

CITY OF ANNA, TEXAS
RESOLUTION NO. 2021-08-977

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR SOLID WASTE AND RECYCLING SERVICES BY AND BETWEEN THE CITY OF ANNA, TEXAS AND CARDS DALLAS, INCORPORATED, A TEXAS CORPORATION, AS SHOWN IN EXHIBIT "A" ATTACHED HERETO, IN A FORM APPROVED BY THE CITY ATTORNEY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Anna is responsible for providing contract services for solid waste and recycling collection within the City Limits of the City of Anna, Texas, and;

WHEREAS, the City of Anna completed a public proposal request process for solid waste and recycling services in the City of Anna Texas in 2020, and;

WHEREAS, the City of Anna received three proposals and completed an in-depth review and interview process with each proposing company, and;

WHEREAS, the City of Anna contracted with CARDS Dallas, Incorporated as the winning proposer based upon a combination of proposed prices, experience, and capabilities, and;

WHEREAS, the City is seeking to amend and restate the original contract with CARDS Dallas, Incorporated for solid waste and recycling services, and;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS, THAT:

Section 1. Recitals Incorporated.

The recitals above are incorporated herein as if set forth in full for all purposes.

Section 2. Authorization.

The City Council hereby authorizes the City Manager to execute the contract in a form as approved by the City Attorney as shown in Exhibit "A" attached hereto.

PASSED AND APPROVED by the City Council of the City of Anna, Texas, on this 24th day of August, 2021.

ATTEST:

APPROVED:


City Secretary, Carrie L. Land





Mayor, Nate Pike

EXHIBIT "A"

CITY OF ANNA
FIRST AMENDED AND RESTATED SOLID
WASTE COLLECTION AND DISPOSAL
CONTRACT

STATE OF TEXAS

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**FIRST AMENDED AND RESTATED SOLID WASTE
COLLECTION AND DISPOSAL CONTRACT**

COUNTY OF COLLIN

This First Amended and Restated Solid Waste Collection and Disposal Contract (the “Contract”) is entered into by and between the City of Anna, Texas, a Texas home rule municipality (the “City”) and CARDS DALLAS INC, a corporation licensed to do business in the State of Texas and CARDS HOLDINGS, INC., a corporation licensed to do business in Arkansas (CARDS DALLAS INC and CARDS HOLDINGS, INC. collectively referenced as “Contractor”), acting by and through their authorized representatives.

WITNESSETH

WHEREAS, City is empowered under state and local law to provide solid waste Collection and Disposal services to its residents and commercial establishments and has the authority to enter into solid waste service Contracts to acquire, sell, lease or allow for the operation of all or any part of a solid waste management system, including the Collection, transportation and Disposal of solid waste; and

WHEREAS, the 2020 the Contractor submitted a proposal, in response to a Request for Proposal from the City, to provide solid waste Collection and Disposal services, including the Collection of recyclables and, bulk trash, including brush pickup, within the City, and to perform such work as may be incidental thereto; and

WHEREAS, the City approved and authorized the City Manager to execute a contract for solid waste and recycling services by and between the City of Anna, Texas, and CARDS Dallas, Incorporated as stated in Resolution 2020-7-759, approved on July 14, 2020; and

WHEREAS, the Contractor has completed the first year of the original seven-year contract term; and

WHEREAS, the City and Contractor both desire to make amendments to the original contract approved by Resolution 2020-7-759; and

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, the parties agree as follows:

1. The Contractor is hereby granted the sole and exclusive privilege and duty, to the extent allowed by law, within the territorial jurisdiction of the City, and agrees to furnish all personnel, labor, equipment, trucks, and other items necessary to provide Solid Waste Collection, hauling and Disposal for residential, commercial and industrial/Roll-off customers and Recyclable Materials Collection and Processing in accordance with this Contract and to perform all of the work called for and described in the Contract documents.
2. The initial term this Contract shall be for a period of seven (7) years, beginning on August 31, 2020 and terminating on September 30, 2027. After the initial term, the City may renew this Contract for three

(3) additional renewal terms of one (1) year each. The Contractor may prohibit the City from exercising an optional renewal term by providing written notice to the City of its election to reject a renewal term on or before eleven (11) months before the scheduled date of expiration of the initial term or the then current optional renewal term of this Contract. If the Contractor does not provide such written notice to the City on or before eleven (11) months preceding the scheduled date of expiration of the initial term or the then current optional renewal term of this Contract prohibiting City from exercising the optional renewal term, the City may upon written notice to the Contractor not later than ninety (90) calendar days preceding the scheduled date of expiration of the initial term or the then current optional renewal term of this Contract exercise such optional renewal term by such notice. This provision in no way limits the City's right to terminate this Contract at any time during the initial term or any optional renewal term thereof in accordance with this Agreement.

3. This Contract includes the General Conditions attached hereto, and shall also include the following Contract Documents which are incorporated herein by reference as if set forth verbatim in this Contract:

- A. City Council Resolution approving Original Contract. (Exhibit "A")
- B. Solid Waste and Recycling Collection Fees (Exhibit "B")
- C. Original Contract (Exhibit "C")

In the event of any conflict between or among the Contract Documents, this Contract shall control. In the event of a conflict between this Contract (including its General Conditions) and its exhibits, the sequencing of the documents are intended to represent priority. For example, the General Conditions will prevail over conflicts in other Contract Documents.

4. All provisions of this Contract shall be strictly complied with by the Contractor, and no amendment to this Contract shall be made except upon the mutual written agreement of the parties. No amendment shall be construed to release either party from any obligation of this Contract except as specifically provided in such amendment.

5. The Contractor shall keep in full force and effect throughout the term of this Contract insurance, and performance bonds, as recited herein, in the amounts and types specified in and required by the Contract documents.

6. The Contractor has the sole obligation to exercise and enforce, at its sole expense, the exclusivity provided for herein as against third parties, and may present claims and bring suit for its damages and injunctive relief against third parties—but not against the City—for a violation of Contractor's exclusivity herein.

7. This Contract shall be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Contract may not be assigned or delegated without the consent of the City, which consent shall not be unreasonably withheld.

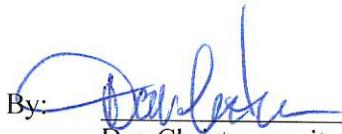
8. This Contract is the entire agreement between the parties with respect to the subject matter covered in this Contract. There is no other collateral, oral, or written agreement between the parties that in any matter relates to the subject matter of this Contract, except as provided in the Contract documents.

9. The validity of this Contract and any of its terms and provisions, as well as the rights and obligations of the parties, shall be governed by the laws of the State of Texas; and exclusive venue for any action concerning this Contract shall be in a court of proper jurisdiction of Collin County, Texas.

10. In the event anyone or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not affect other provisions, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Executed in single or multiple originals this _____ day of _____ 2021.

CARDS DALLAS INC

By: 

Dan Christensen, its President
P.O. Box 775
Tontitown, AR 72770

CARDS HOLDINGS, INC

By: 

Dan Christensen, its President
P.O. Box 775
Tontitown, AR 72770

CITY OF ANNA, TEXAS

By: _____
Jim Proce, City Manager
111 N. Powell Parkway
Anna, Texas 75409

**CITY OF ANNA SOLID WASTE
COLLECTION AND DISPOSAL CONTRACT**

GENERAL CONDITIONS

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Exhibit C
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ARTICLE 1 Definitions

Terms defined herein and their derivations shall have the meanings as set forth in herein.

