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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF JOHNSON CITY, TEXAS APPROVING AN EXCLUSIVE FRANCHISE AND CONTRACT BETWEEN THE CITY OF JOHNSON CITY AND HILL COUNTRY WASTE SOLUTIONS FOR THE COLLECTION AND DISPOSAL OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS IN THE CITY OF JOHNSON CITY, TEXAS; AND PROVIDING AN EFFECTIVE DATE

RECITALS

WHEREAS, as a municipal corporation organized under the laws of the State of Texas and pursuant to the Texas Constitution and state law, the City of Johnson City, Texas ("City") has the authority to protect and promote the public health, safety and welfare, and to regulate the use of the City public rights-of-way; and

WHEREAS, pursuant to Texas Health and Safety Code Chapter 363, Sections 363.116(a), and 363.117, the City has the authority to adopt rules for regulating solid waste collection, handling, transportation, storage, processing and disposal; and

WHEREAS, it is in the public interest to ensure solid waste and recycling services are provided to the citizens of the City; and

WHEREAS, the City Council of the City reviewed service proposals and selected Hill Country Waste Solutions ("Contractor") to provide said services; and

WHEREAS, the City Council has determined that granting of a franchise to and execution of a contract with Hill Country Waste Solutions Waste for said services will assist in meeting the solid waste and recycling needs of the community and is necessary to preserve or protect the public health of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JOHNSON CITY, TEXAS, THAT:

ARTICLE I. FINDINGS OF FACT

The foregoing recitals are adopted as facts and are incorporated fully herein.

ARTICLE II. GRANT OF EXCLUSIVE FRANCHISE; AWARD OF CONTRACT

- A. The City Council hereby grants to the Contractor an exclusive right and franchise to collect, haul and dispose of solid waste and recyclable materials over, upon, along and across the City's present and future streets, alleys, bridges and public properties within the City's jurisdictional limits in accordance with applicable law and the City's ordinances and regulations governing solid waste collection and processing.

- B. The City Council hereby approves the terms for performance of services authorized under the Franchise as outlined in the "*Exclusive Franchise and Contract between the City of Johnson City and Hill Country Waste Solutions for the Collection and Disposal of Municipal Solid Waste and Recyclable Materials in the City of Johnson City, Texas*" ("Contract"), attached hereto as Exhibit A and incorporated fully herein for all purposes.
- D. The City Council hereby selects and awards this Contract to Contractor for the provision of services pursuant to the Franchise in accordance with the terms described therein. In addition, and as provided in the Contract, the Contractor is designated as the sole provider of all roll-off and other commercial containers within the City to be used for the collection and disposal of construction debris, brush, et cetera, whether permanent or temporary.
- E. The Mayor is hereby authorized to execute the Contract on behalf of the City.

ARTICLE III. REPEALER AND SEVERABILITY

REPEALER: All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SEVERABILITY: Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

ARTICLE IV. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and approval.

PASSED AND APPROVED this, the _____ day of _____, 2022,
by a majority vote of the City Council of Johnson City, Texas.

CITY OF JOHNSON CITY, TEXAS

Rhonda Stell, Mayor

Attest:

Whitney Walston, City Secretary

**Exclusive Franchise and Contract
between the City of Johnson City and
Hill Country Waste Solutions
for the Collection and Disposal of
Municipal Solid Waste and Recyclable Materials
in the City of Johnson City, Texas**

Effective June 1, 2022

STATE OF TEXAS

COUNTY OF BLANCO

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**EXCLUSIVE FRANCHISE AND CONTRACT
BETWEEN THE CITY OF JOHNSON CITY AND
HILL COUNTRY WASTE SOLUTIONS
FOR THE COLLECTION AND DISPOSAL OF
MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS
IN THE CITY OF JOHNSON CITY, TEXAS**

This Exclusive Franchise and Contract between the City of Johnson City and Hill Country Waste Solutions for the Collection and Disposal of Municipal Solid Waste and Recyclable Materials in the City of Johnson City, Texas ("Contract") is made on June 1, 2022 ("Effective Date") and entered into between the City of Johnson City, Texas ("City") and Hill Country Waste Solutions ("Contractor"), individually "Party", and collectively "the Parties", acting by and through their duly authorized representatives.

RECITALS

WHEREAS, the City Council of the City of Johnson City, Texas ("City Council") has determined that it would be in the best interest of the citizens and businesses of the City and would promote and protect the health, safety, and general welfare of the inhabitants of the City to provide for the collection, removal, and disposal of solid waste in the City; and

WHEREAS, the City Council desires to grant to the Contractor the exclusive franchise, license and privilege and to execute a contract with the Contractor for the collection, hauling, recycling and disposal of recyclable materials and municipal solid waste within the City's boundaries.

NOW, THEREFORE, in consideration of the foregoing and on the terms and conditions hereinafter set forth and for other good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Contractor agree as follows:

I. GRANT OF EXCLUSIVE FRANCHISE; AWARD OF CONTRACT

1.1 As conducted via separate ordinance, the City hereby affirms its grant to the Contractor, for the term of this Contract and in accordance with applicable law and the City's ordinances and regulations governing solid waste collection and processing, of an exclusive right and franchise to collect, haul and dispose of solid waste and recyclable materials over, upon, along and across the City's present and future streets, alleys, bridges and public properties within the City's jurisdictional limits.

1.2 A franchise fee shall not be assessed nor collected by either Party.

1.3 The City hereby selects and awards this Contract to Contractor for the services of collection, hauling and disposal of solid waste and recyclable materials within the City for

residential, commercial / industrial and municipal units. In addition, the Contractor shall be the sole provider of all roll-off and other commercial containers within the City to be used for the collection and disposal of construction debris, brush, et cetera, whether permanent or temporary.

II. TERM

2.1 Initial Term. The initial term of this Contract shall commence June 1, 2022 ("Commencement Date") and shall terminate on June 1, 2025, unless terminated as provided herein.

