

CONTRACT FOR RECYCLING SERVICES DROP OFF CENTER AND CITY FACILITIES

This Contract is made on the 17th day of June, 2014 between the City of San Marcos, Texas (the "City"), 630 East Hopkins, San Marcos, Texas 78666 and Green Guy Recycling, Inc. 937 Hwy 80, San Marcos, TX 78666 (the "Contractor"), for the provision of Recycling Services - Drop-Off Center and City Facilities.

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 the operation of a recycling drop-off center and the provision of recycling material pick up from City facilities and special events (the "Services") in accordance with the terms and conditions of this Contract. The Contractor will perform all Services in a good and workmanlike manner. Services include furnishing all labor, equipment, tools, materials, insurance, supervision, and all other items necessary to complete the work as specified.

1.1.2 No Contractor will not subcontract any work under this Contract without prior written approval from the City. In the event approval is given by the City, the Contractor will prepare a separate written agreement with the subcontractor that is subject to each provision of this Contract including the appropriate insurance requirements and miscellaneous provisions.

1.1.3. The Contractor will perform all of its services in coordination with the City. The Contractor will advise the City of data and information the Contractor needs to perform its services and the Contractor will meet with City representatives at mutually convenient times to assemble any data and information.

1.1.4 The Contractor certifies that it has fully acquainted itself with all conditions related to this Contract and will complete the Services in and under any conditions it may encounter or create, without additional cost to the City, except for changes in conditions or requirements of the work occurring during the term of this Contract through no fault of the Contractor.

1.1.5 The Contractor certifies that it is not now nor will it become delinquent in the payment of any obligation to any governmental entity.

1.1.6 **Jeremy Kay Kyle Hahn**, President, is the Contractor's Representative. The Contractor will not substitute another representative for this Project unless approved in writing by the City in advance of such proposed substitution. In the event the City and the Contractor cannot agree to the substitution of the Project Representative, the City may terminate this agreement. ***(Amended by ACIS #4, 5/2017)***

Section 1.2 Definitions

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

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

1.2.2 *Collection Center* - Contractor provided facility including real property, utilities, buildings, equipment, and personnel used in the collection, sorting, staging, and processing of recyclable materials received from customers.

1.2.3 *Contract or Contract Documents* - Includes the following: This Contract, the Request for Proposals, the Contractor's proposal, addenda, contract area maps, insurance certificates, Authorizations of Change in Services, and contract amendments. The terms *Contract* and *Contract Documents* have the same meaning.

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

1.2.5 *Director* - Director of the Department of Neighborhood Services or a person designated by the Director to act for the Director.

1.2.6 *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.

1.2.7 *E-Waste* - Discarded computers, office electronic equipment, entertainment device electronics, mobile phones, television sets, and refrigerators. Electronics destined for reuse, resale, salvage, recycling, or disposal.

1.2.8 *Hazardous waste* - Any chemical, compound, mixture, substance or article designated as a "hazardous material" under state or federal law.

1.2.9 *Producer or customer* - An occupant of a commercial or industrial unit or a residential unit who generates recyclable material.

1.2.10 *Recyclable materials* - 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.

1.2.11 *Recycling Drop Off Center* - A full service multi-materials recycling facility that is operated so that it can accept bulk delivery of recyclable materials and processes, sorts, and prepares for shipment of raw materials to commodity end users for manufacture into new products.

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

1.2.13 *Solid waste* - Garbage, rubbish, bulky waste, construction debris, stable matter, tree trimmings and yard waste not suitable for processing at a recyclable materials processing facility.

1.2.14 *Work* - The furnishing of all labor, materials, equipment, services 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.

