

TRANSPORTATION SERVICE AGREEMENT

THIS WASTE TRANSPORTATION SERVICE AGREEMENT (“Agreement”) effective this 8th day of October, 2023 (the “Effective Date”), is entered into by and between the City of Killeen, Texas, a municipal corporation and home-rule city situated in Bell County, Texas, organized and operating under the provisions of its charter and the Constitution and laws of the State of Texas (“CITY”), and Comal Transportation, LLC (“CARRIER”), a Limited Liability Company organized under the laws of the State of Texas; collectively, the “Parties.”

RECITALS

WHEREAS, the CITY and CARRIER desire to enter into a contract for transportation of the CITY’s solid waste at a facility authorized to accept municipal solid waste for disposal;

WHEREAS, the proper transportation and disposal of the CITY’s solid waste is critical to the public’s health, safety, and welfare and is a procurement necessary to preserve and protect the health and safety of the CITY’s residents;

WHEREAS, pursuant to section 252.022(a)(2) of the Texas Local Government Code (“Code”), this Agreement is exempt from the competitive bidding requirements as articulated in chapter 252 of the Code; and

WHEREAS, pursuant to sections 363.116 and 363.117 of the Texas Health and Safety Code, the CITY has the authority to enter into this Agreement so that the CITY is provided solid waste management disposal services on the terms considered appropriate by the CITY.

NOW, THEREFORE, for and in consideration of the provisions as provided below, the parties hereby agree as follows:

1. **DEFINITIONS.** In addition to those words defined within the body of this Agreement, the following terms shall have the following meanings.

A. “Company” means the business or entity that has been retained to operate or is otherwise in control of the Destination Location. As of the effective date of this Agreement, the Company is Waste Management of Texas, Inc. However, the Parties understand that if Waste Management of Texas, Inc. is no longer serving in that capacity, then its successor shall become the Company.

B. “Destination” or “Destination Location” means the landfills, designated by the CITY as the primary and alternate destinations for the Waste, as identified in ATTACHMENT 1.

C. “Equipment” means the tractors, trailers, or other vehicles and equipment used by CARRIER to perform Services under this Agreement; including such equipment provided by CITY hereunder, if any.

D. "Origin" or "Origin Location" means the City of Killeen municipal solid waste transfer station.

E. "Services" means the Waste transportation and other services provided by CARRIER pursuant to this Agreement.

F. "Waste" means all non-hazardous solid waste or recyclables that may be legally disposed of, handled, or processed at its Origin and given Destination.

G. Words that have a well-known technical or trade meaning, unless otherwise specifically defined in this Agreement, shall be construed in accordance with such well-known meaning, recognized by the solid waste transportation professions and trades.

2. ORIGIN AND DESTINATION LOCATIONS; DOCUMENTATION

A. CARRIER agrees to transport Waste under the terms, conditions, and rates set forth herein from the Origin to the Destination Locations as described in ATTACHMENT 1. The CARRIER will not refuse any Waste shipments tendered by the CITY pursuant to this Agreement.

B. CITY will provide, or cause to be provided, to CARRIER shipping documents for each load of Waste to be transported from the Origin Location to a Destination. At the Destination, the CARRIER will obtain a receipt showing that the load has been delivered and the weight of the delivered load. For each load of Waste delivered, the CARRIER shall promptly (within one (1) business day) deliver to the CITY copies of all shipping documents and/or the delivery receipts tendered to CARRIER by the COMPANY.

3. TERM OF CONTRACT

The term of this Agreement shall commence on the Effective Date, and, subject to the provisions of this Agreement, shall continue for five (5) years ("Term"); upon which time it shall automatically terminate.

4. RATES AND CHARGES; INVOICING AND PAYMENTS

CITY shall compensate CARRIER for the Services in accordance with the rates and charges and other terms and conditions set forth in ATTACHMENT 1. CARRIER shall bear all costs incurred in performing the Services, including but not limited to: (i) all costs required to operate and maintain the Equipment in a condition and manner consistent with good business practices and industry standards and as required by applicable laws, ordinances and regulations; (ii) all other operating costs for or relating to the insurance, fuel, permits, and licenses; and (iii) all taxes, tolls, expenses, fines, and fees incurred in connection with the transportation of Waste from the Origin to the Destination Locations.

5. **VOLUME**

A. During the Term of this agreement, CITY intends to use CARRIER as its preferred transporter for the CITY's Waste shipment requirements from the Origin Location to the Destinations covered by this Agreement.

B. CARRIER shall be fully operational and capable of providing the Services in accordance with the terms and conditions set forth in this Agreement on October 8, 2023 and continue providing such Services throughout the Term of this Agreement.