2.2 Automatic Renewal. At the end of the initial 3-year term, and at the end of each renewal term thereafter, this Contract shall automatically renew for a successive three (3) year term, unless terminated as provided herein.

III. DEFINITIONS

The following definitions shall apply:

- a. Bag: Plastic sack with sufficient strength to maintain physical integrity when lifted by the top of the bag and designed to transport solid waste which shall not exceed thirty-five pounds (35 lbs.) when filled.
- b. Brush Items: Solid waste comprised of undergrowth, small trees, and shrubs personally cut / trimmed by the owner of the same parcel and placed curbside for regularly-scheduled brush item pickup.
- c. Bulky Items; White Goods: Solid waste comprised of large household items, including, but not limited to, stoves, refrigerators, water tanks, washing machines, discarded bathroom fixtures, furniture, mattresses, television sets, and other household items that cannot be handled by normal solid waste processing, collection, or disposal methods. The terms do not include construction or remodeling debris in excess of one hundred pounds (100 lbs.) per item, plant materials, rocks, dirt, dead animals, brush items, hazardous, special, or infectious wastes, tires, car batteries, or stable matter
- d. Bundle: Plant trimmings and newspaper and magazine stacks securely tied together forming an easily handled package not exceeding four feet (4') in length and weighing no more than thirty-five pounds (35 lbs.) per bundle.
- e. Chief Administrative Officer: The individual, or his designee, designated by the City to administer and monitor the Contract.
- f. Commercial: A third-party entity, which is of, connected with, or engaged in commerce and in the business of or contracted to perform services for or sell goods to a separate and distinct individual or business.
- g. Commercial and Industrial Units: A commercial or industrial structure or parcel being used for commercial purposes within the corporate limits of the City. A commercial or

industrial unit shall be deemed to be occupied and requiring solid waste collection and disposal services when the unit or occupant is engaging in commercial activity and domestic water or electric services are being supplied thereto.

- h. Commercial Container; Roll-off Container: Metal or comparable material receptacle designed for use by a commercial and industrial unit that is to be lifted and emptied mechanically for use by commercial and industrial units and for use by a residential unit for removal of construction debris, brush, et cetera. A roll-off container is considered a commercial container that is loaded onto a winch truck and not exceeding forty (40) cubic yards in volume.
- i. Commercial Hand-Load Customer: A hand-load service provided to less intensive commercial and industrial units or customers that consists of the same curbside services supplied to residential units by the Contractor.
- j. Construction and Remodeling Debris: Waste building materials, including, but not limited to, rocks, fencing, concrete or cinder blocks, bricks, and lumber resulting from construction, remodeling, repair, or demolition operations.
- k. Container: A receptacle with a capacity of greater than twenty gallons (20 gal.) but less than ninety-six gallons (96 gal.) constructed of plastic, metal, or fiberglass having handles of adequate strength for lifting and having a tight-fitting lid. The mouth of a container shall have a diameter greater than or equal to that of the base. The weight of the container, including its contents, shall not exceed thirty-five pounds (35 lbs.).
- l. Curbside: That portion of the public right-of-way adjacent to paved or traveled municipal or State roadways, with or without curbing, and extending to the front property line.
- m. Dead Animal: An animal, or portion thereof, that has expired from any cause.
- n. Disposal Site: A solid waste depository, including, but not limited to, a sanitary landfill, transfer station, incinerator, and waste processing / separation center licensed, permitted, and approved by all governmental bodies and agencies having jurisdiction to receive, for processing or final disposal, solid waste.
- o. Garbage: Every accumulation of waste (animal, vegetable, and / or other matter) that results from packing, canning, storage, transportation, decay, or decomposition of meats, fish, fowl, birds, fruits, grains, or other animal or vegetable matter, including, but not limited to, used tins, cans, and other food containers and all putrescible or easily decomposable waste and animal or vegetable matter which is likely to attract flies or rodents.
- p. Hazardous Waste: Any chemical, compound, mixture, substance, or article which is designated by the United States Environmental Protection Agency, pursuant to the Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 or appropriate agency of the State, to be "hazardous" or toxic and

requiring special handling or special disposal treatment, as defined by or pursuant to Federal or State Law.

- q. Infectious Waste: Hazardous waste with infectious characteristics, including, but not limited to, contaminated animal waste, human blood and blood products, isolation waste, pathological waste, and discarded sharps / needles.
- r. Out-Of-Cycle Service: Extra Pickup: Brush item, bulky item, white good, and other solid waste collection and disposal services requested by a residential, commercial, or industrial unit and collected by the Contractor out of the ordinary schedule and within five (5) business days of payment by the unit to the City.
- s. Producer: An occupant of a residential, commercial, or industrial unit that generates solid waste.
- t. Recyclable Material: The following constitutes recyclable materials:
 - i. Paper: Goods made of paper, such as circulars, catalogs, carbonless paper, dry goods packaging without liners, envelopes, file folders, flattened cardboard, junk mail, magazines, newspapers, office paper, paperback books, paper bags, paper towel / toilet paper cores, and non-metallic gift wrap. Phone books and wet or yellowed paper are not included in the definition of paper goods;
 - ii. Glass Bottles and Jars: Beverage bottles, food and condiment bottles, and jars made of glass with lids removed and bottles and jars rinsed clean. Mirrors, windows, ceramics, or other glass or glazed materials are not included in the definition of glass bottles and jars;
 - iii. Metal Cans: Aluminum, steel, and tin beverage and food cans rinsed clean, rinsed baking tins, and empty aerosol cans with nozzles removed;
 - iv. Plastics: Goods made of plastic and labeled No. 1 thru No. 7 with all lids removed and bottles rinsed. Examples include beverage bottles, shampoo and lotion bottles, meat trays, condiment bottles, prescription and medicine bottles with labels removed, and bundled plastic grocery bags; and
 - v. Any other items added to or removed from this definition as determined by the City during the Contract term.
- u. Recycling Container: A receptacle with a capacity of greater than eighteen gallons (18 gal.) but less than ninety-six gallons (96 gal.) constructed of plastic, metal, or fiberglass that is provided to residential and commercial units by the Contractor. Total weight should not exceed thirty-five (35) pounds when full.
- v. Refuse: Cans, bottles, rags, dry wastes, paper, kitchen and household wastes, food containers, lawn trimmings, leaves, and other materials typically generated by a residential, commercial, or industrial unit.
- w. Residential Unit: A dwelling within the corporate limits of the City occupied by a person or group of persons for residential and noncommercial purposes. A residential unit shall be deemed occupied when domestic water or electric services are being supplied,