Section 1.3 Recycling Collection Center

The Contractor will:

1.3.1 Recycling Drop-off Center

Operate a Recycling Drop-Off Center within the City limits in order to collect recyclable materials from the public. The mode of collection may be by sorted bins. The Contractor will provide appropriate supervision, materials, equipment, and labor for the operation of the Recycling Drop-Off Center as follows:

- A. Accept all types of paper and cardboard, tires, oil and filters, scrap metal and white goods, glass, Freon bearing appliances, certain types of plastic, non-ferrous metals, and Styrofoam peanuts, rechargeable batteries, printer and toner cartridges, used cooking oil, anti-freeze, car batteries and residential electronic waste during the Contractor's normal business hours. The Contractor will accept a maximum of one (1) television and two (2) Cathode Ray Tubes per household at no charge to City residents per year. In addition, the Contractor will waive the fee for Freon recovery for up to two (2) Freon bearing appliances and the tire disposal fee for five (5) tires per year for San Marcos residents. The Contractor may accept additional items for a fee based on current market conditions.
- B. Market and ship all recyclable materials to raw materials end users for manufacturer into new products in accordance with all applicable local, state, and federal laws and regulations/or transport to a recycling materials processing facility. Under no circumstances will recyclable materials be disposed of at a disposal site.
- C. Ensure that all buildings, facilities, grounds, vehicles, and equipment used in the performance of these Services are kept in good repair and appearance and in sanitary condition. In this regard, the Contractor/subcontractor will police the grounds at least once each day and dispose of loose and wind-blown recyclable materials.
- D. Provide a monthly report to the City detailing the recyclable materials collected and marketed including total pounds per type of material and market value of each type of material.

- E. Require that the Contractor's employees, officers, and agents do not identify themselves as being employees or agents of the City; and ensure that all of the Contractor's employees wear insignia bearing the Contractor's name and the individual's name.
- F. Obtain all licenses and permits required to perform the services described in this Contract, and promptly pay all taxes required by law.
- G. The Contractor will provide access to the City for inspection of the grounds of the facility to ensure that all requirements of this contract are met at any time.

1.3.2 Contractor's Personnel:

Provide the City with personnel for the operation of the City's Household Hazardous Waste Facility as follows:

- A. The Contractor will provide two (2) employees (the "employees") to operate the City's Household Hazardous Waste ("HHW") Facility (the "Facility"). The City Facility will operate up to sixteen (16) hours per week. Each employee will work up to sixteen (16) hours per week with a total of thirty-two (32) hours paid per week. In addition, at the City's direction, the employees may operate the Facility on four separate Saturdays per year (up to sixty-four (64) total hours per year). The aforementioned work schedules are subject to change based on the needs and requirements of the City with prior notice to the Contractor.
- B. The City will pay for the course costs for the Contractor's employees to receive a mandatory forty (40) hours of HAZWOPER training for one (1) employee and eight (8) hours of an annual refresher course (for three (3) employees) at the City's expense.
- C. The City will provide all necessary personal protective equipment for each employee at the City's expense. In addition, the City will provide operating supplies and equipment at its expense for the Facility area.
- D. While operating the Facility on behalf of the City, the employees will be under the direct supervision of the City's Solid Waste Coordinator (the "Coordinator") or the Coordinator's designee, however, the Contractor's employees are not considered City employees and will not receive compensation or benefits (vacation, sick leave, retirement, insurance, etc.) from the City. The Contractor is required, at all times, to ensure that all employees provided to the City are adequately covered by Workers' Compensation, General Liability, and Automobile insurance coverage in accordance with this Contract.
- E. The employees will:
 - (1) Assist the City in the receipt, identification, segregation, storage, and preparation for shipment, of all household hazardous waste received from eligible customers for recycling, treatment and/or disposal.

- (2) Set up, break down, and clean the Facility and equipment before the close of each shift. The employees will maintain the Facility in a neat and orderly manner, and in compliance with all Federal, State, and local laws and regulations for the entire time these services are performed on behalf of the City.
- (3) Develop a supply needs list and perform an inventory of supplies as necessary and promptly notify the Coordinator of any shortage in supplies, materials, or equipment so that the City may order the items as needed.
- (4) Assist the City with waste diversion activities (battery recycling, scrap metal recycling, etc.) as directed.
- (5) Be forklift operator certified (at the expense of the Contractor) and maintain this certification for the entire time the employees perform services on behalf of the City.

Section 1.4 City Facilities/Neighborhood Cleanup/Special Events Etc.