C. CARRIER shall make available to CITY during the Term of this Agreement (i) eleven (11) trailers, plus (ii) up to three (3) additional trailers as set forth on ATTACHMENT 1, and an adequate number of power units to transport all Waste shipments from the Origin Location to various Destinations on a timely basis. CITY does not guarantee any volume amounts. Waste will be loaded in the trailers by CITY and staged and tarped by the CARRIER. At no time shall Waste loaded in trailers remain at the Origin Location for a period exceeding one (1) business day after notification by CITY to CARRIER that a trailer is ready for transit to the Destination Location. If CITY anticipates that there will be a continuous and sustained increase in the volume of Waste to be transported from the Origin Location, CITY shall provide written notice to CARRIER of such increase and CARRIER shall be provided a reasonable period of time, not less than seven (7) days after receipt of such notice, to supply additional tractor-trailer units to transport the increased volume of Waste at the rate for additional trailers as set forth in ATTACHMENT 1.

D. In no event shall CARRIER co-mingle Waste collected at the Origin with any other solid waste.

6. **EQUIPMENT AND PERSONNEL**

CARRIER shall provide personnel and Equipment sufficient to provide the Services in a legal and safe manner as specified in Paragraph 5 above, other than any Equipment to be provided by the CITY as specified on ATTACHMENT 1, if any. At minimum, CARRIER'S Equipment and personnel shall meet the Minimum Standards and Specification in ATTACHMENT 2 attached hereto (the "Minimum Standards and Specification"). CARRIER further warrants that all Equipment used hereunder shall be in roadworthy condition and shall comply with all state and federal laws, regulations, and permits, particularly with regard to (i) the replacement of tires and brakes; (ii) legal weight limits for highway transportation; (iii) properly tarping and securing all loads; and (iv) transportation of Waste, including, those relating to the prevention of leaks and airborne materials.

7. **CARRIER'S SERVICES**

A. **Transportation:** CARRIER shall provide the CITY with transportation services for the Waste received by the CITY at the Origin Location in accordance with the operating hours provided under ATTACHMENT 1. At no time shall Waste loaded in trailers remain at the Origin Location for a period exceeding one (1) business day.

B. **Trailer Loading:** CITY, at its sole cost shall load Waste into CARRIER'S trailers at the Origin Location. CITY shall not load the Trailers in excess of the legal load limit.

8. CITY'S OBLIGATIONS

The CITY agrees to perform all obligations required of the CITY pursuant to the terms of this Agreement, including, but not limited to the following:

A. The CITY shall designate the Agreement administrator, who shall communicate CITY decisions to the CARRIER on a timely basis as required under this Agreement;

B. The CITY shall timely pay CARRIER pursuant to Paragraph 4 of this Agreement;

C. The CITY shall operate and maintain the Origin Location in a safe, good, and workmanlike manner. The CITY shall provide CARRIER with adequate access for the CITY'S loading of Waste into CARRIER'S trailers. CITY warrants that the access ways for CARRIER'S equipment is sufficient to bear the weight of such equipment;

D. The CITY shall timely load Waste into CARRIER'S trailers; and,

E. The CITY shall otherwise comply with its obligations as set forth in this Agreement.

9. PERFORMANCE STANDARDS; COMPLIANCE WITH APPLICABLE LAWS

A. CARRIER shall ensure that the Services are performed in a professional and workmanlike manner and in compliance with all applicable Federal, State, or local laws, ordinances, rules, regulations, and permits, including, but not limited to, Federal Motor CARRIER Safety Regulations (49 CFR Parts 381-399), Federal and State vehicle codes, state commercial driver licensing laws, and federal OSHA standards. Without limiting the foregoing, the CARRIER further warrants that it has not received a "Conditional", "Unsatisfactory" or "Unfit" safety rating pursuant to 49 CFR Part 385; in the event that CARRIER receives a "Conditional", "Unsatisfactory, or "Unfit" safety rating, CARRIER shall immediately notify CITY in writing. If such "Conditional", "Unsatisfactory, or "Unfit" safety rating is received by CARRIER, CITY shall have the right to terminate this Agreement if CARRIER fails to remedy such determination within a reasonable time period (not to exceed ninety (90) calendar days of CARRIER'S receipt of such rating). CARRIER shall at all times have and maintain all required permits, authorizations, registrations, franchises, certificates, licenses, and approvals.