Bulky Waste: Bulky Waste shall mean solid waste composed of materials not easily contained in a Cart such as, but not limited to white goods, furniture, Yard Trimmings, large electronics, and other oversized solid waste. Any solid waste not placed within a Cart will be removed by the Contractor as Bulky Waste.

Business Day: Business day shall mean any day, Monday through Friday, from 8:00 AM, Central Standard Time until 5:00 PM, Central Standard Time, which is not a holiday designated as such in the Contract.

Cart: Cart shall mean a receptacle purchased by the Contractor or City meeting the specifications set forth in this Contract which designed to be mechanically dumped into a loader-packer type truck via a fully-automated truck arm (ANSI Z245.60 Type G) and semi-automated truck tipper (ANSI Z245.60 Type B).

City: City shall mean the City of Anna, Texas.

City Facility: City Facility shall mean any City owned or operated facility designated by the Contract Administrator as a City Facility to receive City services. The City has the sole authority to add or eliminate City Facilities to receive City services.

Collect or Collection: Collect or Collection shall mean the act of removing solid waste, including Bulky Waste, for transport to a Disposal site or the act of removing Program Recyclable Materials and program household hazardous waste and electronics for transport to a Processing facility.

Commercial Service Unit: Commercial Service Unit shall mean all establishments other than residential service units, Homeowner Association Units, or Independent School District Units within the corporate limits of the City

Compactor: Compactor shall mean a mechanical unit that receives, compacts and reduces the volume of solid waste or Recyclable Materials.

Container: Container shall mean Carts, Dumpsters and Roll-offs.

Contract: Contract shall mean this Contract, inclusive of these General Conditions, the Request for Proposals, Instructions to Bidders, Contractor's Proposal, Contract Specifications, this Contract, Performance Bond or Letter of Credit, and any addenda or changes to the foregoing documents agreed to by the City and the Contractor.

Contract Administrator: Contract Administrator shall mean the person, or his designee, designated by the City to administer and monitor the provisions of this Contract.

Contractor: Contractor shall mean CARDS Dallas Inc, a Texas corporation, and CARDS Holdings, Inc., an Arkansas corporation.

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Disaster Debris: Disaster debris shall mean any waste materials including building materials, sediments, vegetative debris, personal property, and other materials resulting from a disaster. Disaster debris may be generated by any sector affected by a disaster (e.g., households, businesses, government, etc.)

Dispose or Disposal: Dispose or Disposal shall mean the deposition, injection, dumping, spilling, leaking or placing of solid waste into or on the land or water Dispose or Disposal; Dispose or Disposal shall further mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether Containerized or un-Containerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater. Contractor shall lawfully Dispose of materials at a Disposal site.

Disposal Site: Disposal site shall mean a landfill or other solid waste management facility permitted under all applicable local, state, and federal laws and regulations for Disposal of solid waste.

Dumpster: Dumpster shall mean a metal receptacle with a tight-fitting lid and a minimum capacity of approximately two (2) cubic yard, a maximum capacity of eight (8) cubic yards, and designed to be lifted and emptied mechanically. Contractor shall provide Dumpsters to customers.

Homeowner Association Units: Shall mean a property owners association as defined in Chapter 209 of the Texas Property Code.

Independent School District Units: Shall mean facilities owned and operated by Anna ISD.

Implementation Plan: Implementation Plan shall mean the formal plan prepared by the Contractor and approved by the City Manager for transitioning solid waste services from the current provider to the Contractor.

Original Contract: Original Contract shall mean the contract approved by the City Council in Resolution 2020-7-759, dated July 14, 2020.

Process or Processed or Processing: Process or Processed or Processing shall mean recovery of Recyclable Materials, treatment into recovered materials, and marketing of recovered materials to end markets and recovery of program household hazardous waste and electronics, treatment of program household hazardous waste and electronics, and marketing of recovered materials to end markets.

Processing Facility: Processing Facility shall mean a facility permitted under all applicable local, state, and federal laws and regulations for Processing of Recyclable Materials and/or program household hazardous waste and electronics.

Program Household Hazardous Waste and Electronics: Program Household Hazardous Waste and Electronics shall mean materials proposed by Contractor to be included and agreed by the City to be included as program household hazardous waste and electronics.

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Program Recyclable Materials: Program Recyclable Materials shall mean mixed waste paper (including corrugated cardboard, newspaper, junk mail, phone books, beverage packaging, cereal boxes, chipboard, envelopes, magazines etc.), bagged shredded paper, steel and tin cans (fruit and vegetable cans), aluminum cans, plastic Containers - # 1,2,3,4,5 & 7, and glass bottles/jars/Containers and shall be collected in a Single Stream. In addition, Program Recyclable Materials include other materials proposed by Contractor to be included and agreed by the City to be included as Program Recyclable Materials.

Recyclable Material: Recyclable Material shall mean a material that has been recovered or diverted from the non-hazardous waste stream for purposes of reuse, Recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become Solid Waste at such time, if any, as it is abandoned or Disposed of rather than recycled, whereupon it will be Solid Waste, with respect to the person actually abandoning or disposing of such material.

Recycling: Recycling shall mean a Process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or Processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, Recycling includes the composting Process if the compost material is put to beneficial use.

Recycling Services: Recycling Services shall mean the Collection and Processing of Program Recyclable Materials and Program Household Hazardous Waste and Electronics.

Residential Unit: Residential Unit shall mean a room or a group of rooms including cooking accommodations, occupied by one family, and in which not more than two persons, other than members of the family, are lodged or boarded for compensation at any one time and/or as designated by the Contract Administrator as a Residential Unit.

Roll-off: Roll-off shall mean a metal receptacle with a minimum capacity of approximately twenty (20) and a maximum capacity of forty (40) cubic yards, intended for high-volume generation of solid waste, and designed to be transported to a Disposal site by loading of receptacle onto rear of transporting vehicle. Contractor shall provide Roll-offs.

Set-out: Set-out shall mean material(s) placed by a customer for Collection by Contractor.

Single Stream: Single Stream shall mean commingled and not required to be subdivided by the customer prior to Collection.

Solid Waste: Solid Waste shall mean garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

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- a) Solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;
- b) Solid, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvement;
- c) Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids Processing plants, pressure maintenance plants, or depressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 USC, §§6901 et seq.); or
- d) Unacceptable waste.

Solid Waste Services: Solid Waste Services shall mean the Collection and Disposal of solid waste including without limitation Bulky Waste.

Special Events: Special Events shall mean events sponsored in whole or in part by the City, or conducted within the City and sponsored privately, which include, but are not limited to, fairs, bazaars, socials, picnics and organized musical and sporting events.

Unacceptable Set-out: Unacceptable Set-out shall mean a Set-out for Collection that does not comply with the requirements of the Agreement.

Unacceptable Waste: Unacceptable Waste shall mean any solid waste, the acceptance and handling of which by Contractor would cause a violation of any permit or regulatory requirement, including, but not limited to, untreated Medical Waste, solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit.

White Goods: White Goods shall mean all major appliances, such as washers, dryers, refrigerators, freezers, stoves, dishwashers, hot water tanks, and trash Compactors and other items of similar weight, material, size and nature.

Yard Trimmings: Yard Trimmings shall mean any cuttings or trimmings from trees, shrubs, or lawns, and similar materials.

