of the collection services, which will include but not be limited to, days of service, materials to be recycled, method of preparation required, and placement of containers for collection. The Contractor will submit this educational literature to the City for its approval prior to distributing it to customers.~~

~~1.5.6 The Contractor will provide a written report to the City on a quarterly basis on the nature and extent of the public information program.~~

~~1.5.7 The Contractor will make available to public schools, multi family units, and university groups educational materials regarding the Contractor's recycling and green waste program.~~

~~1.5.8 The Contractor will assist the City with educational and public outreach materials and representation at public events such as National Recycling Week, America Recycles Day, Earth Day, Business Expo, and Texas Green & Home Living Show.~~

1.5.9 D. The Contractor will ensure that the carts display the Contractor's name and an ID stenciled on each cart for identification, and a decal is on top of the recycle or green waste cart with information on what can go in the cart.

1.5.10 Contractor agrees to provide ~~the following additional educational services, at no additional cost:~~

~~1.5.11 Press releases, newsletter articles and bill inserts in English and Spanish;~~

~~E Contractor agrees to provide a link on Contractor's website that provides specific details regarding single stream recycling and Green Waste materials program (to include videos as well) where Residents are able to put their address into the website and retrieve information on type of service and says days of service, specific to their address~~

~~A. Materials designed for schools for review and downloading purposes will be available on the TDS website (texasdisposal.com) to students in grades K-12, university groups, and multi family units on the benefits of single stream recycling and proper recycling practices and a Green Waste materials program.~~

F When Contractor requests route changes or updates that would require outreach to the residents, contractor will pay for printed materials, and send an alert to residents signed up for the service app.

Contractor and City will mutually agree on cost of printed materials.

Section 1.6 Miscellaneous

1.6.1 Tree Donations

If the City increases the current recycling tonnage by 5% on October 1st, for the prior year, the Contractor will deliver to the City, trees from the Contractor's tree farm valued at \$1,000. If the City increases the current recycling tonnage by 10% on October 1st, for the prior year, the Contractor will deliver to the City, trees from the Contractor's tree farm valued at \$1,250. If the City increases the current recycling tonnage by 15% on October 1st, for the prior year, the Contractor will deliver to the City, trees from the Contractor's tree farm valued at \$2,000. The Contractor will maintain and report estimated tonnage on a on a quarterly basis to the City.

1.6.2 Preferred Pricing

- A. The City will have the option to purchase any Garden-Ville product, including all compost and mulch blend at contract level pricing, which is the lowest pricing tier for the material.
- B. **The City will receive preferred pricing on** Portable toilets - facility and park renovations

ARTICLE 2 THE CITY'S RESPONSIBILITIES

Section 2.1

The City designates the Director to act as the City's authorized representative with respect to this Contract.

Section 2.2

The City will assist the Contractor in encouraging Customers to comply with the City's solid waste regulations by providing instruction, public service contact, and informational materials. The City will contact Customers who violate the regulations as the need arises.

Section 2.3

The City will submit statements to and collect from all residential units for residential solid waste services provided by the Contractor under this Contract, including those accounts that are delinquent.

Section 2.4

The City will serve as the customer contact for initiation of Residential and Multi-family service, and will relay service initiation requests to the Contractor.

Section 2.5

The City will bear all costs incident to this Article.

ARTICLE 3 PAYMENTS

Section 3.1 Rates and Billing

3.1.1 The Contractor will bill the City for service rendered to ~~R~~residential and ~~M~~multi-family ~~r~~units each month within ten calendar days following the end of the month, and the City will pay the Contractor on or before the 30th day following the date of each bill. ~~The City will pay Contractor for services rendered regardless of whether City receives payment from Customers.~~ Payments after the 30th day will accrue interest as provided in Section 2251 of the Texas Government Code as amended. Such billing and payment will be based on the ~~price contract~~ rates and schedules set forth in ~~subsection 3.1.2 of this Contract.~~ Attachment A of this Contract.

~~3.1.2 The contract rates are listed in "Attachment A".~~

Section 3.2 Calculation of Payments for Residential and Multi-Family Units

3.2.1 Payment for each month's service will be determined by applying the contract ~~R~~residential and ~~M~~multi-family unit price for collections to the actual number of occupied ~~R~~residential or ~~M~~multi-family ~~D~~dwelling ~~U~~units within the contract area during the immediately preceding month as shown by the City's utility billing records to include the monthly costs for:

- City services,
- special events; and
- ~~neighborhood-community~~ cleanups.

plus the contract unit price per additional cart per actual number of additional carts delivered and serviced.