however, an unoccupied home placed on the market for sale shall not be deemed occupied. The term "Residential Unit" includes "Handicapped Residential Unit".

- x. Residential Unit Solid Waste: A collective term comprised of garbage, refuse, stable matter, rubbish, and dead animals. A commercial hand-load customer is also part of a residential unit solid waste service.
- y. Roll-Off Containers: See "commercial container".
- z. Rubbish: All other waste materials not included in the definitions of bulky items, white goods, construction and remodeling debris, dead animals, garbage, hazardous waste, refuse, brush items, or stable matter. Rubbish excludes tires and car batteries.
- aa. Solid Waste: A collective term comprised of garbage, brush items, bulky items, refuse, construction and remodeling debris, stable matter, rubbish, white goods, and dead animals.
- bb. Special Waste: Solid waste that poses particular management and / or disposal problems and requires special care, such as human or swine excrement, used oil, tires, end-of-life vehicles, batteries, and some electronic goods.
- cc. Stable Matter: All manure or other waste matter, excluding swine excrement, normally accumulated in or about a stable or any animal, livestock, or poultry enclosure and resulting from the keeping of the same.
- dd. Stop Service: The temporary suspension of solid waste collection and disposal services by the Contractor to a Unit due to the Unit's non-payment of fees associated with solid waste collection and disposal services.
- ee. Tipping Fee; Gate Fee: The charge levied upon a given quantity of solid waste or recyclable material received at a processing facility.
- ff. Unit: A residential, commercial, and industrial unit; occupant; or user.

IV. INDEMNIFICATION

4.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, AND SERVANTS, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, CAUSES OF ACTION, LIABILITIES, AND SUITS OF ANY KIND AND NATURE, INCLUDING, BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY OR DEATH AND PROPERTY DAMAGE MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO THE CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACTS OR OMISSIONS OF THE CONTRACTOR,

ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, OR SUBCONTRACTOR OF THE CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS AND DUTIES UNDER THIS CONTRACT, ALL WITHOUT, HOWEVER, WAIVING GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER STATE LAW AND WITHOUT WAIVING ANY DEFENSE OF THE PARTIES UNDER STATE LAW.

4.2 ADDITIONALLY, CONTRACTOR ASSUMES RESPONSIBILITY AND LIABILITY AND HEREBY AGREES TO INDEMNIFY THE CITY AS PROVIDED ABOVE FROM ANY LIABILITY CAUSED BY THE CONTRACTOR'S FAILURE TO COMPLY WITH APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, AND INDUSTRY STANDARDS.

4.3 This indemnity obligation shall not be construed to negate or reduce any other right or obligation of indemnity that would otherwise exist. Further, this indemnification and hold harmless requirement shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the contractor or any subcontractor under any workers compensation acts, disability benefit acts or other employee benefit acts.

V. INSURANCE

5.1 The Contractor shall at all times during the Contract term maintain in full force and effect Employer's Liability, Worker's Compensation, Public Liability, and Property Damage insurances, as provided below. All insurances shall be made by insurers and for policy limits acceptable to the City and before the commencement of the contract work.

5.2 The Contractor shall furnish the City copies of the required certificates of insurance prior to Effective Date of the Contract. Said certificates shall be attached hereto and incorporated fully herein as Exhibit B. Contractor shall be responsible to maintain that all certificates of insurance are up to date as filed at the City.

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

5.4 Failure of the Contractor to fully comply with the requirements set forth herein regarding insurance may be considered a material breach of this Contract and may be cause for termination of this Contract.

5.5 The Contractor, or its parent corporation if applicable, shall carry the following types of insurance at the following limits:

<u>Coverage</u>	<u>Limits of Liability</u>
Worker's Compensation	Statutory Amount
Employer's Liability	\$500,000.00 each occurrence
Bodily Injury Liability except Automobile	\$500,000.00 each occurrence \$1,000,000.00 aggregate
Property Damage Liability except Automobile	\$500,000.00 each occurrence \$1,000,000.00 aggregate
Automobile Bodily Injury Liability	\$500,000.00 each person \$1,000,000.00 aggregate
Automobile Property Damage Liability	\$500,000.00 each occurrence \$1,000,000.00 aggregate
Excess Umbrella Liability	\$500,000.00 aggregate

5.6 The certificates of insurance shall be prepared and executed by an insurance company or its authorized agent and shall contain the following provisions and warranties:

- a. The company is licensed and admitted to do business in the State of Texas.
- b. The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or Insurance Services Organization.
- c. All endorsements and insurance coverages shall contain the requirements and instructions contained herein.
- d. The form of the notice of cancellation, termination, or change in coverage provisions shall be included in the certificate and shall be provided to the City as described herein. Original endorsements affecting coverage requirements by this section shall be furnished with the certificates of insurance.
- e. The City shall be provided with blanket waivers of subrogation on all required policies.
- f. The City shall be named as an additional insured on each policy.
- g. Each certificate shall contain the following express obligation: "This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in full force for the contract term. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice shall be given to the certificate holder."