It is expressly agreed that nothing in this Agreement shall be construed in any manner to abridge the right of the CITY to pass or enforce necessary police and health regulations for the protection of its inhabitants. It is further agreed and understood that, if the CITY calls the attention of the CARRIER to any such violation on the part of the CARRIER, its officers, employees, contractors, or subcontractors, CARRIER shall immediately desist from such activity and correct such violation.

B. The CITY shall have the right to inspect, review and monitor CARRIER'S performance under this Agreement. If, following a review or inspection, the CITY reasonably believes that CARRIER'S performance is not in compliance with this Agreement, then the CITY shall give written notice of the default to CARRIER, and CARRIER shall have the time periods provided in Paragraph 14 below, if any, to cure such default.

C. **Temporary Interruption of Service:** In the event that CARRIER'S transportation services are interrupted for any reason for more than twenty-four (24) hours, the CITY shall have the right to make temporary arrangements for the purpose of continuing this necessary service to its citizens in order to protect the public health and safety. CARRIER shall be required to reimburse CITY for any excess costs above the unit prices provided in ATTACHMENT 1 and CITY may directly bill the CARRIER and/or present claims under the terms of Paragraph 25 below (Performance Bond) to recover such costs. CARRIER will, with due diligence, restore services at no additional expense to the CITY.

D. **Excessive Interruption of Service:** If the interruption in service in Paragraph 9(C) above continues for a period of thirty (30) consecutive days or thirty (30) cumulative days within a two (2) month time period, the CITY shall have the right to terminate the rights and privileges granted in this Agreement and require forfeiture of CARRIER'S Performance Bond, and subject CARRIER to any other recourse as provided by law.

E. **Holidays/Sundays:** The CARRIER shall not be required to provide transportation services on the following days: Sundays, New Year's Day, Independence Day, Thanksgiving Day, and Christmas Day. Days of operation may be altered with the written consent of each party.

10. **CITY/COMPANY OPERATING RULES**

CARRIER shall fully and promptly comply with all operating rules that are applicable to the Services and to CARRIER'S entry into the Origin and the Destination Locations, including those provided at ATTACHMENT 2. CITY and Company may reasonably modify such operating rules from time-to-time. At CITY's request, CARRIER or any permitted substitute CARRIER shall replace its employees, agents, or representatives who fail to follow such operating rules. CITY shall also have the right to deny CARRIER or permitted substitute CARRIER'S entry to any Origin or Destination Location of the CITY at which Services are performed and/or to terminate this Agreement (in part or in whole) if CARRIER, any permitted substitute CARRIER or their respective employees, agents or representatives fail to follow such operating rules and such failure is continuing ten (10) days after CITY's written notice to CARRIER or immediately upon CARRIER'S receipt of notice of the third such failure.

11. **CUSTODY AND HANDLING OF WASTE**

CARRIER shall have the sole and exclusive responsibility and liability for the care, custody, and control of the Waste from the time CARRIER attaches its tractor to a trailer loaded with Waste at the Origin Location until the waste is discharged from such trailer at the Destination. Except in the event and to the extent of CITY'S negligence, CARRIER assumes full responsibility

and shall bear all liability for any and all damages and fines occurring during the time that the Waste is in CARRIER'S control, custody or possession. Notwithstanding the foregoing, at no time will title to the Waste vest in CARRIER.

12. **MAINTENANCE; DAMAGES; REPAIRS; PENALTIES**

A. CARRIER shall pay and be responsible for all maintenance costs for any Equipment provided by CITY to CARRIER, if any, in the performance of Services hereunder and shall return such Equipment back to CITY in the same general condition in which it was provided to CARRIER.

B. CARRIER shall give notice to CITY within twenty-four (24) hours of, and assume all liability for, any loss or damage to any property, including to any of CITY'S equipment, except to the extent the loss or damage is caused by CITY.

C. CARRIER shall notify CITY within twenty-four (24) hours of, and assume all liability for, any loss or damage to any CITY property, including to any of CITY'S Equipment, resulting from or relating to CARRIER'S performance of Services hereunder, except to the extent the loss or damage is caused by CITY. Without limiting the foregoing, CARRIER shall promptly repair to CITY'S satisfaction all damages occurring to any of CITY'S Equipment while such Equipment is in CARRIER'S control, custody, or possession or damages to CITY property while CARRIER is on CITY premises.

D. If CARRIER fails to maintain CITY'S Equipment as provided above for damages and does not adequately repair CITY'S Equipment or other property, CITY may (i) submit a bill for the costs of repairs and labor expensed incurred, associated with such maintenance or damage, and CARRIER shall promptly reimburse CITY; or (ii) offset such costs against amounts otherwise owing to the CARRIER.