The Contractor will:

1.4.1 Provision of City Facilities Collection Services; Materials to be Collected

A. Furnish City facilities with 96 gallon carts and collect and properly dispose/recycle the following office material at selected City facilities listed in Attachment A on a weekly basis:

- | | |
|---------------------------|------------------------------------|
| (1) computer paper | (10) carbonless forms |
| (2) colored paper | (11) envelopes |
| (3) fax paper | (12) post-it notes |
| (4) file folders | (13) direct mail advertisements |
| (5) glossy paper | (14) flattened cardboard |
| (6) white paper | (15) newspaper |
| (7) phone books | (16) glass |
| (8) plastics #1-7 | (17) aluminum, steel, and tin cans |
| (9) flattened paper board | (18) shredded paper (bagged) |

B. The Contractor will utilize a single stream mode of collection and the existing carts as stipulated in section 1.4.1.A above. The City and the Contractor will review the City's requirements for each of the City facilities listed in Attachment A and adjust the number of carts/containers as needed.

C. Furnish the City with six (6) eight (8) yard containers for the collection and recycling of cardboard. The containers will be located at the Public Services Building, Police Department, Animal Shelter, Activity Center, Nature Center and the San Marcos Airport. The Contractor will pick up flattened cardboard weekly from the above referenced locations. There will be seasonal times for cardboard pick up, as requested: Lion's Tube

Rental, Five Mile Soccer Complex, Ramon Lucio Fields, and the Girls Fast Pitch Fields.

D. Maintain a 30 yard roll off dumpster at 750 River Road, San Marcos for receipt of recyclables from the City’s park crews. **The Contractor will provide a monthly count of all tires collected from the roll off containers. Tires generated from City vehicles will not be accepted. The Contractor will waive fees for the first 35 tires collected per month. After the first 35 tires are collected, the City will pay the Contractor for the acceptance of tires at the prices stipulated in Subsection 3.1 F) of the Contract. (Added by ACIS #1, 6/2/15)**

E. Scrap Material Collection. Furnish the appropriate size containers for recycling of:

Facility	Container #	Type of Materials Collected	Cost Per Haul
San Marcos Electric Utility	3	Aluminum, Copper, Ferrous Metals	3.1.1.C.
Fleet Services	1	Ferrous Metals	3.1.1.C.
Water/Wastewater Warehouse	2	Ferrous Metals, Copper Brass	3.1.1.C.
Transportation/Traffic	2	Aluminum, Ferrous Metals	3.1.1.C.
Household Hazardous Waste Yard	1	Lead Batteries	No Charge

Provide on-call services to pick up scrap metal at 750 River Road, San Marcos.

Haul scrap materials from the above locations for the amount listed in Article 3.1.1.C. The scrap materials collected from City facilities will be paid for at current market values with the amount of the haul deducted before payment. Checks will be mailed to:

City of San Marcos, Utilities
 Attn: Customer Service Supervisor
 630 East Hopkins
 San Marcos, Texas 78666

F. E-Waste Collection: Collect e-waste as requested by the City’s Information Technology Department on an as needed basis.

1.4.2 Provision of Neighborhood Cleanup/River Cleanup/Household Hazardous Waste

A. Assist the City in conducting approximately six (6) neighborhood cleanups, one (1) river cleanup and two (2) household hazardous waste events each year by furnishing labor and equipment for collection of recyclable materials. At these clean ups, the Contractor will accept, at a minimum, cardboard, scrap metal, and appliances including Freon bearing appliances, tires, and automotive batteries on the City’s behalf.

B. Furnish containers that are clear stream or expandable metal frames of the appropriate size and number as determined by between the City and the Contractor as necessary for the

collection of recyclable materials (i.e. aluminum, plastic, and paper). The Contractor will collect materials at the following City sponsored events: Don't Mess With Texas Trash Off, KSMB Spring Concert Series, Spring Carnival, Swingin' on the Square, Movies in Your Park, Summer in the Park, Summerfest, Library Book Sale(s), Passport SMTX, Fall Carnival, one (1) Animal Shelter event, Foodstock (3), and Sights and Sounds of Christmas. The Contractor will ensure that receptacles for recycling are kept at convenient locations throughout the event sites for the duration of each event and ensure that they are emptied at least once per day and removed no later than 12:00 noon following the last day of the event. If the last day falls on a Saturday, recyclables must be removed by noon on Monday. The cost for these services are included in the Contractor's cost for operation of the recycling drop-off center.