ARTICLE 2 Types of Collection

2.01 Residential Collection:

2.01.01 Contractor shall collect Solid Waste and Program Recyclable Materials from the premises of residential accounts within the City utilizing Carts and semi-automated or automated Collection vehicles. Separate Carts shall be provided for Solid Waste and for Program Recyclable Materials. All Residential Units will be furnished by Contractor with a new Cart for Solid Waste Services and Recycling Services as described in this Contract within five (5) business days from request submitted

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to the Contractor. Residential Units will be provided with additional Carts if requested by the customer. Point of service or Collection shall be the paved alley at the driveway connection to the Residential Unit, the street at the driveway connection to the Residential Unit, or at some other location determined by the City. Side door collection for those residents that are physically unable to place their Cart in the required location will be provided at no additional charge. Collection of Solid Waste, Program Recyclable Materials, shall occur a minimum of once weekly, on the same scheduled day, unless otherwise specified. The Contractor may revise or amend the designated collection routes subject to approval by the Contract Administrator.

2.01.02 Residential Collection Set-out, including Bulky Waste, has no Set-out limits. Residents may Set-out excess solid waste, Bulky Waste and Program Recyclable Materials outside Carts. Contractor shall collect all Christmas trees outside of Carts for the two weeks following December 25th.

2.01.03 All Collection from Residential Units of solid waste and Program Recyclable Materials will occur on the same day of the week. Bulky Waste Collection is provided on the same day as Collection of solid waste and Program Recyclable Materials or the following day once per month. Contractor may not require customers to separate Yard Trimmings or other brush or prepare same in any particular manner for purposes of processing same by mulching or composting. Bulky Waste Collection will be limited to three (3) cubic yards per Collection. The Contractor will also provide Solid Waste Services via temporary Roll-offs to residential customers via 20 CY, 30 CY, and 40 CY Roll-offs with and without Compactors.

2.01.04 As part of the Residential services under this Contract, the Contractor will provide one annual Collection of Program Household Hazardous Waste and Electronics. These services will be provided as an event at a certain location as determined by the City. The date and the time of said event will be as agreed to by the City and Contractor. Said services shall be provided for a mutually agreeable fee.

2.02 Commercial Service Units, Homeowner Association Units, and Independent School District Units Collection

2.02.01 In addition to residential services, the Contractor will provide Collection of solid waste via Carts, Dumpsters or Roll-offs to Commercial Service Units, Homeowner Association Units, and Independent School District Units. The Contractor will provide at a minimum once per week Solid Waste Services for such units. For such units that are low waste generators, the Contractor will provide once per week Collection of solid waste via up to three 96-gallon Carts. For such units that are not low waste generators, the Contractor will provide at least once per week and up to six days per week Collection of solid waste via 2 cubic yard (CY), 4 CY, 6 CY, and 8 CY Dumpsters without vertical Compactors and 4 CY, 6 CY, and 8 CY Dumpsters with vertical Compactors. The Contractor will also provide Solid Waste Services via Roll-offs to customers via 20 CY, 30 CY, and 40 CY Roll-offs with and without Compactors.

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2.02.02 In addition to Solid Waste Services, the Contractor will offer, as a non-exclusive service, Recycling services to Commercial Service Units. To incentivize Recycling, the Contractor will provide service fees for Recycling services that are equal to or less than the equivalent service fee for Solid Waste Services.

2.02.03 Collections frequency and Container size and quantity shall be adequate to maintain premises free of accumulation of waste. Collection shall be in a Container as designated by customer. All Containers shall be located on a concrete pad to accommodate equipment. The City shall be the sole determinant of acceptable Container pads, locations and screenings, provided however such pads or locations must be sufficient to bear the weight of all the Contractor's equipment and vehicles reasonably required to perform the service provided herein.

2.02.04 The Contractor will be responsible for purchase, distribution, storage, ongoing repair, replacement, warranty issues, and other requirements related to Dumpsters, Roll-offs, and Compactors owned by the Contractor. Customers may elect to purchase Compactors. All Dumpsters shall have lids that fully close. Dumpsters and Roll-offs must be painted a uniform color, bear the name and telephone number of the Contractor, and bear a serial number coded for the Dumpster or Roll-off size. Dumpsters and Roll-offs shall be painted at least once every 2-1/2 years and shall be steam cleaned at least once each year or as directed by the City. The Contractor is responsible for removing graffiti from its Dumpsters, Roll-offs, and Compactors. Collection drivers shall notify the Contractor at the end of each day of any Dumpster, Roll-off, or Compactor containing graffiti. The Contractor shall remove any graffiti from its Dumpsters, Roll-offs, and Compactors within five (5) business days of notification. Each Dumpster, Roll-off, and Compactor of the Contractor is subject to inspection by the City and approval as to appearance and condition before placement at any City Facility. A Dumpster, Roll-off, or Compactor of the Contractor shall be reconditioned and repainted if necessary before being supplied to a City Facility that had not used it earlier. If the City so requires, a Dumpster, Roll-off, or Compactor shall be cleaned or repainted within seven (7) days. If appropriate to serve the City's needs and/or locations, the City may require the Contractor to install and service a Dumpster, Roll-off, or Compactor. Damage to Dumpster, Roll-off, or Compactor on customers' premises is at the Contractor's risk, as between those parties and without affecting the risk or liability of others. The Contractor shall be responsible for the repair of all Dumpsters, Roll-offs, or Compactors damaged due to the Contractor's negligence. The Contractor shall repair or replace within one business day any Dumpster, Roll-off, or Compactor that the City determines does not comply with ordinance standards or constitutes a health or safety hazard.

2.03 City Services: The Contractor will provide City services at no charge to the City. City services include the following:

1. City Facilities Solid Waste Services and Recycling Services. The Contractor will provide solid waste services and recycling services to all current and future City facilities. This includes hauling and disposing of sludge from the City's wastewater treatment plant.

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2. City Sponsored Special Events. The Contractor will provide solid waste services and recycling services to any City sponsored special event. Currently the City hosts 3-5 special events per year. The Contractor will provide up to twenty-five (25) 90-96-gallon solid waste Carts and twenty-five (25) 90- 96-gallon recycling Carts per event or containers equivalent to. The City will provide a two-week notification to the Contractor to schedule such events and provide information on the number of Carts needed and the location to stage Carts and pick up. Upon completion of the event, the Contractor will pick up the Carts within 24 hours.

2.04 Unacceptable and Uncollectible Waste:

2.04.01 The Contractor shall tag items placed for Collection that are not collectable under the terms of the Contract. The Contractor shall promptly notify the City of the address where the tagged item is located but no later than by 10:00 AM, Central Standard Time, the next business day. The procedure and forms utilized to provide notice to customers must be approved by the Contract Administrator. The Contractor shall report unusual accumulations and Unacceptable Waste to the City. The City shall determine whether the customer has or is habitually abusing the waste Collection services. Upon such determination, the customer shall be advised to eliminate the accumulation, which may be through services of the Contractor. Future unusual accumulations at the same location may involve City Code Enforcement action.

2.04.02 The Contractor shall collect all Solid Waste and Recyclable Materials Set-out in Carts, Dumpsters, and Roll-offs. For Residential Units, the Contractor shall collect all Christmas trees from residential service units for the two-week period following December 25th of each year. If the City elects once per month bulky waste services for residential units, the Contractor shall collect up to four (4) cubic yards of bulky waste per collection. The Contractor is not responsible for collecting in excess of the Set-out limits. It shall be the Contractor's responsibility to give notice first to the customer and also to the Contract Administrator if a Set-out exceeds the Set-out limits. The City shall be the sole and final judge as to whether a Set-out exceeds the Set-out limits.