3.2.2 New accounts added after the first day of a month will be counted as having received service for a full month. Accounts discontinued during a given month will be counted as not having received service for that month, as determined by the above described reports.

3.2.3 On an as needed basis, but at least twice annually, and at a time mutually agreeable ~~to the~~by the City and Contractor, Contractor will provide the City with billing audits which will compare units being billed versus units serviced to make certain that customer billing is accurate. When the Contractor identifies units that are being serviced and are not being billed, the Contractor will provide the addresses of the units to the City as well as the type of service being provided and the date such service began or ended. The City will have 60 business days to verify the list and provide a response to the Contractor. The City may ask for an extension as necessary to complete the audit process. Units not being billed in error will be added to the billing. Units that should not be billed will be returned to the Contractor with the reason for not being added to the billing. The City's reconciliation of discrepancies will be final, ~~subject to dispute resolution.~~

Section 3.3 Modification of Rates

3.3.1 The total rate charged by the Contractor for the period beginning October 1, 20~~1~~25 for the duration of the first contract term as identified in Article 6 will be adjusted upward annually by 3% on the compounded rate. ~~The Contractor may petition City at any time for additional rate and price~~

adjustments due to unusual changes in its cost of operations, such as revised laws, ordinances, or regulations; increase in the cost of doing business, such as but not limited to increases in operating costs. City will consider such a request in good faith.

3.3.2 Six (6) months prior to each renewal term the Contractor ~~will~~may provide historic cost information for the expiring term if requested by City. Based on these cost changes the parties will agree to new annual price percentage increase for the next contract renewal period.

ARTICLE 4 REVENUE SHARING

Section 4.1 The contractor will share revenue from San Marcos recycling commodities based on the following.

4.1.1 The City will receive from the contractor revenue of 10% of commodity market prices for commodities over \$80/ton and volumes exceeding 100 tons per month.

4.1.2 The rebate market value is capped at \$120.00/ton.

4.1.3 Commodity prices are based on average prices from the Official Board Market (Yellow Sheet). Contractor will provide to City upon request

4.1.4. The percentage of commodity volumes will be based on an audit of recycling materials received only from the City of San Marcos. The audit will be conducted with a City representative present on annual basis.

ARTICLE 5 RECORDS AND REPORTS

Section 5.1 The Contractor will file the following records and reports with the City on a monthly basis:

5.1.1 Reports of all actions taken by the Contractor to resolve complaints.

5.1.2 Changes in the number of residential units served by the Contractor.

5.1.3 Report of recycling and ~~G~~green ~~W~~waste information which includes estimated amount by weight of recyclable and ~~G~~green ~~W~~waste materials collected.

5.1.4 The Recycling Material Facility will document and provide to the City estimated weights on all loads delivered to the Recycling Material Facility by the Contractor for City loads of ~~R~~recyclables collected in the City by time delivered to the Facility, tonnage of material delivered, and unacceptable loads collected. A monthly estimated summery will be submitted by the Recyclable Materials Facility to the City. All of these records will be available to the City and its representatives at reasonable times and places throughout the term of this Contract and for a period of five (5) years after last or final payment.

5.1.5 Report of solid waste collected by estimated weight.

5.1.6 Report of all contractual cleanup and special event weights.

Section 5.2 The Contractor will retain all records and supporting documentation applicable to this Contract, and not delivered to the City, for a period of three years except in the event that the Contractor

goes out of business, it will deliver to the City all of its records relating to this Contract for retention by the City.

ARTICLE 6 TERM OF CONTRACT

Section 6.1 Contract Term

6.1.1 The term of the original Contract commenced on July 1, 2008. The City has entered into four amended and restated contracts with the Contractor. This is the fifth Amended and Restated Contract and it will be effective from, October 1, ~~2015-2025~~ through September 30, ~~2020~~2030. The Contractor will continue collection of residential solid waste, recyclable materials, and ~~G~~green ~~W~~waste materials from ~~R~~residential ~~U~~units and ~~S~~single-stream ~~R~~recycling ~~S~~services for ~~M~~multi-family ~~U~~units.