Section 1.5 Quality of Services

The Contractor will:

1.5.1 Spills/Incidents

Endeavor to not spill recyclable material. The Contractor will not leave recyclable material on the ground. If the Contractor spills material it will clean the spill using all means necessary before its truck leaves the premises. The Contractor will clean up liquid and hydraulic spills with the appropriate absorbent material which will be carried on all trucks. If a spill leaves a stain on a roadway, building, parking lot or other similar surface, the Contractor will use all reasonable means available to remove the stain and restore the area to the satisfaction of the Director.

1.5.2 Equipment/Vehicles

- A. In the performance of its services under this contract, utilize only equipment/vehicles and or other containers or devices which are suited to keeping recyclable material from falling or blowing loose. Recyclable materials and waste hauled by the Contractor will be contained, tied or enclosed so that leaking, spilling and blowing is prevented. All of the Contractor's equipment/vehicles will be in good mechanical condition and will be certified under current federal and TXDOT guidelines as applicable.
- B. Utilize only that equipment/vehicles approved for use under this Contract and as proposed per Attachment "B" to this Contract. The Contractor may make changes to the equipment/vehicle list with the written consent of the Director. The Contractor will not use equipment or vehicles that are more than seven years old in order to provide services required under this Contract.
- C. Not allow the noise level of the equipment/vehicles during the stationary compaction process to exceed 75 decibels from a distance of 25 feet from the equipment/vehicle and at an elevation of five (5) feet from the horizontal base plane of the equipment/vehicle.

- D. Identify its vehicles and other equipment with the name, address, and phone number of the Contractor's local office on each side of the vehicle so that the information can be clearly read from a distance of 100 feet.

1.5.3 Personnel

- A. Provide capable drivers with current appropriate class drivers' licenses.
- B. 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. Ensure that any persons employed who are not United States citizens will have valid work permits.
- D. Remove from service under this Contract any of its employees for just cause as requested by the City and will replace the employee(s) with a substitute approved by the City.

1.5.4 Customer Service/Office Facilities

Maintain an office within the City limits that is accessible Monday through Friday, 9 a.m. – 5 p.m. The Contractor will provide sufficient local or toll free telephone numbers and adequate office staff. In addition, the Contractor will provide for voice mail or e-mail receipt of after-hours inquiries and complaints.

Section 1.6 Education Program

The Contractor will:

1.6.1 Be an integral part of the City's continuing effort to educate its citizens regarding recycling services, and will provide a high level of cooperation with the City and its citizens in carrying out the services specified in this Contract.

1.6.2 Public Information

The City maintains an active public information program to educate customers about the importance of materials recycling, and to inform them of effective materials recycling techniques. The City's goal is to reach all customers through various methods including:

- A. Written materials such as press releases, newsletter articles, and bill inserts;
- B. Visual materials such as recycling materials and vehicle signage;
- C. Recycling website;
- D. Representation at public events such as the Business Expo, America Recycles Day, Green Living Showcase, and Texas Wild Rice Festival; and
- E. Presentations for local groups, clubs, and organizations.

Develop and expand this public information program as additional resources become available. Future public information programs may include: regularly scheduled mail outs and newspaper ads, billboard advertising, partnering with neighboring recyclers to provide radio/television spots, and participation in state-wide conservation campaigns.

1.6.3 Develop and implement a Public Outreach/Education Program related to its recycling activities as described in 1.6.2. 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 subsequent Contract. Provide a written report to the City on a quarterly basis on the nature and the extent of the public information program.

1.6.4 Pay all costs of the public information program.

1.6.5 Develop and distribute literature to inform affected customers regarding all aspects of recycling services, which will include but not be limited to, materials to be recycled and method of preparation required. The Contractor will submit all educational literature to the City and receive approval prior to distributing it to customers.

1.6.6 Make available to public schools educational materials regarding the recycling services drop-off center and City facilities.