VI. PERFORMANCE BOND

The Contractor shall furnish a performance bond of \$100,000.00 as security for the faithful performance of the Contract. Such performance bond shall be furnished annually by the Contractor for the following contract year, and shall indemnify the City against any loss resulting from any failure of performance by the Contractor. The initial bond shall be posted on or before the date that the Contractor commences providing services to the City pursuant to the Contract, and the performance bond shall be renewed annually such that the performance bond is in effect at all times the Contract between the Contractor and City remains in effect. The premiums for the performance bond shall be paid by the Contractor. A certificate from the surety company showing that the bond premium is paid in full shall accompany the bond. The surety on the bond shall be a duly authorized corporate surety company authorized to do business in the State of Texas. Attorneys-in-fact who sign bonds must file, with each bond, a certificate and effectively dated copy of their power of attorney.

VII. LICENSES AND LAWS

7.1 The Contractor is required to obtain all Federal and State licenses and permits necessary to perform the contracted services.

7.2 In performance of its services, the Contractor shall observe all State and Federal laws, rules, and local and City regulations, regarding the collection, removal, and disposal of solid waste.

VIII. COLLECTION AND PROCESSING EQUIPMENT

The Contractor, at its sole cost and expense, shall purchase, maintain and operate the solid waste disposal system and its equipment in a manner that renders competent and efficient service. All equipment, including motor vehicles and trucks shall be in good condition and repair. The trucks used in the collection of residential solid waste shall be constructed of metal, with completely enclosed "packer" type bodies that are designed and manufactured for the collection of residential solid waste. With the exception of rented vehicles, all vehicles shall be painted, numbered, and have the Contractor's name and telephone number on each side of the vehicle in a size and type so as to be easily readable from a distance of a minimum of fifty feet (50').

IX. SERVICES FOR RESIDENTIAL, COMMERCIAL/INDUSTRIAL UNITS

9.1 *Residential Services.* The Contractor shall provide the following residential unit services:

- a. Contractor shall provide one (1) curbside residential unit solid waste collection and disposal services per week for each residential unit located within the City. Contractor shall pickup one (1) container and three (3) bags of residential unit solid waste not exceeding thirty-five (35) pounds each when full. As part of the three-bag limit, the Contractor shall accept grass, leaves, tree trimmings, and other similar plant materials which are bundled or placed in plastic bags in lengths no greater than four (4) feet and weighing no more than thirty-five (35) pounds per bundle or plastic bag.

The Contractor shall not collect items in excess of these limits but shall provide photographs to the City to advise the unit of collection. Residential unit service pickup shall be curbside. Pickup for a residential unit service for the disabled or handicapped shall be collected near the residence. Contractor shall provide one (1) recycling bin to each residential unit. Additional recycling containers may be provided to residential units by the Contractor for an additional monthly fee.

- b. Contractor shall provide one (1) curbside collection of recyclable materials biweekly for each residential unit located within the City.
- c. Contractor shall provide commingled brush and white good / bulky item collection and disposal services to residential units two (2) times per year at dates and times to be coordinated between the City and the Contractor. The City shall issue notice to a unit of these pickup dates and times. At each service, each residential unit shall be limited to eight (8) cubic yards of compacted brush and/or non-compacted bulky / white good items.
- d. Solid waste collection and disposal services shall be provided between the hours of 7:00 A.M. and 7:00 P.M. for curbside residential unit solid waste collection and disposal services; curbside collection of recyclable materials; and brush / white good / bulky item collection and disposal services.

9.2 *Commercial / Industrial Services.* The Contractor shall provide the following commercial and industrial unit services:

- a. The Contractor shall collect and dispose of municipal solid waste from a commercial and industrial unit that falls within the regulatory definition of municipal solid waste and which is placed in requisite containers. Other than commercial hand-load customers, this Contract does not include curbside service for commercial or industrial units.
- b. The Contractor shall provide roll-off and other commercial containers within the City for the collection and disposal of construction debris, brush, and similar material for either permanent or temporary setup.
- c. Commercial recycling of recyclable materials will be made available to commercial or industrial units. Such units will have the option of selecting compactors, commercial containers, frontload units, and/or totters for the collection and disposal of recyclable materials. Recyclable materials for commercial or industrial units include cardboard, office paper, aluminum cans, and glass and plastic bottles.

9.3 In the event that a residential, commercial, or industrial unit requires the collection and disposal of excessive or unusual items or requests services not contemplated by this Contract, such unit shall make arrangements with the City and the Contractor for the collection and disposal of said items that are independent from those regular or routine services contemplated under this Contract. The Contractor shall have no obligation whatsoever to collect hazardous,

infectious, or special wastes. Only benign volumes of hazardous waste, meeting the regulatory definition of municipal solid waste, shall be serviced under this Contract.

9.4 Unless specified elsewhere in this Contract, the Contractor shall not pickup and dispose the following as a part of the regular solid waste, brush item, and white good / bulky item collection and disposal services:

- a. construction and remodeling debris and other debris originating from commercial lot clearing and / or construction operations;
- b. brush items cut / trimmed by a commercial or private contractor; or
- c. bulky items and white goods resulting from work completed by a commercial or private contractor during bulky item pickup.

The Contractor shall report to the City said items which have not been properly disposed for pickup and disposal. In accordance with City Ordinance, units shall make delivery and payment arrangements with the City for the collection and disposal of said items by the Contractor utilizing a commercial container(s) in accordance with the Schedule of Rates attached as Exhibit A, and incorporated fully herein.

X. SERVICES FOR CITY FACILITIES

10.1 The Contractor shall provide per municipal fiscal year, for the collection and disposal of a minimum of three hundred sixty (360) cubic yards of compacted brush, trees, and other plant materials trimmed and/or removed by the City from City right-of-way and public drainage areas. The Contractor shall provide this service at no charge to the City, however, the Contractor may invoice the City, for the collection and disposal of said materials in excess of three hundred sixty (360) cubic yards collected and disposed of per year at rates contained in Exhibit A, the Schedule of Rates.