~~6.1.2—The contract term may be extended for two additional five year periods, provided all terms and conditions remain in full force and effect except for the Contract being extended, and a modification to rates as specified in Section 3.3 of this Contract. Each of these options, if exercised, is to be executed in the form of an Authorization of Change in Services (Attachment A) no sooner than 180 calendar days prior to expiration of the Contract, nor later than the final day of the contract period. These options require the mutual agreement of the City and the Contractor. Refusal by either party to exercise an option to renew will cause the Contract to expire on the original or mutually agreed upon date. The total period of the Contract, including both extensions, will not exceed a maximum combined period of 15 years.~~

Section 6.2 Breach/Default

Failure by either party to this Contract to perform any of its provisions will constitute a breach of Contract, in which case, either party may require corrective action within ten (10) business days from date of receipt of written notice citing the exact nature of such breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing such failure within the prescribed ten (10) business days will constitute a default of Contract. The defaulting party will be given a 20 day period within which to show cause why the Contract should not be terminated for default. The City Council may take whatever action as its interest may appear, resulting from such notice. The City reserves the right to enforce the performance of the Contract in any manner prescribed by law in the event of breach or default of the Contract, and may contract with another party with or without solicitation of proposals or further notification to the Contractor. At a minimum, the Contractor will be required to pay any difference in the cost of securing the services covered by this Contract, or compensate for any loss or damage to the City derived hereunder should it become necessary to contract with another source because of this default, plus reasonable administrative costs and attorney's fees. In the event of termination, the City, its agents or representatives, will not be liable for loss of any profits anticipated to be made under this Contract.

Section 6.3 Termination by City

The City reserves the right to terminate this Contract upon a minimum of 30 calendar days written notice for any reason deemed by City Council to serve the public interest, or resulting from any governmental law, ordinance, regulations, or court order. No termination for convenience will be taken with the intention of awarding the same or a similar Contract to another source. In the event of such termination the City will pay the Contractor those costs directly attributable to work done or supplies obtained in preparation for completion or compliance with this Contract prior to termination. Provided, however, that no costs will be

paid which are recoverable in the normal course of doing business in which the Contractor is engaged, or costs which can be mitigated through the sale of supplies or inventories. In the event City pays for the cost of supplies or materials obtained for use under this Contract, these supplies or materials will become the property of City and will be delivered to the City at the place designated by the Director. The City will not be liable for loss of any profits anticipated to be made under this Contract.

Section 6.4 Funding Availability

Funds for payment for the services described in this Contract have been provided through the City budget approved by City Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of services covered by this Contract is considered a recurring requirement and is included as a standard and routine expense of the City to be included in each proposed budget within the foreseeable future. The City expects this to be an integral part of future budgets to be approved during the period of the Contract. However, the City cannot guarantee the availability of funds, and enters into the Contract only to the extent such funds are made available. If funding for continuation of the Contractor's services is not available, the City may terminate this Contract by providing 30 calendar days' notice to the Contractor. The fiscal year for the City extends from October 1st of each calendar year to September 30th of the following calendar year.

ARTICLE 7

MISCELLANEOUS PROVISIONS NOTICE

Section 7.1 As required under this Contract notice will be delivered in writing to the parties at the following locations:

To the City:

City of San Marcos
Stephanie Reyes
630 E. Hopkins
San Marcos, Texas 78666

Contractor:

Texas Disposal Systems, Inc.
P.O. Box 17126
Austin, TX 78760-7

ARTICLE 8

MISCELLANEOUS PROVISION

Section 8.1 Governing Law and Venue

This Contract is governed by the laws of the State of Texas. Exclusive venue for any dispute arising under this Contract is in Hays County, Texas. In the event of a dispute in federal court, venue will be in the United States District Court for the Western District of Texas, Austin Division.

Section 8.2 Limitations

As to all acts or failures to act by either party to this Contract, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act(s) or failure(s) to act.

Section 8.3 Gratuities

The City may terminate this contract if the City finds that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City to secure favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Contract. In the event this Contract is terminated under this section, the City may collect, in addition to any other damages or remedies to which it may be entitled by law, exemplary damages in an amount neither less than three nor more than ten times the value of the gratuity offered or given to any city officer or employee.

