

From: David O'Bannon  
Sent: Thursday, February 18, 2021 12:22 PM  
To: Rick Schroder <rschroder@johnsoncitytx.org>  
Subject: Lease between JC and ESD1

Rick,

Attached is a new lease agreement for the recycling center between Johnson City and the ESD 1. The ESD will require the City to cancel the existing lease with the EMS. I hope this will be on the agenda for the next city council meeting. Let me know if you have any questions.

Best regards,

David O'Bannon

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## LEASE AGREEMENT

THE STATE OF TEXAS     §  
  §  
COUNTY OF BLANCO     §

This Lease Agreement is made and entered into this \_\_\_\_ day of February, 2021 at Johnson City, Blanco County, Texas, by and between BLANCO COUNTY EMERGENCY SERVICES DISTRICT NO. 1, a political subdivision of the State of Texas, hereinafter called Lessor, and the CITY OF JOHNSON CITY, a Type A General Law Municipality, hereinafter called Lessee.

### ARTICLE 1. DEMISE, DESCRIPTION, USE, TERM AND RENT

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, that certain property, hereinafter called the leased premises, situated in Blanco County, Texas, and described as follows:

BEING a rectangular tract of land located at the middle northwest corner of property now owned by Lessor lying south of Ranch Road 2766 and east of Block 2 of the Winters-Furr Subdivision, the leased property has a width of 110 feet and a length of 110 feet; the northwest corner of which is at the southeast corner of Lot 28 and the northeast corner of Lot 29, Block 12, Winters-Furr Subdivision, ***adjoining the previously leased property being used for recycling purposes*** (“Leased Premises”),

to be used only as a recycling facility by Lessee and for no other purpose for the term of two (2) years, commencing on the date noted above, and ending on February \_\_, 2023, unless sooner terminated as provided for herein. Lessee's use of the Leased Premises shall be limited to use as storage, office, sorting, pickup and drop off, vehicle storage, and sales, provided, however, such activities are specifically in connection with recycling for the Lessee and its citizens only as set forth herein. The Lessee is thoroughly familiar with the condition of the Premises, and takes possession of the Premises “AS IS” and “WHERE IS,” and with all faults. Lessee is solely responsible for the condition, operation, and use of the Premises, and at any time, from time to time, Lessee shall have the right to construct, erect, repair, replace, and maintain the leased Premises and any improvements thereon, and such other and further improvements as Lessee may determine to be useful in connection with the Lessee’s operations on the leased Premises, provided such work is done in a good and workmanlike manner and in compliance with all valid and applicable regulations, orders, statutes, ordinances, and laws of legally constituted authorities. Any such improvements constructed, erected, repaired, replaced, or maintained on the Premises shall be at Lessee’s sole risk, responsibility, liability, and expense, and shall be removed as set forth herein.

### ARTICLE 2. RENT

Lessee agrees to and shall pay Lessor at the commencement of this lease the sum of TEN AND 00/100 (\$10.00) DOLLARS per year for each year of the lease.

### ARTICLE 3. TAXES AND ASSESSMENTS

Lessor shall be in no way responsible for any costs or expenses related to or arising from Lessee's use of the Leased Premises. Lessee shall pay and discharge any and all costs and expenses of any kind or nature whatsoever related to or arising from its use of the Leased Premises, including, but not limited to, taxes, fee, permits, fines, citations, attorney's fees and court costs, general and special assessments, and any and all other charges of every kind or description whatsoever that shall be incurred by Lessee or its use or occupancy of the Leased Premises during the term of this lease and that may be levied on or assessed against the Leased Premises and all interests therein and all improvements and other property thereon.

### ARTICLE 4. INSURANCE

4.01. Lessee agrees to maintain during the entire term of this lease, or any renewal thereof, any insurance required by Lessor, including, but not limited to, a general liability policy, a pollution or hazardous uses policy, or any other necessary insurance related to or arising from Lessee's use of the Leased Premises, insuring Lessee's occupancy, use, and activities on the Leased Premises, or to be self-insured in accordance with state law for municipalities.