2.04.03 The Contractor may inspect each Set-out prior to collection for compliance with this Contract. For all unacceptable Set-outs, the Contractor shall provide a written report of the unacceptable Set-outs including the address, the reason(s) the Set-out was an unacceptable Set-out, and other information as requested by the City to the City by 10:00 AM, Central Standard Time, the next business day. Prior to collection of the Set-out, the Contractor may designate a Set-out as an unacceptable Set-out for the following reasons:

1. Set-out exceeds the Set-out limits established in this Contract; or
2. Set-out of Program Recyclable Materials contains more than twenty-five percent (25%) of non-recyclable materials by weight.

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The Contractor may not designate a Set-out as an unacceptable Set-out for any reason other than those identified in this Contract. If the Contractor designates a Set-out as an unacceptable Set-out for any of the reasons set forth in this Contract, the Contractor shall:

1. Collect the portion of the Set-out that is properly Set-out; and
2. Immediately provide an unacceptable Set-out notice to the customer stating the reason the Set-out or portion of the Set-out was designated as an unacceptable Set-out.

2.05 Recyclable Materials:

2.05.01 The Contractor must Process a minimum of ninety-five percent (95%) by weight of Program Recyclable Materials from all Residential Units into recovered material per month.

2.05.02 The Contractor shall provide for the Single Stream Collection and Processing of all Program Recyclable Materials as defined in this Contract. The Contractor may retain all revenues from the sale of all collected Program Recyclable Materials.

2.05.03 The Contractor shall not commingle Program Recyclable Materials with Solid Waste or other non-recyclable material. The Contractor shall not Dispose of any Program Recyclable Materials in any manner other than at and through an appropriate Recycling facility, except when approved, in advance and writing, by the City. The Contractor shall not market or transfer Program Recyclable Materials to any person or entity that the Contractor knows or reasonably should know will Dispose of Program Recyclable Materials in any manner other than at and through an appropriate Recycling facility, except when approved, in advance and writing, by the City. Under no circumstances shall the delivery to and deposit of Program Recyclable Materials at any landfill, dump, transfer station or other facility used for the final deposit of waste material, or any other disposition of recyclables to any person, location or facility other than a recognized Recycling facility, be construed to comply with the prohibitions of this paragraph.

2.05.04 A violation of the foregoing provision is a breach of this Contract and may result, at the City's discretion, in the assessment of administrative charges and/or termination of the Contract. All remedies are non-exclusive and the City may elect to pursue any one or more remedy or sanction, including the filing of criminal charges, without waiving the right to pursue any other remedy or sanction.

2.06 Roll-Offs: Upon request of a Residential Unit customer, Contractor shall provide temporary Roll-off Collection in accordance with the Original Contract.

2.07 Exclusive Services: The Contractor shall be the City's exclusive Contractor for the Collection of Solid Waste, Program Recyclable Materials and Bulky Waste from Residential Units and Collections from Commercial Service Units in the City including the Anna Independent School District. The exclusive right does not include properties located in the City's Extraterritorial Jurisdiction (ETJ). However, the Contractor is not prohibited from seeking to provide trash collection services to properties in the ETJ. The exclusive

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right includes the provision of Solid Waste Collection services to construction projects within the City. In addition, the Contractor shall have the exclusive right to provide all Recycling Collection services to Residential Units. The Contractor shall have the non-exclusive right to provide Recycling Collection to Commercial Service Units and City Facilities. The Contractor, not the City, shall be solely responsible for defending the rights granted to the Contractor herein against third parties.

ARTICLE 3 Collection Operations

3.01 Hours of Operation: Collection of Solid Waste and Program Recyclable Materials shall begin no earlier than 7:00 o'clock a.m. and shall generally not extend beyond 7:00 o'clock p.m. Central Standard Time. No regular weekly residential Collection shall occur on Saturday, however, irregular Collection schedules shifted to accommodate holidays may occur on Saturdays. No Collection shall be made on Sunday. Commercial services shall be provided Monday through Saturday. The Contractor shall not change collection days or schedules to Residential Units without written authorization by the Contract Administrator. The City and the Contractor shall mutually agree to holidays to be observed. If the holiday falls on a regularly scheduled workday, collections for the holiday and each day thereafter will be delayed one day and Friday's material shall be collected on Saturday. The City shall determine the service level, including container type and collection frequency, and schedule for all City Facilities Collections. Commercial services and Roll-off services customers and the Contractor shall agree upon the collection schedule and days subject to no objection by the City.

3.02 Hours of Disposal: Contractor shall Dispose of waste within the operating hours of the Disposal Site.

3.03 Routes of Collection: Collection routes shall be established by the Contractor as approved by the Contract Administrator. The Contract Administrator shall be provided route Collection maps and Container locations.

3.04 Holidays: Holidays for purposes of this Contract will be provided by the Contractor based upon the landfill schedules, including any of the following holidays which fall on a weekday (Monday thru Friday):

- New Years Day
- Memorial Day
- Fourth of July
- Labor Day
- Thanksgiving
- Christmas Day

3.05 Alternate Schedule: Contractor may elect to observe any or all the above-referenced holidays by suspension of Collection service on the holiday; provided, however, the Contractor shall collect for Residential Units the next calendar day following the holiday. Contractor shall provide an annual holiday schedule to City each October and updates quarterly. Contractor shall inform customers by public notice in a newspaper of general circulation, mail out piece, electronic mail and website alert or other effective means as agreed upon with City.

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3.06 Vehicle Maintenance and Specifications:

3.06.01 The average age of frontline collection vehicles (including chassis and packer) shall not exceed the age of this Contract. No more than 50% of the fleet shall be at an age beyond age of this Contract. The age of a vehicle will be deemed to be the age of the oldest of the two primary components of the vehicle (chassis and packer). For example, during the first year of this Contract, the average age of all vehicles shall be no more than one (1) year. During the second year of this Contract the average age of all vehicles shall be no more than two (2) years, and so on for the duration of this Contract. All vehicles shall be kept in a clean and sanitary condition. Collection and management vehicles shall be painted in the Contractor's color or colors schemes. The vehicles shall be uniquely numbered, and the vehicle numbers shall be painted in a contrasting color, at least six inches high, on each side of each vehicle and on the rear of the vehicle. No advertising shall be permitted other than the name, address, and phone number of the Contractor.

3.06.02 Collection vehicles shall be manufactured to provide the services specified. Collection vehicles will be equipped with two-way communication devices so that the Contractor's staff and driver may communicate during the route collection. In addition, collection vehicles will have back-up cameras, spill kits, and GPS tracking capability. The GPS equipment shall enable the Contractor to verify the location and routes of all trucks deployed in the City. All trucks shall also be equipped with camera equipment and technology, to enable and deploy a set of cameras that record the activities of trucks used in the City, which can be recalled and viewed by the City as needed.

3.06.03 The Contractor shall utilize equipment which can safely maneuver all City streets and properly collect waste and redistribute Carts. Contractor shall review existing neighborhoods, including streets and on-street parking conditions to ensure that all equipment used shall meet this requirement.