E. CARRIER shall give notice to CITY within a reasonable time (in no case to exceed ten (10) calendar days) of, and assume liability for, any fine, traffic ticket, or notice of violation of any statute, ordinance or regulation received while performing the Services, excluding any tickets or fines for overweight violations solely caused by the CITY overloading a trailer.

F. CARRIER will be responsible for any reasonable increased costs that CITY incurs as a result of CARRIER not meeting all of its performance standards and obligations under this Agreement.

G. CITY shall promptly repair all damages occurring to any of CARRIER'S Equipment caused solely by CITY while such Equipment is located at the Origin Location through the loading process, excluding normal wear and tear. If CITY damages and does not adequately repair CARRIER'S Equipment, CARRIER may submit a bill for the costs of repairs and labor expenses incurred, associated with such damage, and CITY shall promptly reimburse CARRIER. CARRIER agrees to notify CITY within twenty-four (24) hours of any damage to the Equipment.

13. **GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for causes of action arising out of this Agreement shall be brought in Bell County, Texas.

14. **TERMINATION**

A. CITY shall have the right to terminate this Agreement:

1. with fifteen (15) days prior written notice to CARRIER, if CARRIER fails to provide sufficient empty trailers in the loading area at the Origin Location, as required by the Agreement, and fails to remedy the insufficiency within such time frame or upon receipt of notice of the third such failure;

2. with two (2) days prior written notice to CARRIER, if CARRIER fails to accept, transport, and unload any Waste rendered by CITY to CARRIER under this Agreement;

3. immediately if CARRIER fails to maintain, at CARRIER'S sole cost and expense, the insurance provided for, and in accordance with the terms and conditions set forth, in Paragraph 16 below;

4. immediately if CARRIER fails to maintain, or comply with all requirements, any and all permits, approvals, or licenses required by federal, state, or local law, statute or ordinance necessary to CARRIER'S performance of this Agreement.

5. with ten (10) days prior written notice to CARRIER if CARRIER fails to abide by CITY's or Company's operating rules at either the Origin or Destination locations or immediately upon receipt of a third such notice, in accordance with Paragraph 10 above;

6. immediately if CARRIER or any subsidiary makes an assignment for the benefit of creditors, or admits in writing its inability to pay, or generally fails to pay its debts as they mature or become due, or petitions or applies for the appointment of a trustee or other custodian, liquidator or receiver or for any substantial part of its assets or commences any case or other proceeding relating to CARRIER or any subsidiary under bankruptcy, reorganization, arrangement, insolvency, readjustment of debt dissolution, or liquidation or similar law of any jurisdiction, now or hereafter in effect, or takes any action to authorize in furtherance of any of the foregoing, or if any such petition or application is filed or any such case or other proceeding is commenced against CARRIER or any subsidiary, and the CARRIER or the subsidiary, as applicable, indicates its approval thereof, consent thereto or acquiescence therein;

7. immediately if a decree or order is entered appointing any such trustee, custodian, liquidator, or receiver or adjudicating CARRIER, or any subsidiary, bankrupt or insolvent, or approving a petition in any such case or other proceeding, or a decree or order for relief is entered in respect of CARRIER or any subsidiary in an involuntary case

under federal bankruptcy laws of any jurisdiction as now or hereafter constituted, and such decree or order remains in effect for more than thirty (30) days, whether or not consecutive;

8. immediately if CARRIER fails to comply with any other term or provision of this Agreement and any such failure continues for fifteen (15) days after CITY provides written notice of such failure to CARRIER; or

9. immediately upon termination of the “Non-Hazardous Waste Disposal Agreement,” in accordance with its terms and conditions, by and between the Company and CITY, dated on or about October 8, 2023.

B. CARRIER shall have the right to terminate this Agreement (in part or in whole):

1. with thirty (30) days prior written notice to CITY, if CITY fails to make a payment of an invoice not in dispute on its due date and such failure remains uncured during the thirty (30) day period;

2. immediately if CITY fails to maintain, or comply with all requirements, permits, approvals, or licenses required by Federal, State and local law, statute or ordinance necessary to CITY’S performance of this Agreement; or

3. if CITY fails to comply with any other term or provision of this Agreement and any such failure is continuing fifteen (15) days after CARRIER provides written notice of such failure to CITY.

15. **INDEPENDENT CONTRACTOR**

It is understood by the parties hereto that the CARRIER and its employees are not agents or employees of the CITY, but CARRIER is an independent contract.