Section 1.7 Disposal of Recyclable Materials and Solid Waste

The Contractor will:

1.7.1 Disposal

Haul and dispose of all recyclable materials collected by it, or will arrange for the hauling and disposal of, all recyclable materials collected by it at a recyclable materials processing facility licensed by the State of Texas for that purpose. The Contractor may dispose of contaminated, non-recyclable solid waste at a solid waste disposal site licensed by the State of Texas for that purpose. Under no circumstance will the Contractor dispose of recyclable materials in a solid waste disposal site. The recyclable materials processing facility will have adequate capacity to accommodate the materials collected under this Contract. Any costs of recycling, including without limitation, tipping, drop-off, processing or other fees charged for processing are included in the fees set forth in this Contract. **The Contractor will remove recyclable materials from City facilities and from City construction and renovation project sites as requested by the City. (added by ACIS #2, 11/12/15)**

1.7.2 Ownership of Collected Recyclable Materials Waste

Accept title to all recyclable materials waste and solid waste placed in the Contractor's collection vehicles, received by the Contractor at the recycling drop-off center or from City facilities and events. The City does not accept ownership or title to any such items.

1.7.3 Notifications and Disposal Site Reports

Forward, to the City at its request, all copies of Texas Commission of Environmental Quality (“TCEQ”) inspection for each registered recyclable materials processing facility being used for the disposal of recyclable materials collected under this Contract. In addition, as assurance that all recyclable materials are only disposed of at a recyclable materials processing facility, the Contractor will provide on a quarterly basis, copies of all delivery receipts to said recyclable materials processing facility.

1.7.4 Interruption of Service

In the event the collection and disposal of recyclable materials is interrupted for any reason outside of the Contractor's reasonable control for more than 48 hours, the City will have the right to make temporary arrangements for continuing this service for its citizens in order 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 collection and disposal of recyclable materials.

1.7.5 Natural Disaster

In the case of excessive amounts of debris and recycling materials caused by tornadoes, severe storms, high winds, flooding, hurricanes, ice storms or other similar occurrences or other force majeure event, the City may dispose of the debris or recycling 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 20, 30, and 40 yard roll off containers and available personnel at the rates included in Section 3.1 of the Contract. The Contractor agrees to provide the necessary requested services to the City within 24 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. *(added by ACIS #2, 11/12/15)*

ARTICLE 2 THE CITY'S RESPONSIBILITIES

The City will:

Section 2.1 The City will designate the Director to act as the City's authorized representative to act on the City's behalf with respect to this Contract.

Section 2.2 Provide full information to the Contractor regarding the City's requirements for the Contractor's services under this Contract. The City will furnish the Contractor with copies of data and information in the City's possession needed by the Contractor at the Contractor's request. The City will examine the documents and information submitted by the Contractor and promptly render responses to the Contractor on issues requiring a decision by the City.

Section 2.3 Provide access to and make all necessary provisions for the Contractor to enter public and private property as required for the Contractor to perform its services under this Agreement.

Section 2.4 The City will assist the Contractor in encouraging customers to comply with regulations by disseminating instruction, public service contacts, and informational materials.

Section 2.5 The City will bear all costs incident to this Article.

Section 2.6 File appropriate documentation with the Texas Department of Motor Vehicles including but not limited to form VTR 71-4, Application for a Certificate of Authority to Dispose of a Motor Vehicle (“COA”).
(Added by ACIS #4, 5/2017)

ARTICLE 3 PAYMENTS

Section 3.1 Rates and Payments Billing

3.1.1 The Contractor will bill the City for its Services within ten (10) calendar days following the end of each month. After receipt and approval of the Contractor's invoice, the City will pay the Contractor on or before the 25th day following the end of the preceding month as follows:

- A. Drop off center: The rates to be charged for the recycling drop off center by the Contractor will be \$0.69 per account per month. Before the 15th of each month, the City will provide the Contractor with the number of active accounts for the preceding month. Based on active accounts as provided by the City, the Contractor will bill the City on a per account basis for each month.
- B. Contractor's Personnel: The City will pay the Contractor for the provision of two employees to operate the City's HHW Facility as stipulated in Subsection 1.3.2 at \$17.78 per hour/per employee. *Disaster Relief Labor Rate: \$45.00/hour per employee. Price includes any physical labor, heavy equipment usage, light truck transportation and administrative support. (added by ACIS #2, 11/12/15)*
- C. City Facilities: The City will pay the Contractor for city facility pickup at a monthly rate of \$2,874.00.
- D. Scrap Materials: The City's payment for the hauling of scrap materials will be deducted from the total amount due to the City by the Contractor based upon the current market value of the scrap materials collected from City facilities. If the container is hauled by truck and trailer, the cost per haul is \$30.00. If the pickup is a roll-off by a roll-off truck, the cost per haul is \$75.00 regardless of roll-off size.
- E. E-Waste: The City will pay the Contractor \$30.00 per pick-up of e-waste collected from the City.