10.2 Regular scheduled solid waste collection and disposal services shall be provided free of charge at the following City facilities:

- a. City Hall, 303 E. Pecan Dr., Johnson City, TX 78636; and
- b. Wastewater Treatment Plant, 404 U.S. Hwy. 281, Johnson City, TX 78636.

10.3 Regular scheduled solid waste collection and disposal services, including the collection, disposal, and replacement of clean plastic garbage bags, shall be provided to the City free of charge for all permanent, public trash receptacles within the City listed in Exhibit C, attached hereto and incorporated fully herein. The number and location of public trash receptacles may be increased at the sole discretion of the City. The City shall purchase and supply the Contractor with replacement plastic garbage bags.

10.4 The Contractor shall provide solid waste collection and disposal services for sewage sludge originating from the City's Wastewater Treatment Plant at times determined by the City's Public Works Director and at rates contained in Exhibit A, the Schedule of Rates.

XI. ADDITIONAL SERVICE PROVISIONS

11.1 The following holidays may be observed by the Contractor, with no service on these days:

New Year's Day (January 1)
Thanksgiving Day (Last Thursday in November)
Christmas Day (December 25)

11.2 The number of residential, commercial, or industrial units to be served by the Contractor may be increased or decreased by the City at any time.

11.3 Should Contractor fail to respond within seven (7) business days to any complaint of solid waste collection of qualified solid waste, after being notified by the City by telephone or email, the City, without further notice, may collect and dispose of the solid waste, and shall bill the Contractor for charges incurred by the City. Said charges shall not exceed the Schedule of Rates.

11.4 The Contractor shall submit to the City the proposed solid waste collection routes and schedules within thirty (30) days from the effective date of this Contract.

11.5 The Contractor shall notify the City a minimum of five (5) business days before any scheduled delay in the regular solid waste collection schedule. Such notice shall include the Contractor's proposal for completing the delayed collection within a reasonable timeframe.

11.6 The Contractor shall maintain a website and an office or such other facilities by which it may be contacted Monday through Friday, excluding holidays, from 8:00 A.M. to 4:30 P.M. The Contractor shall inform the City on a quarterly basis of the Contractor's business contact phone numbers.

XII. BILLING, RATES, AND FEES

12.1 The City shall be billed for all Units within the City in accordance with the Schedule of Rates. The City shall collect and remit all sales tax in accordance with applicable State Law. The Schedule of Rates shall not be amended nor subject to Consumer Price Index adjustments for a period of one (1) year from the Effective Date of this Contract.

12.2 Following one (1) year from the effective date of this Contract, modifications to the Schedule of Rates for any contractual or renewal term shall be subject to a Consumer Price Index (CPI) adjustment. The CPI adjustment shall be based on the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index-Urban Wage Earners and Clerical Workers South Urban (all items) adjustment (CPI-U). Said adjustment shall not vary by more than five percent (5%) from term year to term year.

12.3 In determining the following year's CPI-U adjustment, the Schedule of Rates, as amended from time to time, shall be computed as follows. The CPI-U used will be the CPI-U published by the Bureau during the ninety (90) days preceding the adjustment under this section.

The amount of the increase or decrease shall be equal to the percentage that the CPI-U has increased or decreased over the previous twelve (12) month period.

- a. In addition to the above, the Contractor may adjust the Schedule of Rates at any time after giving thirty (30) days written notice to the City on the basis of unusual changes in the cost of operations. The Contractor shall also be entitled to "pass through" any actual taxes, fees, or other impositions made upon the Contractor by any governmental or regulatory entity by billing the City directly for such costs to the extent the Contractor is affected or liable for them. The City may cancel the Contract by giving the Contractor thirty (30) days written notice should the abovementioned increase(s) in rates be considered by the City, at its sole discretion, to be unreasonable.
- b. The Contractor may implement, at its discretion, a fuel surcharge when the average quarterly price per gallon (three-month average) of "Diesel – All Types" for the "Gulf Coast" region preceding July 1, October 1, January 1, and April 1 equals \$3.70 or higher per gallon, according to the United States Energy Information Administration. The surcharge shall act as a "pass through" whereby the Contractor shall bill the City directly for such surcharge to the extent the Contractor is liable for them. Fuel surcharges shall be computed as follows:

$$\frac{((\text{Avg. Diesel Cost per Gal.}) - \$3.69) * (\text{No. of Gals. Purchased in Preceding 3 Months})}{\text{No. of Residential, Commercial, and Industrial Units within City}}$$

An implemented fuel surcharge shall be removed and discontinued and any excess collection refunded to the City when the average quarterly price per gallon falls below \$3.70 per gallon.

XIII. DISPOSAL OF SOLID WASTE; OWNERSHIP

13.1 Contractor shall dispose all solid waste in compliance with all laws and regulations of the Federal Government and the State of Texas.

13.2 The Contractor shall dispose all solid waste at a properly permitted landfill selected by the Contractor. The Contractor shall pay all landfill fees for solid waste hauled by the Contractor.

13.3 The title to solid waste shall pass to the Contractor when the solid waste is placed in the Contractor's collection vehicle or upon the removal of the same by the Contractor from the unit's curbside location, whichever comes first.

XIV. CONTRACTOR'S STANDARD OF CARE AND EMERGENCY MANAGEMENT

14.1 The Contractor shall use reasonable care and diligence in executing this Contract.

14.2 **Industry Standard.** The Contractor shall use all proper skills and care, as are typical in the industry, and the Contractor shall exercise all due and proper precautions to prevent injury to any property or person.

14.3 The Contractor shall provide the City with an emergency telephone number available for response on a 24-hour x 7 days per week x 365 days per year basis.