16. **INSURANCE**

CARRIER shall maintain, as its sole cost, and shall require any subcontractors it may engage to maintain at all times during the Term of this Agreement, the insurance coverage set forth below:

A. Workers’ Compensation Insurance as required by laws and regulations applicable to and covering employees of CARRIER engaged in the performance of the transportation Services under this Agreement;

B. Commercial General Liability Insurance including products and completed operations with limits less than \$1,000,000 per occurrence and in the aggregate;

C. Automobile Liability Insurance including non-owned and hired vehicle coverage with limits of liability of not less than \$1,000,000;

D. Accident clean-up \$100,000.

In addition to all the other risks for which coverage is provided in this Section 16, the Commercial General Liability Insurance shall cover the contractual liability assumed under Paragraph 17 (Indemnification).

Prior to commencement of the Services, CARRIER shall deliver to CITY a certificate evidencing the required coverages including, but not limited to, coverage for CARRIER'S indemnity obligations and naming the CITY and COMPANY (Waste Management of Texas, Inc.) as additional insureds with waivers of subrogation. This certificate shall provide that any change restricting or reducing coverage or the cancellation of any policies under which certificates are issued, shall not be valid as respects the CITY'S and COMPANY'S interests therein until CITY and COMPANY have received thirty (30) days' written notice of such change or cancellation. To the proportionate extent only that CARRIER'S negligence, acts or omissions causes the CITY or COMPANY'S damages, the certificate shall state that the insurance is primary coverage and not concurrent or excess over other valid insurance which may be available to CITY and/or COMPANY. CITY and COMPANY shall be included as additional insured as respects operations of CARRIER, its subcontractors and agents, but only as it respects claims or suits arising out of the negligence of CARRIER, its employees and anyone CARRIER is legally liable for while in the course of CARRIER'S business.

CARRIER agrees to comply with all terms of the insurance contracts referenced in this Paragraph 16 (Insurance). Failure of CARRIER to keep the required insurance policies in full force and effect during the term of this Agreement, and during any extensions thereof, shall constitute a breach of this Agreement and CITY shall have to right, in addition to any other rights, to immediately cancel and terminate this Agreement without further cost to the CITY, except for liabilities and/or obligations incurred by CITY prior to termination of the Agreement or which otherwise survive termination of the Agreement as provided herein. Nothing contained in these provisions relating to coverage and amounts set out herein shall operate as a limitation of CARRIER'S liability in tort or contract under the terms of this Agreement.

17. **INDEMNIFICATION**

Each party hereto (an "Indemnifying Party") covenants and agrees to defend, protect, indemnify, hold harmless and render whole the other party, its subsidiaries and affiliates, and their respective officers, directors and employees ("Indemnified Parties"), to the extent allowed by law, from and against all damages, claims, demands, or causes of actions and any liability, cost, fine, environmental remediation and response cost, penalty and/or expense, including but not limited to reasonable attorney's fees and expenses ("Damages") as provided under section 271.159 of the Code, incurred by each such Indemnified Party arising or resulting from, and to the extent caused by the Indemnifying Party's, its permitted subcontractors' or agents' (or their respective shareholders', partners', officers', directors', or employees') negligent acts or omissions under this Agreement or relating to the Services provided hereunder.

18. **IMMEDIATE ACCIDENT RESPONSE**

If any loss of load of any nature or kind (referred to hereinafter as “Discharge”) into the environment occurs as a result of the performance of this Agreement by CARRIER, its agents, employees, or subcontractors, CARRIER shall immediately proceed to stop or abate such Discharges, and shall immediately notify CITY and confirm the same in a writing to CITY within twenty-four (24) hours, and make any other notifications of such occurrence to governing or regulatory bodies as may be required of CARRIER by law.

CARRIER shall, at its expense, be responsible for loss of load response action and environmental remediation required as a result of such Discharges, including disposal of any waste resulting therefrom.

If, while providing the Services, CARRIER, or any of its employees, agents, or subcontractors (i) is involved in an accident or incident causing injury or damage to any person or property or a spill or waste; or (ii) receives any fine, traffic ticket, or notice of violation of any statute, ordinance or regulation, CARRIER shall immediately advise the CITY of the incident and shall confirm the details of the incident in writing to the CITY not later than twenty-four (24) hours thereafter.

19. **FORCE MAJEURE**

In the event performance of this Agreement, by either party, is affected by strike or other labor disturbances, fire, riot, war, weather conditions, Act of God, pandemic, governmental actions or regulations, governmental requests or requisitions for National defense, or any other cause beyond the reasonable control of either party, the running of all periods of time mentioned herein shall be suspended during such interruption. Such period of suspension shall not in any way invalidate this Agreement, but on resumption of operations, the deliveries shall be continued, and liability shall not be incurred by either party for damages resulting from such suspensions. Economic hardship shall not be considered an event of Force Majeure. In the event of Force Majeure affecting a party’s obligations hereunder, such party shall immediately notify the other party in writing.