F. Tires: The City will pay the Contractor the following fees for its collection of abandoned tires after the first 35 tires collected per month:

<u>Commodity</u>	<u>Price</u>	<u>Unit</u>
Passenger Tires	\$2.00	Each
18-Wheeler Tires	\$10.00	Each
Off-The-Road (Equipment) Tires <i>(added by ACIS #1, 6/2/15)</i>	Varies by Weight	Each

G. Roll Off Containers (all sizes): \$450.00 per container, thirty (30) day fee waived. *Price includes delivery, hauling, disposal, fuel, environmental and rental fees. Additional fees will apply for the inclusion of TVs, CRTs, tires, and Freon bearing appliances.*
(added by ACIS #2, 11/12/15 and alphabetical reference changed from "F" to "G" by ACIS #4, 5/2017)

H. Nuisance Vehicles: The City will pay for the hauling and disposal of two nuisance vehicles per year at a rate of \$75.00 per vehicle.
(added by ACIS #4 5/2017)

ARTICLE 4 RECORDS AND REPORTS

Section 4.1 The Contractor will file the following records and reports with the City as directed:

4.1.1 Reports of all complaints received, investigations of these complaints, and actions taken by the Contractor.

4.1.2 Reports of recycling information which includes volumes by category.

Section 4.2 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 5 TERM; TERMINATION OF CONTRACT

Section 5.1 Contract Term

This Contract is a five (5) year contract effective from July 1, 2014 through June 30, 2019.

Section 5.2 Option to Extend

This contract may be extended for two (2) additional five (5) year terms, provided all terms and conditions remain in full force and effect except for the contract period being extended. This option, if exercised, is to be executed in the form of an Authorization of Change in Services, to be

issued no sooner than one hundred and twenty days (120) prior to expiration of this contract, nor later than the final day of the contract period. This option to extend requires the mutual agreement of both parties. Refusal by either party to exercise this option to extend will cause this contract to expire on the original or mutually agreed upon date. The total period of this contract, including the extension, as a result of exercising this option, will not exceed a maximum combined period of fifteen (15) years. The contract price, however, will be adjusted annually by 2.5%.

Increase of 1.01%---- ACIS #1, 6/2/15

Increase of 1.2%----- ACIS #3, 7/28/16

Increase of 2.7%-----ACIS #4, 5/2017

Section 5.3 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) calendar 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 calendar days will constitute a default of Contract. The defaulting party will be given a 20 calendar day period within which to show cause why the Contract should not be terminated for default. The City 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 the City for any loss or damage 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 for default, the City, its agents or representatives, will not be liable for loss of any profits anticipated to be made under this Contract.

Section 5.4 Termination by City

The City reserves the right to terminate this Contract for convenience and without cause upon at least thirty (30) calendar days prior written notice for any reason deemed by City to serve the public interest, or resulting from any governmental law, ordinance, regulation, 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 5.5 Funding Availability

The Contractor understands that funds for the payment for the services performed by the Contractor under 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. The City cannot guarantee the availability of funds, and enters into the Contract only to the extent such funds are made available. The Contractor acknowledges and agrees that it will have no recourse against the City for its failure to appropriate funds for the purposes of this Contract in any fiscal year other than the year in which the Contract is executed. The fiscal year for the City extends from October 1st of each calendar year to September 30th of the following calendar year.

**ARTICLE 6
MISCELLANEOUS PROVISIONS**

Section 6.1 Governing Law and Venue

This Contract is governed by and will be construed under the laws of the State of Texas. All obligations of both parties are performable and exclusive venue for any dispute arising under this Contract is in Hays County, Texas.

Section 6.2 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 6.3 Partisan Political Activity

The Contractor will not use funds received by it directly or indirectly under the terms of this Contract for any partisan political activity or to further the election or defeat of any candidate for public office.

