

## Agreement for Landfill Lease and Operation

This Agreement for Landfill Lease and Operation (the "Agreement") is entered into this 25<sup>th</sup> day of July, 2014 (but effective as of August 1, 2014) ("effective date"), by and between the City of San Angelo, a municipal corporation of the State of Texas ("City") and Republic Waste Services of Texas, Ltd., a Texas limited partnership ("Provider").

### RECITALS:

**A.** Pursuant to Texas Health and Safety Code, Chapter 363, the State of Texas declares that this state's policy is to safeguard the health, general welfare, and physical property of the people and to protect the environment by encouraging the reduction in solid waste generation and the proper management of solid waste, finds that the control of solid waste collection and disposal should continue to be the responsibility of local governments and finds that local governments should be encouraged to contract with waste management firms for the proper management of solid waste consistent with the provisions of state law.

**B.** Pursuant to Texas Health and Safety Code, Chapters 363 and 364, a municipality is authorized to enter into contracts to enable it to furnish or receive solid waste management services on the terms considered appropriate by the City Council, and in particular, contract with a private contractor to operate a solid waste disposal system owned by the municipality.

**C.** City is the owner of the City of San Angelo Landfill located on certain city-owned property located at 3002 Old Ballinger Highway, San Angelo, being more particularly described in Exhibit B, for the operation and management of its solid waste disposal system.

**D.** City is in need of services to operate and maintain its solid waste disposal system to include its appurtenants, facilities, easements and features effective August 1, 2014, in that City's current special exclusive contract between City and Provider will expire on July 31, 2014.

E. Accordingly, City issued a request for proposals (“RFP”) No. OP-01-14 “Landfill and Waste Collection Services”, and various addenda to RFP, for a solid waste collection services contract and a contract for lease and operation of City’s landfill, soliciting proposals for either or both contracts.

F. City staff and the evaluation committee evaluated and ranked the proposals, in response thereto, based on evaluation criteria set out in RFP, consisting of operational experience and qualifications, adherence to specifications, financial impact, financial qualifications and stability and additional beneficial criteria.

G. After consideration of Provider’s proposal and the responses of the other proposer, City staff and the evaluation committee recommended, on April 1, 2014, Provider to City Council as the most highly ranked offeror for the provision of services to operate and maintain its solid waste disposal system to include its appurtenants, facilities, easements and features and on April 1, 2014, City Council authorized City to negotiate a contract with Provider.

H. City wishes to engage the services of Provider, and Provider wishes to perform the services for City.

I. On July 1, 2014, City Council determined that this Agreement for Landfill Lease and Operation of the City of San Angelo Landfill (“Agreement”) is in City’s best interest and shall result in significant economic benefits and additional revenues and authorized the City Manager to enter into this Agreement for landfill lease and operation (“Services”) with Provider, under the terms and conditions set forth herein.

**NOW, THEREFORE,** in consideration of the mutual covenants and conditions contained herein, Parties agree as follows:

**TERMS:**

1. **RECITALS:** The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

2. **DEFINITIONS:** Whenever any term used in this Agreement is defined by the City of San Angelo Code of Ordinances, Article 11.400, the definition of such term set forth therein shall apply, unless the term is otherwise defined in this Agreement. Except as provided in Section 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the capitalized words and terms not otherwise defined in this Agreement shall have the meanings set forth in Exhibit A attached hereto, which by this reference is incorporated into and made a part of this Agreement.

3. **LEASE AND LANDFILL OPERATIONS:** For and in consideration of compliance by Provider with the covenants and conditions set forth in this Agreement and the ordinances and regulations of City governing the disposal of Acceptable Waste and landfill operations, City hereby grants to Provider the exclusive right, privilege and permit to operate the landfill property described below for the purposes stated in this Agreement during the term of this Agreement and any extensions thereof.

4. **TERM:** The term of this Agreement shall commence on Effective Date, August 1, 2014, and shall be in full force and effect during the life of the Landfill in accordance with this Agreement (the "Term"). After the expiration of Term, City shall grant Provider the appropriate license(s) to access Landfill and to carry out any Closure and Post-Closure Obligations pursuant to an access agreement on substantially similar terms as the soil access agreement attached as Exhibit C-1.

5. **LEASE AND ACCESS:**

A. **Lease of Landfill:** City agrees to lease and does hereby lease to Provider the Landfill, a legal description of which is attached as Exhibit B attached hereto, which by this reference is

incorporated into and made a part of this Agreement. Provider shall pay City each month during Term of this Agreement for use of the Landfill in accordance with Exhibit C attached hereto, which by this reference is incorporated into and made a part of this Agreement.