3.06.04 The Contractor shall maintain a complete inventory showing each vehicle (type, capacity, approximate age) used for performing services within the City. Upon approval of the City, the Contractor may change vehicles from time-to-time and shall revise the inventory accordingly. Replacement vehicles shall conform to this Section 3.06. The City may consider allowing the Contractor to utilize older vehicles in a temporary manner due to unforeseen vehicle damage or breakdown. Such temporary vehicle usage shall not exceed 30 calendar days prior to being replaced with a permanent vehicle conforming to this Section 3.06.

3.06.05 The Contractor shall exercise care to prevent spilling, leaks and littering during the Collection Process. The Contractor shall ensure all materials hauled are contained, tied, or enclosed to prevent spilling, leaking and littering. The Contractor shall immediately pick up and clean up all spills, leaks and litter resulting from Contractor's proposer's vehicles/equipment, or by Contractor's employees or subcontractors while performing services under this Contract. Each vehicle shall be equipped with the proper tools and cleaning equipment to adequately clean up any spillage. No equipment shall be allowed to leak or scatter any waste within the limits of the City nor while en route to the Disposal Site where such accumulations shall be dumped.

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3.07 Commingling and Disposal of Recyclable Materials Prohibited:

3.07.01 Except when approved in writing by the City, the Contractor shall not commingle Recyclable Materials with any other materials. Commingling of such materials is a breach of this Contract that may result, at the City's discretion, in administrative charges and/or termination of this Contract.

3.07.02 The Contractor shall not dispose of any Recyclable Materials collected for recycling, or market such materials to markets that the Contractor knows or reasonably should have anticipated will dispose of the materials, except when approved, in writing, by the City.

3.07.03 Disposal of Recyclable Materials collected for recycling, or marketing of such materials to markets that the Contractor knows or reasonably should have anticipated will dispose of such materials, except when approved by the City, is a breach of this Contract that may result in administrative charges and/or termination of this Contract.

3.07.04 In this Section 3.07, "dispose" or "disposal" means the delivery to and deposit of Recyclable Materials at any landfill, dump, transfer station or other facility used for the final deposit of waste material, or any other disposition of Recyclable Materials to any person, location or facility other than a recognized recycling facility.

3.08 Disposal and Processing Services:

3.08.01 The Contractor will be responsible for providing disposal services. Contractor shall have and maintain during the term hereof, adequate disposal and processing capacity for the City's needs and the needs of all Residential Units and all Commercial Service Units within the City. All solid waste collected under this Contract shall be disposed of at a Disposal Site properly authorized under all applicable federal, state and local laws. All recyclable materials collected under this Contract shall be processed at a processing facility properly authorized under all applicable federal, state and local laws.

3.08.02 The Contractor will be responsible for processing all recyclable materials collected from the City and all . The Contractor must process a minimum of ninety-five percent (95%) by weight of program recyclable materials from residential customers into recovered material per month. Prior to award of this Contract, the City and the Contractor will agree to the minimum processing requirements for hazardous waste and electronics services collection.

3.09 Carts:

3.09.01 New Carts shall meet the requirements set forth in the Original Contract. Carts must be 90-96 gallons. In addition, recycling Carts must have a full-color in-mold label on the lid of the Cart of Program Recyclable Materials and non-Program Recyclable Materials with a minimum size of 100 square inches.

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3.09.02 The Contractor shall supply all new Carts during the term of this Contract, be responsible for maintenance, repair, warranty issues, replacement, and retain ownership of Carts in the possession of residential units at the expiration of this Contract.

3.09.03 Upon notice from the City, the Contractor shall deliver new Carts to new customers. The Contractor will be responsible for responding to requests from and delivering Carts to customers who need a Cart replacement for whatever reason. Carts shall be delivered no later than three (3) business days after notice. Used Carts must be cleaned prior to reentry into the system and delivery to customers. Damaged Carts shall be removed at the same time a replacement Cart is delivered. Customers shall be provided with instructions for proper use, including any customer actions that would void manufacturer warranties, such as placement of hot ashes in the Cart causing the Cart to melt, and procedures to follow to minimize potential fire problems.

ARTICLE 4 Complaints; Missed Collections

4.01 Contractor's Office: The Contractor shall maintain an office or other facilities through which it can be contacted. The office shall be equipped with sufficient telephones having toll free phone numbers and have a responsible person in charge and an adequate number of competent persons available to answer the phone from 7:00 a.m. to 7:00 p.m. on regular Collection days. When residential Collection is postponed one day for the holiday schedule the Contractor's customer service personnel must be available to answer phones on all days during which Collection service is provided. An informative recording answering frequently asked questions and voicemail shall be available at all other hours.

4.02 Customer Service and Complaint Resolution:

4.02.01 The Contractor will be primarily responsible for complaints and the City will forward all initial complaints to the Contractor for resolution. Customer complaints shall be directed to the Contractor, and the Contractor shall give each complaint received prompt and courteous attention. The Contractor shall respond to all complaints via phone or written correspondence with the customer within one business day. The Contractor shall maintain a log of complaints and shall provide the City, on a daily basis, with copies of all complaints indicating the date and hour of the complaint, nature of the complaint, and the manner and timing of its resolution.

4.02.02 If a complaint cannot be resolved and the City's Contract Administrator is notified by the complainant, it will be the Contractor's responsibility to provide adequate documentation to demonstrate that the complaint was handled in a satisfactory manner. The Contractor shall provide a single source contact for the City's Contract Administrator for complaints or other city needs and shall communicate back with the Contract Administrator within two (2) hours of initial outreach.

4.03 Customer Grievances:

The Contractor will designate a representative to adjudicate customer grievances. At the City's request, the representative will join the City in meeting with an aggrieved customer within 3 business days of notification. The decision of the City shall be final and binding.

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4.04 Reserved.

4.05 Reserved.

4.06 Customer Notifications

The City will coordinate with the Contractor and approve all necessary communications with residential customers including but not limited to fee changes, route changes, holiday schedules, promotion of mulching and composting to reduce waste, etc. Unacceptable set-out notices and program introduction notices shall be printed and distributed by the Contractor. All other notices shall be printed and distributed by the City.

4.07 Reporting

4.07.01 The Contractor shall provide the following weekly and monthly reports to the Contract Administrator. Reports shall be in a format approved by the Contract Administrator. Complete and accurate weekly reports must be submitted to the Contract Administrator by no later than 3:00 PM, Central Time on Friday, each week. Weekly reports must contain the following information:

1. Call Log – Spreadsheets listing the calls received by date and time, type of call (missed collection, complaint, inquiry), and resolution.
2. Unacceptable Set-out Log - Spreadsheet of unacceptable Set-outs by address and description of reason.

4.07.02 Complete and accurate monthly reports must be submitted to the Contract Administrator on or before the tenth (10th) day of each month. Monthly reports must contain the following information:

1. Amount of Solid Waste and Program Recyclable Materials Collected – spreadsheet listing amounts (in tons/pounds) of Solid Waste and Program Recyclable Materials collected by customer type. The spreadsheet must also include year-to-date totals.
2. Customer List for Roll-off Services – identify each by address and level of service, name, and contact information.
3. Billing and Revenue Documentation – documentation justifying the Contractor’s billings and revenue derived by the Contractor for services within the City.
4. Summary of motor vehicle accidents or moving violations involving the Contractor’s vehicles and any other infractions by or accidents/injuries/damages involving the Contractor’s employees while performing services under this Contract.