14.4 The Contractor shall at all times work to ensure compliance with all activities and responsibilities assigned to and required of the City's solid waste collection and disposal franchisee within Annex K *Public Works & Engineering* of the City's Emergency Management Plan, attached as Exhibit D and incorporated fully herein. A full and complete copy of Annex K is available for review at City Hall.

XV. CITY DUTIES AND RESPONSIBILITIES

15.1 The City shall perform all billing and payment collection, scheduling, establishment of new service, and service termination functions for all Units in the City. Billing shall be in accordance with the most recent adopted Municipal Fee Schedule.

15.2 The City shall collect and remit all sales tax in accordance with applicable State Law.

15.3 The City shall notify the Contractor within two (2) business days of any complaints received by the City regarding the Contractor's failure to collect solid waste or alleviate other concerns.

15.4 The City shall notify each Unit of the following requirements for pickup:

- a. Each container, bag, bundle, or other solid waste container must be placed at a curbside location for collection on a scheduled collection day;
- b. Containers, bags, and bundles shall be placed as close to the roadway as practicable without interfering with or endangering the movement of vehicles or pedestrians;
- c. When construction work is being performed in the right-of-way, containers, bags, and bundles shall be placed as close as practicable to a vehicular access point for the solid waste collection vehicle to enter and exit; and
- d. The Contractor may decline to collect any container, bag, or bundle that is not placed correctly along the curbside or is containerized incorrectly.

XVI. COLLECTION ALTERNATIVE

In the event the collection and disposal of solid waste is interrupted for any reason for more than forty-eight (48) hours as a sole result of a willful or negligent act of the Contractor, the City shall have the right to make alternate arrangements for the collection and disposal of municipal solid waste in order to provide for and protect the public health and safety. The Contractor shall reimburse the City within seven (7) business days of municipal payment for services for all costs

associated with the City providing alternate solid waste collection and disposal services. If the service interruption is the result of the occurrence of hazardous conditions, as reasonably determined by the Contractor, an exception to this Section will be made by the City. In such instances, a report will be made to the City and service shall resume when the hazardous condition is rectified.

XVII. RECORDS AND REPORTS

17.1 The City shall have access during regular business hours, and upon reasonable advance notice, to all of Contractor's records, customer service cards, and all papers relating to the operation of the Contractor within the City under this Contract. Upon request, the Contractor shall furnish to the City reports of the results of all complaints and investigations received from the public and actions taken by the Contractor.

17.2 The Contractor shall maintain books and financial records in accordance with generally accepted accounting principles. The City shall have the authority to audit, examine, and make excerpts or transcripts from the books and records during the Contractor's regular business hours regarding the operation of the Contractor under this Contract.

17.3 The Contractor shall keep complete and accurate books of accounts and records of its operations under this Contract.

17.4 The City shall provide the Contractor with copies of approved building and tree trimming permits upon monthly receipt of a written request for said information.

XVIII. CONTRACTOR COMPLAINT RESPONSE

The Contractor shall respond to a Unit's complaints pertaining to customer service, property damage, or personal injury from the solid waste collection and disposal service. A unit complaint received by the City shall be forwarded to the Contractor. The Contractor shall notify the City of the action(s) taken in response to a forwarded complaint within two (2) business days of the complaint. Failure of the Contractor to timely respond to complaint shall be considered a failure to perform under this Contract.

XIX. TERMINATION; DEFAULT

19.1 Default by Contractor.

- a. **Default Notice and Cure.** In the event of a failure by Contractor to perform any material provision of the Contract, the City shall give written notice of such breach to Contractor along with a thirty (30) day ("Cure Period") notice to correct such breach ("Default"). A defaulting party shall not be declared in default, if, within the cure period, the defaulting party has commenced in a commercially reasonable manner to remove or cure such alleged default, provided that, in the event the alleged default cannot reasonably be removed or cured within the cure period, the defaulting party shall provide the non-defaulting party a commercially reasonable written timeline for removing or curing such alleged default and the Parties shall enter into a written

agreement extending the cure period to a timeframe consistent with such timeline. The City may withhold all or part of any sums which would otherwise be due to Contractor, but that relate to such default, either until such time as such default is cured, or if such default cannot be cured, forever.

- b. **Emergency Notice and Cure.** If the City determines, and notifies Contractor, that such default poses an immediate or emergency threat to the health or safety of any person or to any property interest, and if Contractor has not cured such default within twenty-four (24) hours after receipt of such notice, the City shall have the right to perform or cause to be performed all or part of the work necessary to cure such default. In the event that the City performs such work, or caused it to be performed, Contractor shall compensate the City for the cost thereof. The City shall also have the right to exercise its right to payment for costs incurred under the performance bond or may deduct any such compensation due to the City from any sums otherwise due and owing to Contractor.
- c. **Termination and Payment.** If Contractor has not adequately corrected such breach, the City may terminate the contract after such cure period. Upon the date of termination, Contractor shall immediately discontinue all services unless the notice directs otherwise. At such time, the City shall pay Contractor only for services performed on or before such termination date.
- d. **City Performance.** In the event such termination occurs, the City may exercise its rights under Contractor's performance bond and procure the services of another waste services provider to complete the work covered under the contract for the remainder of the time period covered by the initial term of the Contract or extension thereof.