4.02. On securing the foregoing coverage, the Lessee shall give the Lessor written notice thereof and provide copies of said insurance to Lessor.

4.03. Lessee shall be solely responsible for all operations, costs, and expenses related to or arising out of the use of the Premises by Lessee, including all liability, casualty, and other appropriate insurance, with a minimum amount as may be required by the Texas Tort Claims Act or other applicable statutes, rules, laws, or regulations. The Lessee agrees to defend, indemnify, and hold harmless Lessor from any and all claims, judgments, damages, or other liabilities related to or arising out of the use of the Premises by Lessee

### ARTICLE 5. UTILITIES

Lessee shall during the term hereof pay all charges for telephone, gas, electricity, water, and any and all other utilities or services used in or on the Leased Premises and for the removal of rubbish, debris, or other materials therefrom before they shall become delinquent and shall, to the fullest extent permitted by law, indemnify and hold Lessor harmless from any liability therefor.

### ARTICLE 6. WASTE AND NUISANCE

Lessee shall not commit, or suffer to be committed, nor shall maintain, commit, or permit the maintenance or commission of any nuisance or waste on or in relation to the Leased Premises or its occupancy, use, or activities of any kind on the Leased Premises or use the Leased Premises for any unlawful or illegal purpose. Lessee shall promptly comply with all valid regulations, orders, ordinances, statutes and laws of legally constituted authorities applicable to the use and occupancy of the Premises.

### ARTICLE 7. REPAIRS

Lessor shall not be responsible for any repairs, maintenance, or other duty to the Leased Premises. Lessee shall be solely responsible for any and all repairs, maintenance, hazardous materials mitigation, compliance with all applicable law, statutes, rule, or regulation, or other duty to the Leased Premises at its sole cost and expense. Lessee shall promptly comply with all valid regulations, orders, ordinances, statutes and laws of legally constituted authorities applicable to the use and occupancy of the Premises.

#### ARTICLE 8. TERMINATION

Lessee, at Lessee's option, may terminate this Lease for any reason or no reason by written notice to Lessor at least thirty (30) days in advance of termination. Lessor, at Lessor's sole option, may terminate this Lease and Lessee's occupancy and use of the Leased Premises for any reason or no reason by written notice to Lessor at least thirty (30) days in advance of the termination. In the event Lessee ceases the use of the leased property in connection with recycling and the purposes set forth herein, this lease agreement shall be immediately null and void and of no further effect thirty (30) days after the lessee terminates its recycling activities on the Leased Premises. With that said, Lessee's obligations hereunder shall survive termination, except for the obligation to pay rent as of the date of termination.

#### ARTICLE 9. QUITE POSSESSION

Lessor shall on the commencement date of the term of this lease as hereinabove set forth, place Lessee in quiet possession of the Leased Premises.

#### ARTICLE 10. SURRENDER OF LEASED PREMISES

10.01. Lessee shall at his own cost and expense and within fifteen (15) days after expiration or termination hereof by either party, or of any extended term hereof, remove any and all property or improvements on the Leased Premises, and any and all alterations, additions, improvements, and fixtures thereon of any kind or nature whatsoever which by the terms hereof Lessee is permitted to remove, repair all damage to the Leased Premises caused by such removal and the use and occupancy of the Leased Premised by Lessee, and restore the Leased premises to essentially the condition it was in prior to the installation of the property, alternations, additions, or improvements to the Lease Premises at Lessee's sole cost and expense. Any property of any kind or nature whatsoever not so removed shall be deemed to have been abandoned by Lessee and may be retained by or disposed of by Lessor at Lessee's sole cost and expense. It is agreed the Leased Premises was a vacant lot at the time of Lessee's first occupancy and use of the Property under this or any preceding lease or use by Lessee and all improvements, alterations, or additions were added by Lessee.