Section 6.4 Gratuities

The Contractor hereby affirms that the Contractor has not made or agreed to make any valuable gift whether in the form of service, loan, thing or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of contractors to provide these Services to the city within the two years preceding the execution of this Contract. A campaign contribution as defined by the Texas Election Code or the San Marcos City Code will not be considered as a valuable gift for the purposes of this Contract. 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 not less than three or more than ten times the value of the gratuity offered or given to any city officer or employee.

Section 6.5 Nondiscrimination

In performing the services required under this Contract, the Contractor will not discriminate against any person based on race, color, religion, sex, national origin, age, disability, or ancestry. The Contractor agrees not to engage in employment practices which have the purpose or effect of discriminating against employees or prospective employees because of race, color, sex, religion, national origin, age, disability or ancestry and will comply with all laws and regulations prohibiting such discrimination. The Contractor will submit reports at the City's request to assure compliance. A breach of this covenant may be regarded as a default by the Contractor of the Agreement.

Section 6.6 Construction

All references in this Contract to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term "will" is mandatory in this Contract. The captions or headings included in this Contract are for convenience only and in no way define, limit or describe the scope or intent of any provisions, articles, or sections of this Agreement.

Section 6.7 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 6.8 Compliance With Laws

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

Section 6.9 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, as amended. 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 6.10 Exclusivity

All services provided pursuant to this Contract are for the exclusive use and benefit of the City and the Contract will not give rise to any rights in third parties.

Section 6.11 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 6.12 Remedies; No Waiver.

In the event of a default or breach of this Contract by the Contractor, the City reserves the right to choose among the remedies for the default or breach available to the City. These remedies may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce this Contract with respect to one or more defaults by the Contractor will not waive the City's ability to enforce the Contract after that time.

Section 6.13 No Waiver of Immunity from Suit

The City's execution and performance under this Contract will not act as a waiver by the City of any immunity from suit to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing this Contract, is a governmental entity acting in a governmental capacity.

Section 6.14 Contractor Name Change

The Contractor is responsible for the performance of the Contract. In the event the Contractor changes its name, the City must be notified in writing immediately. No change in the obligations of the Contractor will be recognized until such change is approved by the City. A fee of \$100.00, payable to the City, will be charged the Contractor for administrative costs in processing each change under this provision. The Contract will then be modified to reflect the change.

Section 6.15 Force Majeure

In the event that the performance by either the City or the Contractor 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 6.16 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. The City and the Contractor may not assign, sublet or transfer any of their rights or delegate or subcontract any of their duties under or interest in the Contract in whole or in part, without the written consent of the other. Any work or services subcontracted under the Agreement will be specified by separate written agreement and will be subject to each provision of the Agreement. The Contractor will notify the City, in writing, of any change in its partnership/ownership within 30 calendar days of such change.

Section 6.17 Entire Agreement

This Contract including all appendices and referenced attachments or exhibits represents the entire and integrated Contract between the City and the Contractor and supersedes all prior negotiations, proposals, negotiations, representations or agreements either written or oral between the parties. In the event of a dispute between the City and the Contractor regarding the intent of this Contract, both parties agree that this Contract will be constructed in a manner consistent with the City's Request for Proposals, the Contractor's proposal response and the public record of the City Council's approval of this Contract as applicable. This Agreement may be amended only by written instrument and must be signed by both the City and the Contractor. Any such authorization of change in services or amendment must be approved by the City's governing body unless the compensation for which does not exceed \$50,000.00. Any exhibits and/or attachments attached to this contract are incorporated by reference into this contract as though included verbatim herein. In the event of any conflict between the Contract and the provisions of any referenced exhibit or attachment to this Contract, this Contract will govern and control.

Section 6.18 Change in Services/Amendment

Each material change (deletion or addition) in the services to be provided by Contractor must be authorized by the City on the Authorization of Change in Services form attached to this Contract as Attachment C. Compensation for any additional services or change in services will be calculated in accordance with Section 3.2 of this Contract. The approval of the City's governing body is necessary for all additional services the compensation for which exceeds \$50,000.00.

Section 6.19 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 5 working days, the demanding party may treat this failure as an anticipatory repudiation of this Contract.

Section 6.20 Schedule of Work

The Contractor will complete the work in accordance with the schedule negotiated with the City and the Contractor has taken into consideration and made allowance for all hindrances and delays incident to such work, whether growing out of delays in securing material, workers, and weather or otherwise.