19.2 Forfeiture of Franchise and Termination of Contract on Material Breach by Contractor. Upon written notice by the City, this Contract shall terminate and the franchise deemed forfeited within thirty days of a material breach by the Contractor of the terms, covenants, or conditions of this Contract. Such notice shall provide reasonable detail of the nature of the material breach. A material breach shall include, but not be limited to, the following:

- a. Failure of the Contractor to pay the City any and all fees or payments prescribed by this Contract in a timely manner;
- b. Failure of the Contractor to provide, as solely determined by the City, the services provided for in this Contract within ten (10) business days of the receipt of a written demand for performance by the City;
- c. Failure of the Contractor to repair or replace defective equipment, goods, or products within thirty (30) calendar days of receipt of written demand for performance by the City;
- d. Failure of the Contractor to cure urgent health or sanitation conditions or risks, as determined by the Chief Administrative Officer, within two (2) business days of receipt of written or oral demand for performance by the City;

- e. Failure of the Contractor to adequately cure a default within the specified time period;
- f. Material misrepresentation(s) of fact in the application for or negotiations of this Contract;
- g. Conviction of any director, officer, employee, or agent of the Contractor of the offense of bribery or fraud connected with or resulting from the awarding of this Contract;
- h. Material misrepresentations of fact knowingly made to the City with respect to or regarding the Contractor's operations, management, revenues, services, or reports required pursuant to this Contract; and
- i. The revocation or denial of solid waste collection and disposal permit(s) through Federal and State Laws and regulations which would prohibit or interfere with the ability to fulfill the requirements of this Contract.

19.3 Termination by City upon Contractor Bankruptcy. The City may terminate this Contract one hundred eighty (180) calendar days after the appointment of a receiver or trustee who is directed to take over and conduct the business of the Contractor, whether in receivership, reorganization, bankruptcy, or other action or proceeding, whether voluntary or involuntary.

19.4 Termination by Either Party.

- a. Either Party may terminate this Contract without cause at any time during the Contract term upon providing written notice to the other Party not less than one hundred eighty (180) calendar days prior to termination.
- b. Upon termination, the City shall be responsible only for payment to Contractor for services performed by the Contractor on or before such termination date.
- c. Termination of the Contract shall terminate the franchise grant.

XX. ADDITIONAL PROVISIONS

20.1 Independent Contractor; No Third-Party Beneficiaries. The Contractor is acting as an independent contractor and not as an employee or agent of the City. Nothing in this Contract shall be construed to create any right in any third party not a signatory to this Contract, and the parties do not intend to create any third-party beneficiaries by entering into this Contract. The City will not be liable for any claims that may be asserted by any third party against the Contractor or its contractors, or subcontractors, occurring in connection with services performed by the Contractor under this Contract.

20.2 Litigation.

- a. **Governing Law and Venue.** This Contract shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Contract shall be in Blanco County, Texas.
- b. **Negotiation; Dispute Resolution.** If a dispute arises out of this Contract, the Parties shall first, in good faith, seek to resolve the dispute through negotiation between the upper management of each respective Party. If the dispute cannot be resolved informally, the dispute shall be submitted to non-binding mediation first before resorting to other alternative dispute proceedings, including litigation in court.
- c. **Litigation Costs.** Each Party shall be responsible for its own costs and fees of negotiation, mediation and/or litigation, and waives its right to recovery from the prevailing Party of litigation costs and fees, including attorneys' fees.
- d. **Limitation of Damages.** No Party will be liable to the other under this Contract for consequential damages, including lost profits, or exemplary damages.

20.3 Assignment. The Contractor may not assign this Contract without the specific prior written approval of the City, which may be withheld for any reason

20.4 Notices. All notices and payments required to be given by either party to the other party shall be in writing and, shall be delivered to either party at the following addresses:

City:

Chief Administrative Officer
City of Johnson City
Mailing: P.O. Box 369
Physical: 303 E. Pecan Drive
Johnson City, Texas 78636

Contractor:

Karlis Ercums IV, President
Hill Country Waste Solutions
Mailing: P.O. Box 960
Physical: 11737 U.S. Hwy 281 N.
Spring Branch, TX 78070

Advance written notice of a change of address shall be provided to the respective Party not less than thirty (30) days of such change of address.

A notice shall be deemed delivered when received if delivered personally or if sent by Federal Express or other carrier; or 72 hours after deposit if sent by First Class, postage pre-paid mail through the U.S. Postal Service.

20.5 Amendments. No amendments, alterations or variations to the terms of this Contract, including all addendums hereto, shall be effective unless made in writing, approved and signed by both parties.

20.6 Severability. If any section, sentence, clause, or paragraph of this Contract shall be held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Parties shall use their best efforts to replace the invalid, illegal, or unenforceable provision(s) of this Contract with valid legal terms and conditions approximating the original intent of the parties.

20.7 Force Majeure. If either of the Parties is unable to provide the services or perform the requirements of Contract due to circumstances beyond their control and without their fault, such as an act of God, acts of a public enemy, war, riot, civil commotion, sovereign conduct, or the unforeseeable act or conduct of any person or persons not party to this Contract, then the Party shall be excused from such performance for such period of time as is reasonably necessary to remedy the adverse effect of such event, and neither Party shall be liable for a breach of Contract. A Party claiming an event of Force Majeure shall give prompt written notice to the other Party specifying the event and an estimate of the time needed to cure.

20.8 No Waiver Implied. The failure of a Party to insist upon performance of any of the terms, covenants, or conditions of this Contract shall not be construed as a waiver or relinquishment of the future performance of any term, covenant, or condition by the other Party, but rather, the obligation of the other Party with respect to such future performance shall continue in full force and effect.

20.9 Entire Contract. This Contract constitutes the entire agreement between the parties. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement. All Exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. Notwithstanding any other provisions in this Contract, the City, acting by and through the City Council of the City of Johnson City, Texas, shall be the final arbiter, authority, and decision maker on all matters related to this Contract, the solid waste collection and disposal services within the corporate municipal limits of the City, and the municipal Solid Waste Collection and Disposal Services Franchise.

20.10 Counterparts. This Contract may be executed in duplicate original counterparts, each of which so executed shall be deemed to be an original. Such counterparts shall together constitute one in the same instrument.

[Remainder of page intentionally left blank]

Signature Page(s) follow.