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4.08 Missed Collections: The Contractor shall notify the City by 5:00 PM, Central Standard Time when a route may not be completed before 7:00 PM Central Standard Time. The Contractor shall notify the City immediately upon discovering a street, portion of a route, or a complete route was not collected as scheduled. When notification of a missed Collection is received, the Contractor shall provide Collection the next business day.

4.09 Materiality: Without limiting the materiality of other provisions of this Contract, the Contractor's compliance with the complaint resolution, customer grievance, and reporting requirements of this Article 4 is and shall be a material term of this Contract.

ARTICLE 5 Billings; Payments; Charges

5.01 Billing and Payments:

5.01.01 The City shall provide the Contractor a customer list for residential services and commercial services identifying each by address and level of service. The Contractor shall provide the City a customer list for all other customers, identifying each by level of service, address, name, and contact information. The City and the Contractor shall update the customer list each month.

5.01.02 The City will be responsible for billing and Collection of payments for solid waste and recycling services based on the customer list. The Contractor will be responsible for billings and collection of payments for all Roll-off services, and additional pickups. The Contractor shall bill customers in accordance with this Contract and then-current fee schedule plus the then-current franchise fee, if one is in place. The Contractor shall not bill customers for any fees other than those specifically authorized in this Contract.

5.01.03 Within thirty (30) calendar days of the end of each month, the City shall remit to the Contractor payment, less any franchise fees, disputed amounts, administrative charges, and payments withheld in accordance with the Contract, for residential services and commercial services rendered by the Contractor and billed by the City for the prior month.

5.01.04 Within thirty (30) calendar days of the end of each month, the Contractor shall remit to the City payment for any franchise fees, and other payments in accordance with this Contract for services rendered by the Contractor or payments due for the prior month.

5.02 Administrative Charges (Liquidated Damages): The Contractor understands that if it does not timely perform its obligations pursuant to the terms of this Contract or violates any provision of the Contract, City will suffer damages which are difficult to determine and adequately specify. The City and the Contractor agree that the liquidated damage amounts set forth herein are not penalties but are instead an estimate of damages that the City and public will sustain if any of the types of breaches listed below occur. In this regard, the Contractor agrees, in addition to any other remedies available to City, that City may withhold payment to Contractor in the amounts specified below as administrative charges for failure of the Contractor to fulfill its obligations. The following is a non-exclusive list of acts or omissions

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constituting breaches of this Contract entitling the City to withhold payment to the Contractor of the liquidated damage amount set forth for each such breach:

1. Failure to clean up spill as identified in this contract: \$250 per occurrence.
2. Failure to correct a missed collection as specified in this contract: \$50 per occurrence per day.
3. Failure to respond to a customer complaint as specified in this contract: \$100 per occurrence per day.

5.03 Remittance of Charges: The City may impose administrative charges in the amounts set forth above (or withhold such amounts from payments due to the Contractor) when the Contract Administrator determines that performance consistent with the provisions of this Contract has not occurred. The Contract Administrator shall notify the Contractor in writing or electronically of each act or omission under the terms of this Contract reported to or discovered by the City or its designee. It shall be the duty of the Contractor to take whatever steps or action may be necessary to remedy the cause of any complaint.

5.04 Remedies Cumulative. The City may deduct the full amount of any such charges from any payment due to the Contractor. The remedy available to the City under this paragraph shall be in addition to all other remedies which the City may have under law, at equity, or pursuant to the terms of this Contract. Contractor's obligations to make payments for such charges under this section occurring prior to the expiration or termination of this Contract shall survive termination or expiration of this Contract.

ARTICLE 6 Rates and Fees

6.01 Franchise Fee: For the right and privilege of using the City's public rights-of-way to provide scope of services of this Contract, the City may choose to implement a Franchise Fee as part of the annual contract renewal in an amount not to exceed 5% of gross receipts resulting from operation of the Solid Waste Collection Services within the City. Said Franchise Fee shall be shown in Exhibit "B," which shall be updated if implemented. All collection and disposal fees listed in Exhibit "B" exclude Franchise Fees.

6.02 Collection Fees: The fees assessed by Contractor to the City shall be as set forth in Exhibit "B" ("Solid Waste and Recycling Collection Fees"). The fees may be modified during the term of this Contract, or any renewal term, only in accordance with the following provisions; provided, however, that the fees set forth in Exhibit "B" shall not be revised based on changes in the CPI-U, Fuel Adjustment, or landfill and recycling processing fees during the first year of this Contract.

6.02.01 The Contractor may submit a written request for modification to fees on or before July 1, 2022 and every July 1 thereafter. If either party fails to submit a written request or notice of a fee modification on or before July 1st of any year, the existing fees shall apply throughout the following year. All fees shall remain fixed from the execution of this Contract through September 30, 2022. A fee adjustment may be based on: (1) changes to the CPI-U, (2) changes to the Fuel Adjustment, and (3) changes to disposal and recycling process fees at landfills and material recovery facilities (MRF). Any fee adjustment shall be effective of and from October of the year in which requested or noticed. City billing fees will be determined by the City and added to the base for residential, commercial, and

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dumpster rates. The City reserves the right to increase rates or charges to Customers without any increase in compensation to the Contractor.

6.02.02 The adjustment to fees based on CPI, Fuel Adjustment, and disposal and recycling process fees, whether an increase or decrease, shall be a composite of the CPI and Fuel indices and real price changes at landfills and MRF's as set forth herein. The parties agree that any annual fee adjustment shall not exceed seven percent (7%) for any single year.

1. CPI Adjustment. Fees will remain fixed as set forth in Exhibit "B" and may not be adjusted for changes in Consumer Price Index (as hereinafter defined), until August 31, 2021. Any proposed CPI adjustment shall be included in the annual updates to Collection and Disposal service rates commencing on August 31, 2021 and continuing annually on each September 30th of each year. Contractor shall provide City with CPI information as part of the rate adjustment process for City review and approval.

2. Fuel Adjustment. Fees will remain fixed as set forth in Exhibit "B" and may not be adjusted for changes in fuel price (as hereinafter defined), until August 31, 2021. Any proposed fuel adjustment shall be included in the annual updates to Collection and Disposal service rates commencing on August 31, 2021 and continuing annually on each September 30th of each year. Contractor shall provide City with fuel price information as part of the rate adjustment process for City review and approval.

3. Disposal and Processing Adjustment. Fees will remain fixed as set forth in Exhibit "B" and may not be adjusted for changes in disposal and recycle processing prices (as hereinafter defined), until September 30, 2022. Any proposed disposal and recycling process adjustment shall be included in the annual updates to Collection and Disposal service rates commencing on September 30, 2022 and continuing annually on each September 30th of each year. Contractor shall provide City with disposal and recycle process price information as part of the rate adjustment process for City review and approval.

6.03 Recyclable Materials Revenues: Contractor shall retain all revenues from the sale of Recyclable Materials.

6.04 Audit: The City may, on reasonable notice, at reasonable times and at the City's expense, request and conduct an audit of the Contractor's books and records to establish compliance with the rates and fees charged under this Contract. To the extent allowed by law, the City will maintain confidentiality of all information received by the City in such audits.