B. Access to Contiguous Property: City agrees to give Provider access, for the rates set forth in Exhibit C, to the City-owned property consisting of 65-acres to the north of the Landfill for the purposes of acquiring soil to be used for Landfill operations pursuant to that certain Access Agreement attached as Exhibit C-1.

**6. CHANGE IN LAW:**

A. Provider acknowledges that San Angelo the City of San Angelo Code of Ordinances, Article 11.400 is in the process of being amended and that the current provisions of the City of San Angelo Code of Ordinances, Article 11.400 shall continue to apply to this Agreement until such time as the amendments adopted by City Council become law. Notwithstanding the foregoing, the parties agree that rates for Services set forth in this Agreement and in the amended Appendix A Fee Schedule to the City of San Angelo Code of Ordinances, Article 11.400 shall apply as of Effective Date.

B. Provider acknowledges that this Agreement shall be interpreted to be consistent with all applicable local, state and federal laws, now in effect and adopted during Term of Agreement, and Services shall be limited by all applicable current and developing ordinances, laws and regulations and that in the event that future interpretations of current law or future enactments limit the ability of City to lawfully grant to Provider a special exclusive contract for Services as specifically set forth herein, Provider agrees that the scope of this Agreement shall be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Provider as a result thereof.

C. The parties agree that any changes in federal, state or local laws or regulations that results in a detrimental change in circumstances or a material hardship for Provider in performing this

Agreement may be the subject of a request by Provider for a rate adjustment, subject to review and approval by City Council, which will not be unreasonably withheld. If City requires review of financial or other proprietary information in conducting its rate review, at the request of Provider, City shall retain a third party to review such information at Provider's expense provided that (a) such third party signs a confidentiality agreement with Provider and (b) the results of such rate review remain confidential. Any rates, including adjustments set forth herein, shall not otherwise increase unless as required by Change In Law, subject to review and approval by City Council.

7. **DUTIES OF PROVIDER:** Provider shall maintain the highest industry standard of service for the protection of the health and welfare of the public and in the performance of this Agreement and agrees that it is obligated to perform all services under this Agreement in strict accordance with the terms, conditions and provisions provided herein.

A. Landfill Operation, Closure and Post Closure. Provider shall be responsible for operation and closing of the landfill and disposal areas of the Landfill adhering to City's MSW Permit No. 79 requirements as approved by the Texas Commission on Environmental Quality ("TCEQ"). In addition to the responsibilities set forth in this Section, Provider shall be responsible for the following:

- i. Operating, maintaining and managing the scales, scalehouse, and gate;
- ii. Conducting customer billing, reporting and record keeping, as applicable;
- iii. Paying all necessary operational fees including, but not limited to quarterly TCEQ solid waste fees, air emissions fees, and stormwater permit fees;
- iv. Coordinating with any contractors City may have;
- v. Providing and maintaining all equipment necessary for the operation of the Landfill;
- vi. Maintaining service of all site utilities (phone, water, electricity, gas, etc.);

- vii. Performing general administration and management tasks including engineering and planning incidental to complete operations, and submitting operation plans to City;
- viii. Except as set forth in Section 8, assuming all environmental liability related to operations, construction, closure, and post-closure of Landfill;
- ix. Landfilling Acceptable Waste;
- x. Conduct waste screening under appropriate protocol acceptable to TCEQ and City to prevent the acceptance of solid waste that is Unacceptable Waste and/or not permitted for disposal at Landfill;
- xi. Providing sufficient full-time employees at Landfill, to include the working face, who spot traffic, inspect and check loads of incoming solid waste for Unacceptable Waste in a manner consistent with prudent landfill operations practices and industry standards for the size of landfill and types and volume of Solid Waste received, and redirect such loads as appropriate;
- xii. Collecting, storing, and removing from Landfill all Household Hazardous Waste (“HHW”) diverted from the waste stream. Provider shall be responsible for the handling, transport, and disposal or final disposition of all diverted HHW in accordance with Applicable Laws;
- xiii. Accepting and properly disposing of liquid waste as long as such liquid waste is handled in accordance with this Agreement;
- xiv. Furnishing all labor to perform Services required herein at Provider’s own expense;
- xv. Maintaining existing and future Storm Water Pollution Prevention Plan (“SWPPP”) including event monitoring;
- xvi. Excavating cover material and obtaining any and all cover material required for Landfill operation and closure at Provider’s expense with the exception of soil as described in Section 7.AA.