Section 8.4 Nondiscrimination

In performing the services required under this Contract, the Contractor will not discriminate against any person on the basis of race, color, religion, sex, national origin, age or disability. The Contractor will comply with all laws and regulations prohibiting discriminating against employees or prospective employees because of age, religion, race, color, sex, disability, or national origin. The Contractor will submit reports at the City's request to assure compliance.

Section 8.5 Construction

All references in this Contract to any particular gender are for convenience only and will be construed and interpreted to be of the neuter gender. The term "will" is mandatory in this Contract.

Section 8.6 Severability

Should any provision in this Contract be found or deemed to be invalid, this Contract will be construed as not containing the provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Contract are declared to be severable.

Section 8.7 Compliance with Laws

In performing this Contract, the Contractor, its subcontractors, successors and assigns will comply with all local, state and federal laws.

Section 8.8 Public Information Act

The City of San Marcos is governed by the Texas Public Information Act (the "Act"), Chapter 552 of

the Texas Government Code. This Contract and all written information generated under this Contract may be subject to release under the Act. The Contractor will not make any reports, information, data, etc. generated under this Contract available to any individual or organization without the written approval of the City.

Section 8.9 Waiver/Renunciation

No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing and signed by both parties.

Section 8.10 Contractor Name Change

The Contractor is responsible for the performance of the Contract. In the event the Contractor changes its name, the Contractor will notify the City Manager in writing prior to the change taking effect, and the Contractor will publish notice of the change in a newspaper circulated in the contract area prior to the change taking effect. A fee of \$100.00, payable to the City, will be charged the Contractor for administrative costs in processing each name change under this provision. The Contract will then be modified to reflect the change.

Section 8.11 Force Majeure

In the event that the performance by either party of any of its obligations under the Contract is interrupted or delayed by events outside of their control such as acts of God, war, riot, or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of the events.

Section 8.12 Successors and Assigns; Assignment

The City and the Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract. Neither the City nor the Contractor will assign, sublet or transfer any interest in this Contract without the written consent of the other, which will not be unreasonably withheld.

Section 8.13 Entire Agreement; Amendments

This Contract represents the entire and integrated Contract between the City and the Contractor and supersedes all prior negotiations, representations or agreements either written or oral. This Contract may be amended to include additional services, or for other reasons, by mutual consent of the parties in the form of an Authorization of Change in Services (Attachment B). Any such amendment must be in writing and executed by both parties.

Section 8.14 Written Assurances

Whenever one party to this Contract, in good faith, has reason to question the other party's intent to perform, the former may demand that the other party give written assurance of intent to perform. In the event that a demand is made and no such assurance is received within five (5) business days, the demanding party may treat this failure as an anticipatory repudiation of this Contract.

Section 8.15 Smoke-Free

The Contractor's attention is called to the fact that pursuant to San Marcos Ordinance No. 2013-57, as amended, all City of San Marcos owned and rented/leased properties are smoke free properties. All Consultants, their subconsultants and employees are prohibited from smoking while on City property. This prohibition includes the enclosed areas of public places and workplaces and within 10 feet of doors and windows of City-owned or rented buildings, all City parks and the grounds outside of any City building. This prohibition includes e-cigarettes and other inhaled vapor devices. The City may terminate this Contract for noncompliance with this ordinance.

ARTICLE 9 INSURANCE, INDEMNITY AND BONDS

Section 9.1 Indemnity

The Contractor will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional wrongful acts of the Contractor, its employees, subcontractors or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property, alleged or actual infringement of patents, copyrights, and trademarks and without limitation by enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising from any negligent or intentional wrongful act, error or omission of the Contractor and/or its agents and/or employees. This obligation of the Contractor will not be limited by reason of the specification of any particular insurance coverage in this Contract.