ARTICLE 7 Disaster Management

7.01 Disaster. The City and the Contractor will negotiate the services, including compensation, related to excessive debris and solid waste resulting from a force majeure event or occurrence, such as but not limited to wildfires, storms, floods, fires, tornados, earthquakes, ice storms, etc., determined by the City to have caused widespread destruction and which results in increased residential services tonnage by 20% or

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more from the average per household of historical residential services tonnage for the same quarter for the prior three years. Collection of all other Disaster Debris (at less than the foregoing 20% limitation) shall be provided by the Contractor at no additional charge. The City may further require the Contractor to submit a disaster management plan that may be incorporated into this Contract.

7.02 Force Majeure. The occurrence of a force majeure event shall in no way relieve Contractor of any of its obligations under this Contract, and Contractor shall make best efforts to provide the same or comparable level of service as provided prior to the event.

ARTICLE 8 Insurance; Indemnification; Bond

8.01 Generally. The Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amount as may be necessary to protect itself and the interest of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be acceptable to the City but regardless of such acceptance it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve him of any contractual responsibility or obligation.

8.02 Certificates, Generally. Satisfactory certificates of insurance shall be filed with the City prior to starting any work under this Contract. The certificates shall state that thirty (30) calendar days advance written notice will be given to the City before any policy covered thereby is changed or canceled.

8.03 Compliance and Ratings. The Contractor shall comply with all Federal, State and local laws and ordinances relating to Social Security, Unemployment Insurance, Pensions, etc. All insurance providers used to meet the requirements of this section must have an A.M. Best rating of "A" or better and be authorized to conduct business in the State of Texas.

8.04 Workers Compensation Insurance Coverage.

8.04.01 Definitions related to Workers Compensation Insurance Coverage:

1. Certificate of coverage (or "certificate") is a copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84 or equivalent), showing statutory workers' compensation insurance coverage for the Contractor's employees providing services under this Contract for the duration of this Contract.
2. "Duration of this Contract" includes the time from the commencement of services and continuing for seven years plus any optional renewal term(s) and/or other extensions.
3. "Persons providing services" includes all persons or entities performing all or part of the services the Contractor has undertaken to perform under this Contract, regardless of whether that person contracted directly with the Contractor and regardless of whether that

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person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services related to this Contract.

4. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to this Contract. "Services" does not include activities unrelated to this Contract, such as parts suppliers, office supply deliveries, or other incidental vendors.

8.04.02 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on this Contract.

8.04.04 The Contractor must provide a certificate of coverage to the City prior to commencement of service. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of this Contract, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

8.04.05 The Contractor shall obtain from each person providing services under the Contract, and provide to the City:

1. a certificate of coverage, prior to that person beginning work related to this Contract, so the City will have on file certificates of coverage showing coverage for all persons providing services related to this Contract; and
2. no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of this Contract.

8.04.06 The Contractor shall retain all required certificates of coverage for the duration of this Contract and for one year thereafter.

8.04.07 The Contractor shall notify the City in writing by certified mail or personal delivery, within ten days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services related to this Contract.

8.04.08 The Contractor shall post at the office where the vehicles serving the City are based a notice in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services related to this Contract that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

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8.04.09 The Contractor shall contractually require each person with whom it contracts to provide services to:

1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory definitions/requirements of Texas Labor Code, §401.011(44) for all of its employees providing services related to this Contract, for the duration of this Contract;
2. provide to the Contractor, prior to that person beginning work, a certificate of coverage showing that coverage is being provided for all employees of the person providing service, for the duration of this Contract or services;
3. provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of certificate of coverage ends during the duration of this Contract or services;
4. obtain from each other person with whom it contracts, and provide to the Contractor:
 - (a) a certificate of coverage, prior to the other person beginning work; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of this Contract;
5. retain all required certificates of coverage on file for the duration of this Contract or services and for one year thereafter;
6. notify the City in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services; and
7. contractually require each person with whom it contracts, to perform as required by paragraphs 8.04.01 – 8.04.07, with the certificates of coverage to be provided to the person for whom they are providing services.

8.04.10 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the City that all employees of the Contractor who will provide services under this Contract will be covered by workers' compensation coverage for duration of this Contract. The Contractor also represents that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self- Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

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8.04.11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City to declare this Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the City.

8.05 Comprehensive Automobile Liability.

8.05.01 The Contractor's automobile liability insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.

8.05.02 The liability limits shall not be less than:

Bodily Injury	...\$1,000,000/person ...\$1,000,000/occurrence
Property Damage	...\$1,000,000/occurrence

8.05.03 The insurance shall be of the occurrence type and name the City as an additional insured with a requirement that the City be notified at least 30 days in advance of any material change in policy terms, including cancellation. There shall be no deductible applied to the City as additional insured.

8.06 Comprehensive General Liability.

8.06.01 The Contractor's general liability insurance shall be written in comprehensive form and shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or the Contractor's agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under Section 8.07.

8.06.02 To the extent that the Contractor's work, or work under the Contractor's direction, may require blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property. The liability limits shall not be less than:

Bodily Injury	...\$1,000,000/person ...\$1,000,000/occurrence
Property Damage	...\$1,000,000/occurrence ...\$2,000,000/aggregate

The insurance shall be of the occurrence type and shall name the City as an additional insured. There shall be no deductible applied to the City as additional insured.

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8.07 DEFENSE OF SUITS.

IF ANY ACTION IN COURT IS BROUGHT AGAINST THE CITY, OR ANY OFFICER OR AGENT OF THE CITY, FOR THE FAILURE, OMISSION, OR NEGLECT OF THE SUCCESSFUL PROPOSER TO PERFORM ANY OF THE COVENANTS, ACTS, MATTERS, OR THINGS UNDER THE CONTRACT; OR FOR INJURY OR DAMAGE CAUSED BY THE ALLEGED NEGLIGENCE OF THE SUCCESSFUL PROPOSER OR THE CONTRACTOR'S SUBCONTRACTORS OR ANY OF THE CONTRACTOR'S OR SUBCONTRACTORS' AGENTS, OR IN CONNECTION WITH ANY CLAIM BASED ON LAWFUL DEMANDS OF SUBCONTRACTORS, WORKMEN, MATERIAL MEN, OR SUPPLIERS THE SUCCESSFUL PROPOSER SHALL INDEMNIFY, DEFEND AND SAVE HARMLESS THE CITY AND ITS OFFICERS AND AGENTS, FROM ALL LOSSES, DAMAGES, COSTS, EXPENSES, JUDGMENTS, OR DECREES ARISING OUT OF SUCH ACTION.

8.08 INDEMNITY AND RELEASE.

THE SUCCESSFUL PROPOSER IS SOLELY RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY (AND ANY OF THE CITY'S REPRESENTATIVES OR EMPLOYEES), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, LOSSES, DAMAGES, COSTS OR EXPENSE TO ALL PERSONS (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND RELATED EXPENSES) ARISING OUT OF, RESULTING FROM, OR OCCURRING IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES UNDER THIS CONTRACT THAT IS (I) ATTRIBUTABLE TO ANY BODILY OR PERSONAL INJURY, SICKNESS, DISEASES OR DEATH OF ANY PERSON OR ANY DAMAGE OR INJURY TO OR DESTRUCTION OF REAL OR PERSONAL PROPERTY INCLUDING WITHOUT LIMITATION THE LOSS OF USE THEREOF, AND (II) CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT, STRICT LIABILITY OR OTHER ACT OR OMISSION OF THE SUCCESSFUL PROPOSER, ANY SUBCONTRACTOR OR SUPPLIER, THEIR RESPECTIVE AGENTS OR EMPLOYEES OR ANY OTHER PARTY FOR WHOM ANY OF THEM MAY BE LIABLE REGARDLESS OF WHETHER SUCH IS CAUSED IN PART BY THE NEGLIGENT, STRICT LIABILITY OR OTHER ACT OR OMISSION OF A PARTY OR PARTIES INDEMNIFIED HEREUNDER.