20. **NOTIFICATION**

All notices required to be given by this Agreement shall be in writing and addressed to the respective parties at the following addresses:

CITY

City of Killeen
Attn: Director of Solid Waste
P.O. Box 1329
Killeen, TX 76540-1329

CARRIER

Comal Transportation, LLC
Attn: John Taylor
P.O. Box 1106
Georgetown, TX 78627

With copy to:
City of Killeen
Attn: Office of the City Attorney
P.O. Box 1329
Killeen, TX 76540-1329

21. **ASSIGNABILITY**

Neither party shall assign its rights, responsibilities, and obligations under this Agreement without the prior written consent of the other party. If this Agreement is assigned as provided above, it shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns. In the event CARRIER, with CITY's written consent, subcontracts any of its responsibilities and obligations under this Agreement (including to any approved substitute carriers), CARRIER shall require all substitute carriers and other subcontractors to comply with the terms, conditions, and standards contained in this Agreement and CARRIER shall remain liable to CITY for each substitute carrier's and other subcontractor's performance of the Services (including any loss, damage or delay sustained by CITY), as if the Services were provided by the CARRIER itself.

22. **ADMINISTRATIVE**

CARRIER must provide copies of the following prior to the Effective Date of this Agreement to CITY, and thereafter, within fifteen (15) business days after written request by CITY (unless provided otherwise below):

- A. Operating authority;
- B. Proof of current insurance;
- C. Executive, operations, emergency and customer service contacts with telephone numbers;
- D. Performance and Payment Bonds;
- E. Latest Bureau of Motor Carrier Safety Survey or U.S. DOT Safety Rating; and
- E. Any and all permits required for CARRIER to operate in those states or jurisdictions where the Origin or Destination Locations are located or to provide Services under this Agreement.

23. **DISPUTE RESOLUTION/ATTORNEY'S FEES**

If a claim or dispute arises out of or relates to the interpretation, application, enforcement, or performance of Services under this Agreement, the Parties agree to attempt to resolve the claim or dispute at a meeting between the principals within ten (10) business days of receipt by either party of a notice and description of the dispute. If the claim or dispute cannot be resolved through the

meeting, and unless otherwise mutually agreed, either party may file suit in an appropriate court as provided in this Agreement. As provided under section 271.159 of the Code, both parties agree that reasonable attorney's fees shall be available to the prevailing party of any claim adjudicated hereunder.

24. **NON-DISCRIMINATION**

CARRIER, in the execution, performance, or attempted performance of this Agreement, shall not discriminate against any person or persons because of sex, race, religion, age, creed, color, national origin, or the American Disabilities Act. CARRIER must be an equal opportunity employer.

25. **PERFORMANCE AND PAYMENT BONDS**

In accordance with chapter 2253 of the Texas Government Code, the CARRIER shall, at its cost, furnish the CITY with a Performance Bond and a Payment Bond in accordance with Paragraph 22 of this Agreement as security for the performance of the Agreement. The Performance Bond and Payment Bond shall be in the contract amount for each year and remain in effect for the duration of this Agreement.

At any time during the term of this Agreement, if the CITY, in its sole discretion, determines that: (i) any surety upon any bond furnished by the CARRIER is unacceptable; or (ii) the Agreement amount has increased to such an extent that the bond furnished by the CARRIER is inadequate, the CARRIER shall provide such additional bond or other security as may be requested by the CITY.

All bond premiums shall be paid by the CARRIER and 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 Performance and Payment Bonds must file with each bond a certified and effectively dated copy of their power of attorney.

26. **RIGHTS/REMEDIES CUMULATIVE**

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive that party's right to use any or all other remedies. The rights and remedies provided in this Agreement are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

27. **NO WAIVER**

No waiver by CITY or CARRIER of any default of the other under this Agreement shall operate as a waiver of any future default whether of like or different character.

28. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts with the same effect as if all signatories had signed the same document. All counterparts must be construed together to constitute one and the same instrument.

29. **SEVERABILITY**

If any part of the Agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable.

30. **ENTIRETIES**

This Agreement sets forth the entire agreement between the parties with respect to the matters set forth herein, and there are no other agreements or understandings whatsoever expressed or implied relating to the subject matter thereof.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives.