Section 9.2 Insurance

The Contractor will procure and maintain at its expense insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of Texas, covering all operations under this Contract, whether performed by the Contractor or its agents, subcontractors or employees. Before commencing the work, the Contractor will furnish to the City a certificate or certificates in form satisfactory to the City, showing that the Contractor has complied with this paragraph. All certificates will provide that the policy will not be materially changed or canceled until at least 30 calendar days written notice has been given to the City, and will name the City as an additional insured on all policies except workers' compensation. The kinds and minimum amounts of insurance required are as follows. Failure of the Contractor to demand a certificate or other sufficient evidence of full compliance with these insurance requirements or failure of the Contractor to identify a deficiency from the evidence that is provided as proof of insurance will not be construed as a waiver of the Contractor's obligation to maintain the required insurance coverage specified herein. Commercial general liability insurance and motor vehicle insurance will be written with the City of San Marcos, Texas as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City. The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance and/or Employer's Liability: In accordance with the provisions of the Workers' Compensation Act of the State of Texas and/or \$500,000.00/\$500,000.00 for Employer's Liability.

Liability Insurance: (1) Commercial general liability insurance with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000.00 in the aggregate, providing coverage for, but not limited

to, bodily injury and property damage, premises/operations, products/completed operations, independent Architects as applicable (2) Business Motor Vehicle liability insurance (standard ISO version) in an amount not less than \$1,000,000 per occurrence .

The stated limits of insurance required by this Paragraph are MINIMUMS ONLY, and it will be the Contractor's responsibility to determine what limits are adequate. These minimum limits may be basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of Certificates of Insurance that in any respect do not comply with the requirements of this Contract does not release the Contractor from compliance herewith.

Section 9.3 Bonds

The Contractor will furnish a performance bond as security for the performance of the contract within 10 calendar days following the Contractor's receipt of a fully executed contract and before commencing any work under this Contract, and annually thereafter. The amount of the performance bond will be \$250,000. The Contractor will pay the premium for this bond. The surety on the bond will be a duly authorized corporate surety authorized to do business in the State of Texas. The attorney-in-fact who signs performance bonds must file with each bond a certified and effectively dated copy of a power of attorney.

This Contract will be effective as of the 1st day of October, 2015.

City of San Marcos

Texas Disposal Systems, Inc.

By: _____
Stephanie Reyes,
City Manager

By: _____

Printed name, title

Date: _____

Date: _____

Attest:

~~Jamie Lee Pettijohn~~ Elizabeth Trevino, City Clerk

Attest:

Printed name, title

~~ATTACHMENT A~~

~~2015 Rates~~

~~(Reflects rate adjustments in 2012 and 2013 and 2014 per section 3.3 of contract)~~

Service	2012 Rate adjustment	2013 Rates
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City Facility Services	\$ 4,812.15	\$ 4,887.22
Additional Fire Station	\$ 105.00	\$ 106.64
Residential Service	\$ 15.66	\$ 15.90
Garbage	\$ 11.21	\$ 11.39
Special Events, etc.	\$ 0.39	\$ 0.39
Curbside recycle	\$ 4.05	\$ 4.12
Trash-extra 30-gallon bag	\$ 5.25	\$ 5.33
Trash-extra 30-gallon bag (non-tagged)	\$ 8.40	\$ 8.53
Extra-Garbage or Recycling Cart-96 gal.	\$ 5.25	\$ 5.33
Natural Disaster		
Rear Load Truck with 2 employees	\$ 147.00	\$
per hour plus disposal	\$ 152.25	\$ 149.29
	\$ 325.50	
Roll-off (all sizes)-		
Delivery	\$ 4.20	\$ 154.63
Haul		\$ 330.58
Container rental		
No charge first 7 days then		\$ 4.27
Multi-Family Recycling	\$ 4.44	
Weekly service per unit		
(Recycling \$3.86 and special	\$ 4.05	
events/Neighborhood Cleanups/	\$ 0.39	\$ 4.51
Downtown pick-up \$0.37)		\$ 4.12
		\$ 0.39

ATTACHMENT BD
AUTHORIZATION OF CHANGE IN SERVICES
CITY OF SAN MARCOS, TEXAS

CONTRACT: Collection and Disposal of
Solid Waste and Recyclable Materials

CONTRACTOR: Texas Disposal Systems, Inc.

AUTHORIZATION NO.:

ORIGINAL CONTRACT DATE: October 1, 2015

DATE OF CHANGE:

WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES

Previous contract amount: \$ _____
Net increase/decrease in contract amount: \$ _____
Revised contract amount: \$ _____

Texas Disposal Systems, Inc.

By: _____

Date: _____

Printed Name/Title

Approved by:

City of San Marcos:

Date: _____

By: _____

Printed Name/Title