SAID INDEMNITY, DEFENSE AND HOLD HARMLESS AGREEMENT SHALL ALSO APPLY TO CLAIMS ARISING FROM ACCIDENTS TO THE SUCCESSFUL PROPOSER, ITS AGENTS OR EMPLOYEES, WHETHER OCCASIONED BY THE SUCCESSFUL PROPOSER OR ITS EMPLOYEES, THE CITY OR ITS EMPLOYEES, OR BY ANY OTHER PERSON OR PERSONS.

THE FOREGOING INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER WORKERS' OR WORKMEN'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

THIS SECTION 8.08 PROVIDES FOR SOLE LIABILITY OF THE CONTRACTOR REGARDLESS OF WHETHER SUCH IS CAUSED IN PART BY THE NEGLIGENT, STRICT

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LIABILITY OR OTHER ACT OR OMISSION OF A PARTY OR PARTIES INDEMNIFIED HEREUNDER.

8.09 Performance Bond.

A performance bond in the amount of \$250,000.00 will be maintained and renewed each year during the term of this Contract. Proof of renewal of the bond must be submitted to the City prior to August 31 each year of this Contract. The performance bond shall guaranty full and faithful performance of this Contract and the bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bond. The performance bond furnished by the Contractor shall be in form suitable to the City and shall be executed by a surety, or sureties, reasonably suitable to the City and authorized to do business in the State of Texas. The bond will be maintained and renewed each year during the term of the Contract. Proof of renewal of the bond must be submitted to the City prior to August 31st each year of the Contract.

ARTICLE 9 Miscellaneous

9.01 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to its performance of this Contract, and shall further ensure that all subcontractors observe and comply with said laws, ordinances and regulations.

9.02 This Contract shall be governed by the laws of the State of Texas. Exclusive venue for any cause of action arising under this Contract or the work to be performed hereunder shall be in the state courts of Collin County, Texas.

9.03 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the City.

9.04 The provisions of this Contract are severable; if any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.

9.05 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the City to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such failure to object or enforce estop the City from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

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Original Contract

9.06 Nothing in this Contract shall be deemed to waive any immunity, sovereign, governmental, official, qualified or otherwise, from liability or suit, which the City may have or assert, except as may be provided by law, all such immunities being hereby expressly retained.

9.07 All notices required by this Contract shall be in writing and presumed received when deposited in the mail properly addressed and sent certified mail, return receipt requested, to the other party at the address set forth herein or set forth in a written designation of change of address delivered to all parties. However, notice of breach, of assessment of charges, or of intent not to renew shall be sent by certified mail, return receipt requested, and no electronic transmission thereof shall be deemed sufficient.

9.08 This Contract shall be effective on the last date affixed to the parties' signatures below.

AGREED:

CARDS DALLAS INC

By: 
[Dan Christensen], its President

CARDS HOLDINGS, INC

By: 
Dan Christensen, its President
P.O. Box 775
Tontitown, AR 72770

CITY OF ANNA, TEXAS

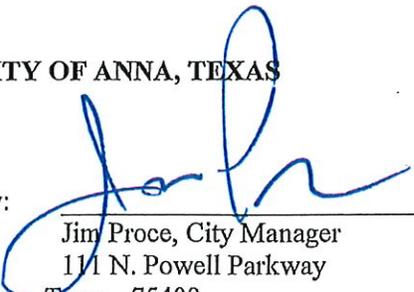
By: 
Jim Proce, City Manager
111 N. Powell Parkway
Anna, Texas 75409

Exhibit C
Original Contract

**FIRST AMENDED AND RESTATED SOLID WASTE COLLECTION AND DISPOSAL CONTRACT
BETWEEN CITY OF ANNA AND CARDS**

Exhibit B

(a) **Solid Waste and Recycling Collection Fees** Residential polycart collection service, per Residential Unit*

- i. \$16.99 per month for solid waste, recycling, and 1x/month bulk trash service*
- ii. \$7.00 per month for each additional polycart
- iii. \$75.00 lost polycart fee

*Does not include sales tax or franchise fee.

(b) Homeowners Association polycart collection service, per Homeowner Association Units*

- i. \$16.99 per month for solid waste, recycling, and 1x/month bulk trash service*
- ii. \$7.00 per month for each additional polycart
- iii. \$75.00 lost polycart fee

*Does not include sales tax or franchise fee.

(c) Commercial Service Unit and Independent School District Unit Collection and Disposal Service Fees for CARDS

iv. CARDS - Dumpster service rates*:

Dumpster Collection Rates						
Size/Pickup	1x Week	2x Week	3x Week	4x Week	5x Week	6x Week
Cart	\$ 26.27	\$ 52.54	\$ 78.81	\$ 105.08	\$ 131.35	\$ -
2 cu yd	\$ 93.52	\$ 152.37	\$ 236.43	\$ 315.24	\$ 409.81	\$ 491.77
3 cu yd	\$ 114.54	\$ 183.89	\$ 246.94	\$ 367.78	\$ 483.37	\$ 580.07
4 cu yd	\$ 134.90	\$ 210.16	\$ 299.62	\$ 420.32	\$ 550.96	\$ 661.72
6 cu yd	\$ 173.24	\$ 315.24	\$ 472.86	\$ 630.48	\$ 788.10	\$ 947.14
8 cu yd	\$ 204.48	\$ 400.44	\$ 568.00	\$ 735.56	\$ 920.16	\$ 1,103.34

*Note: Rates do not include sales tax, franchise fee, or disposal fee.

v. CARDS - Vertical Compactor Service Rates*:

Vertical Compactor Collection Rates						
Size/Pickup	1x Week	2x Week	3x Week	4x Week	5x Week	6x Week
2 cu yd	\$ 184.60	\$ 369.20	\$ 552.38	\$ 735.56	\$ 920.16	\$ 1,104.76
4 cu yd	\$ 342.22	\$ 683.02	\$1,025.24	\$ 1,366.04	\$ 1,708.26	\$ 2,049.06
6 cu yd	\$ 525.40	\$ 1,050.80	\$1,576.20	\$ 2,101.60	\$ 2,627.00	\$ 3,152.40
8 cu yd	\$ 719.94	\$ 1,439.88	\$2,159.82	\$ 2,837.16	\$ 3,572.72	\$ 4,288.40

*Note: Rates do not include sales tax, franchise fee, or disposal fee.

(d) Roll-off container rates: The following rates are for large roll-off containers, which will be billed directly by the city's contractor.

i. Roll-off bin collection service rates*:

Size/Pickup	Rental Fee per month	Delivery Fee	Collection Fee (per pull)	Disposal Fee** (per ton)
20 cu yd	\$150.00	\$100.00	\$300.00	\$42.00
30 cu yd	\$200.00	\$100.00	\$350.00	\$42.00
40 cu yd	\$225.00	\$100.00	\$400.00	\$42.00

*Rates do not include sales tax, or franchise fee.

**Disposal Fee based upon current landfill disposal costs and material recovery facility charges for recycling. Subject to change.