IN WITNESS WHEREOF, the Parties have made and executed this Contract on the respective dates by each signature:

CITY: CITY OF JOHNSON CITY

Rhonda Stell, Mayor

Date

Attest:

Whitney Walston, City Secretary

Date

CONTRACTOR: HILL COUNTRY WASTE SOLUTIONS

Karlis Ercums IV, President

Date

Exhibit A

Schedule of Rates for Solid Waste Collection and Disposal Services

*****The Rates / Fees notated below do not include applicable fuel or other surcharges or sales tax*****

Carts:

Residential Unit Service (RUS) (1x weekly)	\$12.50 / month
Handicapped RUS (1x weekly)	\$12.50 / month
RUS Recycling (biweekly)	\$4.07 / month
Handicapped RUS Recycling (biweekly)	\$4.07 / month
Additional 96 Gallon (gal.) Totter for RUS	\$7.30 / month / totter
Additional 96 Gal. Totter for RUS Recycling	\$3.00 / month / totter
RUS Extra Pickup	\$10.00 ea.
Commercial Hand Load Service (1x weekly)	\$16.50 / month
Commercial Unit Hand Load Recycling (biweekly)	\$5.37 / month
Additional 96 Gallon (gal.) Toter for Commercial Hand Load Service	\$9.64 / month / totter
Additional 96 Gal. Totter for Commercial Hand Load Service Recycling	\$3.95 / month / totter
Commercial Hand Load Service Extra Pickup	\$10.00 ea.

Frontload Commercial Containers:

Size / Frequency	Trash	Recycling
2 Cu. Yard / 1X Per Week	\$58.00 / Month	\$52.00 / Month
2 Cu. Yard / 2X Per Week	\$115.00 / Month	N/A
3 Cu. Yard / 1X Per Week	\$81.00 / Month	\$73.00 / Month
3 Cu. Yard / 2X Per Week	\$157.00 / Month	N/A
4 Cu. Yard / 1X Per Week	\$106.00 / Month	\$95.00 / Month
4 Cu. Yard / 2X Per Week	\$206.00 / Month	N/A
4 Cu. Yard / 3X Per Week	\$309.00 / Month	N/A
6 Cu. Yard / 1X Per Week	\$162.00 / Month	\$145.00 / Month
6 Cu. Yard / 2X Per Week	\$313.00 / Month	N/A
6 Cu. Yard / 3X Per Week	\$470.00 / Month	N/A
8 Cu. Yard / 1X Per Week	\$200.00 / Month	\$180.00 / Month
8 Cu. Yard / 2X Per Week	\$352.00 / Month	N/A
8 Cu. Yard / 3X Per Week	\$525.00 / Month	N/A
Frontload Extra Pickup	\$37.50 ea.	N/A

Roll-Off:

	Misc. / Delivery / Hauling Fee	Disposal Fee
<i>Large Roll-Off Containers:</i>		
Delivery Fee	\$75.00	N/a
Relocation Fee	\$75 (Truck Not Onsite) / NONE (Truck Still Onsite)	N/a
Rental / Day	First 30 days free; \$5.00 / day thereafter	N/a
20 Cu. Yard	\$475.00 / Pull	\$60 / Ton
30 Cu. Yard	\$525.00 / Pull	\$60 / Ton
40 Cu. Yard	\$575.00 / Pull	\$60 / Ton
Dry Run Charge (Fee assessed in the event the Contractor is unable to service commercial container due to overload, other weight issues, locked gate(s), or other similar issues.)	\$75	N/a
Same Spot Charge (Fee assessed in the event the Contractor is required to place the commercial container in the same location as the commercial container being swapped out.)	NONE	N/a
<i>Mini Roll-Off Containers:</i>		
Delivery Fee	NONE	N/a
Relocation Fee	\$75 (Truck Not Onsite) / NONE (Truck Still Onsite)	N/a
Rental / Day	No rental fee	N/a
8 Cu. Yard	\$300.00 / Pull	\$N/A / Ton
Dry Run Charge (Fee assessed in the event the Contractor is unable to service commercial container due to overload, other weight issues, locked gate(s), or other similar issues.)	\$75	N/a
Same Spot Charge (Fee assessed in the event the Contractor is required to place the commercial container in the same location as the commercial container being swapped out.)	NONE	N/a

Miscellaneous Fees:

	Misc. / Delivery / Hauling Fee	Disposal Fee
Commingled brush and white good / bulky item collection and disposal services to residential units two (2) times per year.	\$0.80 / Unit / Month	N/a
Special Waste collection and disposal services for sewage sludge originating from the City's Wastewater Treatment Plant.	\$1,750.00 / 30 Yd. End Dump Trailer	N/a

Emergency Management Plan Services

For any work that must be subcontracted by the Contractor, the Contractor shall serve as a pass through and the City shall pay the Contractor the subcontractor's invoiced amount.

	Misc. / Delivery / Hauling Fee	Disposal Fee
Residential Truck + Driver	\$250.00 / hr.	\$60 / Ton
Residential Truck + Driver + Helper	\$300.00 / hr.	\$60 / Ton
Dedicated Roll Off + Driver	\$200.00 / hr.	\$60 / Ton
Mini Wheeled Front End Loader + Operator	\$150.00 / hr.	N/a

Exhibit B

Certificates of Insurance

See attached certificates.

Exhibit C

Public Trash Receptacles

City of Johnson City

Trash Cans

- ① Pocket Park - 1 Trash Can
- ② JC Bank - 1 Trash Can
- ③ Proof & Cooper - 1 Trash Can
- ④ Memorial Park - 1 Trash Can
- ⑤ Memorial Park - 1 Trash Can
- ⑥ Park - 1 Trash Can
- ⑦ Park - 1 Trash Can
- ⑧ Park - 1 Trash Can
- ⑨ Park - 1 Trash Can
- ⑩ Park - 1 Trash Can
- ⑪ Annex - 1 Trash Can



Exhibit D

City of Johnson City
Emergency Management Plan
Annex K Public Works & Engineering

A complete copy of Annex K is available for copy and inspection at City Hall in Johnson City.