CITY

CARRIER

Kent Cagle
City Manager

Date

By:

Date

Title:

ATTACHMENT 1

1. ORIGIN AND DESTINATION LOCATIONS:

1.1 Origin:

City of Killeen, Texas Transfer Station located 12200 State Highway 195, Killeen, TX 76549 ("CITY Transfer Station")

1.2 Destinations:

PRIMARY destination: City of Temple Landfill located at 706 Landfill Road, Temple, TX 76501 ("City of Temple Landfill").

SECONDARY destination: Williamson County Landfill located at 600 Landfill Road, Hutto, TX ("Williamson County Landfill").

CARRIER shall transport all Waste to the PRIMARY location unless otherwise directed in advance by the CITY. CARRIER shall operate in accordance with paragraph 4 of this ATTACHMENT 1.

2. INVOICING AND PAYMENT:

2.1 CARRIER shall submit to CITY weekly invoices for the Services provided and, where applicable, a copy or the original shipping order or delivery receipt, and any other reports or information required by the CITY, including weight tickets from the Destination. CARRIER shall include in each such invoice all state and local sales, use or excise taxes applicable (in respect to CITY'S tax-exempt status) to the Services provided by the CARRIER to CITY, itemizing such amounts. CARRIER shall indemnify and hold CITY harmless for any interest, fines, or penalties incurred by CITY as result of CARRIER'S failure to charge CITY for applicable state and local sales, use or excise taxes.

2.2 CITY shall issue payment for all undisputed amounts due on the next Friday following the week in which the invoice was received provided such invoice is received in time for the CITY to process the payment for issuance the following Friday. If the CITY receives any invoice or portion thereof that it believes was billed in error, the CITY will timely pay the undisputed portion of the invoice, and before the invoice payment is due, notify CARRIER in writing of the portion that the CITY believes to be billed in error, together with information supporting the CITY's assertion. The due date for these disputed sums shall then be extended for fifteen (15) days (or such later time as both parties may agree) from that date that CARRIER provides the CITY with all reasonably requested supporting documentation as to the legitimacy and accuracy of the disputed amount. If such invoicing dispute cannot be remedied as provided in this Paragraph, both CITY and CARRIER shall resolve the dispute in accordance with Paragraph 23 of this Agreement.

3. **BASE RATES AND CHARGES:** (Base Rate shall remain constant).

ORIGIN LOCATION	DESTINATION LOCATION	\$/Base Rate INCLUDING TRAILER
City Transfer Station	City of Temple Landfill	\$315.00/per load
City Transfer Station	Williamson County Landfill	\$390.00/per load

4. **OPERATING HOURS:**

ORIGIN location (Killeen Transfer Station):

Monday, Tuesday, Thursday, and Friday: 8:00 a.m. to 5:00 p.m.

Wednesday and Saturday: 8:00 a.m. to 3:00 p.m.

Sunday: Closed Sunday

PRIMARY destination (Temple Landfill):

Monday through Friday: 6:00 a.m. to 6:00 p.m.

Saturday: 7:00 a.m. to 2:00 p.m.

Sunday: Closed Sunday

SECONDARY destination (Williamson County Landfill):

Monday through Friday: 7:00 a.m. to 5:00 p.m.

Saturday: 7:00 a.m. to 12:00 p.m.

Sunday: Closed Sunday

The Parties agree and understand that the above operating hours are for convenience purposes only and are subject to change. The CITY maintains no control over the Destination Locations or the Company that operates them. If there are questions or concerns regarding the dates and/or times, CARRIER should contact Company for the respective landfill.

5. **FUEL SURCHARGE:**

There shall be a fuel surcharge adjustment to the Base Rate(s) listed above. The fuel surcharge will consist of a two (2) percent price adjustment for every (ten) 10 cent increase or decrease, as the case may be, in diesel fuel (i) above \$4.40 per gallon, and (ii) below \$ 3.25 per gallon. Each increase or decrease will be calculated based on the Base Rate provided above. The diesel fuel price shall be as determined weekly by reference to the Energy Information Administration of the U.S. Department of Energy (EIA/DOE) Weekly Retail on Highway Diesel Prices for the Gulf Coast. The EIA/DOE currently publishes these prices on their website at the following location: https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_nus_w.html

The surcharge for each week will be determined by referencing this website each Monday morning. Each week's applicable surcharge so determined shall be clearly itemized on the CARRIER'S weekly invoice to the CITY as a separate line item. Any adjustment to any invoice by paragraph 6 of this ATTACHMENT 1 shall not be included when calculating any surcharge hereunder. If at any time the cost of fuel exceeds \$6.60 per gallon or reduces below \$2.75, the Parties shall meet to discuss possible amendment of this Agreement.