10. 02. Lessee agrees to and shall, on expiration or sooner termination of the term hereof or of any extended term hereof, promptly surrender and deliver the leased premises to Lessor in good condition, and in a condition meeting all federal, state and local environmental laws, statutes, rules, or regulations.

10.03. The provisions contained herein shall survive termination of the lease.

#### ARTICLE 11. CONDEMNATION

If during the term of this lease or any extension or renewal thereof, all or part of the leased premises should be taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this lease shall terminate effective as of the date of the taking of said premises by the condemning authority.

#### ARTICLE 12. ASSIGNMENT AND SUBLEASE

Lessee shall not assign this lease nor sublease all or a portion of the Lease Premises for any reason unless specifically agreed to in writing by Lessor. Lessor may assign or transfer any or all of its interest in the Leased Premises or this lease at any time and in its sole discretion.

#### ARTICLE 13. INDEMNITY

To the fullest extent permitted by law, Lessee agrees to fully indemnify and hold Lessor harmless against any and all claims, demands, damages, fines, fees, assessments, costs and expenses, including reasonable attorney's fees for the defense thereof, arising from or in relation to the conduct or management of Lessee's activities, use, or occupancy of the Leased Premises or from any breach on the part of Lessee of any conditions, obligations, or covenants of this lease, or from any all acts or omissions, specifically including negligence of Lessee, its agents, contractors, employees, volunteers, representatives, agents, concessionaires, or licensees in, or, or about the Leased Premises. In case of any action or proceeding against Lessee as set forth herein, Lessee shall be represented only by counsel acceptable to Lessor. Nothing herein shall be construed to indemnify Lessor from its own acts or omissions. By entering into this lease, Lessor shall not waive, nor be deemed to waive, any right, immunity, or defense it may have as to Lessee or any third party.

The relationship between Lessor and Lessee shall at all times remain solely that of the Lessor and Lessee and shall not be deemed a partnership or joint venture.

#### ARTICLE 14. MISCELLANEOUS

14.01. This lease is entered into by and between Lessee and Lessor under the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code, and other applicable law. This Lease is authorized by the governing bodies of the parties hereto, and each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

14.02. Any, notice or communication hereunder must be in writing, and may be given by registered or certified mail, shall be deemed to have been given and received when a registered or certified mail containing such notice, properly wrapped and addressed, with postage prepaid, is deposited in Texas, in the United States mail; and if given otherwise than by registered or certified

mail, it shall be deemed to have been given when delivered to and actually received by the party to whom it is addressed. Such notices or communications shall be given to the parties hereto at the following addresses:

LESSOR:

President  
Blanco County Emergency Services District No. 1  
P. O. Box 494  
Johnson City, Texas 78636

LESSEE:

Mayor  
City of Johnson City  
P. O. Box 369  
Johnson City, Texas 78636

14.03. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their I respective heirs, executors, administrators, legal representative, successors, and assigns where permitted by this agreement.

14.04. This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Blanco County.

14.05. No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dating subsequent to the date hereof and duly executed by the parties hereto.

14.06. Lessor shall be entitled to any and all attorney's fees, costs, and expenses for any violation of the terms of the lease by Lessee as determined by a court of competent jurisdiction.

14.07. Neither Lessor nor Lessee shall be required to perform any term, condition, or covenant in this lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of the Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

14.08. Lessee's obligations hereunder shall survive termination.

IN WITNESS WHEREOF, the undersigned Lessor and Lessee execute this agreement as of the day and year first above written.

LESSOR:

LESSEE:

BLANCO COUNTY EMERGENCY

CITY OF JOHNSON CITY

019.23393/CITY LEASE OF EMS PROPERTY/Lease Agreement rev. kpc 020521

SERVICES DISTRICT NO. 1

By: \_\_\_\_\_  
David O'Bannon, President

By: \_\_\_\_\_  
Rhonda Stell, Mayor

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
City Secretary

DRAFT