Section 6.21 Smoking Ordinance

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 Contractors, their subcontractors 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 Agreement for noncompliance

Section 6.22 Safety

The work to be performed under this contract will be performed entirely at the Contractor's risk. The Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work to be performed under this contract. The Contractor will take all reasonable precautions for the safety of and will provide all reasonable protection to prevent damage, injury, or loss to employees, the work, the endangered species, or the property affected by this contract. All damage or loss to any property caused in whole or in part by the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them will be remedied by the Contractor.

Section 6.23 Taxes

The Contractor will not include Federal taxes or State of Texas limited sales excise and use taxes in its invoices or vouchers and statement of costs. The City is exempt from payment of such taxes and the Contractor may retrieve a resale certificate for use on this Project from the State of Texas Comptroller's website.

Section 6.24 "Green" Procurement

It is the City's intent to be proactive with regard to the environment. The City encourages "Value Purchasing" of environmentally friendly products. The Contractor is encouraged to identify and utilize green solutions in performing any services under the Agreement, as appropriate.

**ARTICLE 7
INSURANCE AND INDEMNITY**

Section 7.1 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 errors or omissions of the Contractor, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable 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 by the Contractor will not be limited because of the specification of any particular insurance coverage required under the Agreement.

Section 7.2 Insurance

(a) The Contractor will procure and maintain at its own expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under the Agreement, 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 a form satisfactory to the City, showing that the Contractor has complied with this paragraph. All certificates will provide that the policies will not be canceled until at least 30 calendar days prior written notice has been given to the City. 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 and motor vehicle insurance will be written with the City 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 (standard ISO version) with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate, providing coverage for, but not limited to, bodily injury and property damage, premises /operations, products/completed operations, independent contractors as applicable. (2) Business Motor Vehicle liability insurance (standard ISO version) in an amount not less than \$1,000,000 per occurrence.

ARTICLE 8
NOTICE

Section 8.1 Notices required under this Contract will be provided by the parties to one another by certified mail, return receipt requested, or by confirmed facsimile transmission, to the following addresses:

To the City:
City Manager
City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666

To the Contractor:
Kyle Hahn, President
Green Guy Recycling, Inc.
937 Hwy 80
San Marcos, Texas 78666

Each of the persons executing this Contract represents that he or she has full power and authority to execute the Contract on behalf of the party that person represents. This Contract will be effective as of the day and year established in the first paragraph of this Contract.

City of San Marcos

By: _____

Jared Miller, City Manager

Date: 06/20/2014

Attest:

By: _____

(Signature)

Samie Lee Pettigrew

(Printed or typed name)

City Clerk

(Title)

Green Guy Recycling, Inc.

By: _____

Kyle Hahn, President

Date: 7/1/14

Attest:

By: _____

(Signature)

Laura Diver

(Printed or typed name)

Admin. Services manager

(Title)

Attachment A

CITY FACILITIES

Single Stream Carts

Facility	Location
Activity Center	501 East Hopkins
Animal Shelter	750 River Road
Central Fire Station	114 Hutchison Street
City Marshal Office	1402 West Hopkins
City Hall	630 East Hopkins
Household Hazardous Waste Drop Off	630 East Hopkins
Community Services Department	401 East Hopkins
Municipal Building	630 East Hopkins
Nature Center	430 Riverside Drive
Permit Building	630 East Hopkins
Public Library	625 East Hopkins
Public Services Building	630 East Hopkins
San Marcos Police Department	2300 South IH 35
Sub Fire Station #2	1314 Academy Street
Sub Fire Station #3	2420 Hunter Road
Sub Fire Station #4	404 Broadway
Sub Fire Station #5	100 Carlson Circle
Tourist Information Center	617 North IH 35
Traffic Department	630 East Hopkins
Waste Water Treatment Plant	750 River Road
Water/Waste Water Warehouse	630 East Hopkins
WIC – San Marcos	401C Broadway
Lion’s Club (Summer Only)	170 Charles Austin Drive

Recycling Containers

Facility	Location
Municipal Building	630 East Hopkins
Public Services Department	630 East Hopkins
Traffic Department	630 East Hopkins
Waste Water Treatment Plant	750 River Road
Water/Waste Water Warehouse	630 East Hopkins