6. CONSUMER PRICE INDEX (CPI) ANNUAL INCREASE

After the expiration of the first twelve (12) months of this Agreement, and subsequently for each following twelve (12) month period for the duration of this Agreement, CARRIER may add a separate line item to each invoice in an amount equal to the same net percentage increase, if any, as the CPI indicated in the next paragraph. Any such increase shall be added at the beginning of each subsequent twelve (12) month period.

The CPI increase shall be calculated by multiplying the Base Rate by the same net percentage as the Consumer Price Index (Dallas/Fort Worth regions for All Urban Consumers, less energy) as published by the U.S. Department of Labor, Bureau of Labor Statistics during the preceding twelve (12) months, as measured from May of the previous year to April of the then current year. Increases, if any, in this line item shall be cumulative from year to year.

Any such increase shall be clearly itemized on the CARRIER'S weekly invoice and shall not be considered, for fuel surcharge calculations, to be an increase in the Base Rate. CARRIER shall notify the City no later than June 1st of any given year prior to the addition of the CPI line item, if any, of the CPI percentage as calculated hereunder.

7. STAGING FEE:

There shall be a trailer staging fee of \$1.35 per ton to compensate CARRIER for necessary personnel and power units required to ensure adequate staging and efficient operations at the Origin Location.

8. CITY EQUIPMENT:

CITY will not be supplying any Equipment under this Agreement.

9. TRAILERS/ADDITIONAL TRAILERS

The above stated rate of \$315.00 and \$390.00 for the City of Temple and Williamson County Landfills, respectively, per load includes the availability and use of 11 trailers. If requested by CITY, CARRIER shall provide up to an additional three (3) trailers under this Agreement, subject to the provisions of Paragraph 5C (above).

ATTACHMENT 2 MINIMUM STANDARDS AND SPECIFICATIONS

In addition to compliance with all applicable federal, state, and local laws, regulations, and ordinances, CARRIER and CARRIER'S Equipment shall meet the following minimum standards and specifications.

- A. All drivers shall have:
 - 1. a current and appropriate State Commercial Driver's License;
 - 2. a copy of the vehicle registration, inspection sticker and insurance card for the vehicle the driver is operating;
 - 3. the most recent annual Motor Vehicle Report (not to exceed 6 months of current date; and,
 - 4. a current and valid U.S. DOT required medical certificate.
- B. CARRIER shall maintain current Driver Qualifications and Training files for each driver and shall keep on file all pre-trip and post-trip vehicle condition reports for a six (6) month period.
- C. Tractors and trailers shall meet all current U.S. DOT and appropriate State inspections, licenses, regulations and permits, without limitation.
- D. Tractor hoses shall be kept clean and must be arranged to eliminate any chance of falling to the ground and becoming entangled with the driveshaft, fifth-wheel or frame.
- E. Trailers shall be sufficient to provide transportation and disposal service in a legal and safe manner. Trailers must be designed to haul waste. Trailers must have a one hundred (100) cubic yard maximum capacity. Trailers must be capable of transporting a maximum of twenty-two (22) tons per load. Trailers must have live floor, or similar, for unloading purposes. Trailers must have an open-top design with roll-tarp or equivalent covering. All drivers shall ensure trailers are properly secured and tarped prior to departure.
- F. All drivers shall operate in the safest, most effective manner possible while in the Origin Location, on a public or private property, and in the Destination Location by obeying all posted signs, directions from designated spotters, and applying all their experience to safely and effectively accomplish their assignment.
- G. All drivers shall apply their best judgment and professionalism to gauge rest or meal breaks to eliminate any convoying of our trailers (i.e., no tractor-trailer to be within three (3) miles of another tractor-trailer going in the same direction.)

- H. All drivers shall use only tractor-trailer routes that will accommodate the following:
1. Appropriate height and weight restrictions.
 2. Routes that minimize time spent away from the Origin Location.
 3. No residential streets will be transited except at the Destination Location entrance and trucks will travel under 25 mph.
- I. All trailers provided shall be empty and shall not have been used for the transport of Special or Hazardous Waste, as defined by any Federal, State or local law, or other regulated substance without having been cleaned, prior to deployment for transport of CITY's waste materials.
- J. CARRIER shall not back-haul food products unless previously approved by CITY.
- K. All drivers shall cooperate completely in timely finishing and furnishing documentation within one (1) business day of each assignment in accordance with Paragraph 2A of this Agreement, including filing appropriate paperwork with a dispatcher if any discrepancy is observed or experienced.
- L. CARRIER shall not hold or receive a "Conditional" or "Unsatisfactory" safety rating with the U.S. DOT. or other applicable State agency.