xvii. Maintaining diversion programs to include brush, tires and electronic waste (E-waste) as well as diverting small metal items, as set forth in Section 7.K.iii including white goods, for recycling. Provider shall contract or staff qualified personnel for removing Freon/coolants and compressor oils;

xviii. Maintaining sufficient employees consistent with Applicable Laws, prudent landfill operating practices, health and safety standards, and traffic flow to properly staff the Citizen Convenience Center during operational hours;

xix. To the extent reasonable and appropriate and if allowed by Applicable Laws, preferential use of local businesses in the purchase of supplies and services, and/or alignment with local providers for operational needs as applicable; and

xx. Site Maintenance including but not limited to:

1. Maintaining, repairing and/or replacing scales;
2. Controlling and picking up litter;
3. Mowing all grass areas on a regular basis according to City ordinance;
4. Performing all site security including during off-hours;
5. Sweeping and cleaning Old Ballinger Highway from Bell Street to Highway 277;
6. Debris removal along Old Ballinger Highway from Bell Street to Highway 277;
7. Repairing and maintaining all fences;
8. Constructing and maintaining drainage facilities;
9. Constructing final cover as areas reach final waste grades;
10. Maintaining, repairing and replacing as needed all asphalt/concrete paving areas;

11. Constructing new cells as they become needed;
12. Maintaining internal water and electrical systems and all related equipment;
13. Maintaining and cleaning all access roads;
14. Providing housekeeping in all buildings and work areas;
15. Constructing any additional roadways within Landfill, adjacent properties, or buffer as needed;
16. Maintaining a wheel wash, or any Storm Water Best Management Practice that accomplishes the same;
17. Maintaining and repairing as necessary, all interim and final covers including necessary seeding/sod; and
18. Making any other repairs, as needed, to any areas in post-closure care.

B. Landfill Costs: Provider shall be responsible for performing the following functions and assuming the following costs associated with Landfill:

- i. Permit fees and permit modification fees, including the costs of engineers and consultants to obtain permits from TCEQ;
- ii. Ground water and methane gas sampling;
- iii. All costs of quality assurance, quality control, professionals, and laboratory testing during planning, construction and testing;
- iv. Closure and post-closure inspection and testing;
- v. Site monitoring and maintenance after completion and closure of cells; and
- vi. Leachate disposal costs during operation and after closure of cells.

C. Operation of Municipal Landfill: Provider shall provide disposal service at Landfill for the disposal of Acceptable Waste in accordance with all federal, state and local laws, rules and

regulations applicable to the contracted work as such laws, rules and regulations now exist or may be amended during Term of this Agreement or any extensions thereof. Provider shall have the duty and responsibility for the operation of Landfill according to TCEQ Permit No. 79, issued to City, including any amendments and limitations thereof (the "Permit"), which is incorporated by reference and made a part of this Agreement for all purposes the same as if written in full in this Agreement, and any and all state and federal regulations.

D. Labor and Equipment: Provider shall furnish all labor, supervision, and equipment necessary to provide landfill services to City. Any vehicles, material or equipment required for the performance of this Agreement shall be provided by Provider and maintained in a safe and sanitary condition at all times.

E. Roads: Provider shall be responsible for cleaning up any refuse blown from Landfill by wind or other natural forces. Provider shall be responsible for cleaning up garbage or refuse dumped along the street leading to Landfill if it is dumped by Provider. Provider shall maintain all-weather roads.

F. Sources of Waste: Provider shall exercise due diligence and good faith in determining the source of all Acceptable Waste brought to Landfill, and shall, to the best of its ability, keep accurate records showing the point of origin of all such waste and in any event, shall keep any and all required records in the manner required of an operator or transporter under local, state and federal law and the Permit.

G. Landfill Schedule and Hours of Operations: Provider shall keep Landfill open to the public to accept waste for disposal at the following times:

- i. Monday through Friday 7:00 a.m. to 5:30 p.m.
- ii. Saturday from 7:00 a.m. to 2:00 p.m.
- iii. Closed Sunday

iv. Landfill may be closed on the following holidays; provided that Landfill is open the next Saturday beyond 7:00 a.m. to 5:30 p.m. to accommodate additional deliveries, as necessary:

1. New Year's Day
2. July Fourth
3. Labor Day
4. Memorial Day
5. Thanksgiving Day
6. Christmas Day

H. Waste to be Excluded from Landfill: Provider shall inspect all waste brought to the Landfill for disposal prior to accepting it for disposal. Provider shall not accept into the Landfill waste that is prohibited under federal and/or state law. Further, Provider shall not be required to and shall not landfill or dispose of any Unacceptable Waste. Title to and liability for Unacceptable Waste shall at no time pass to Provider and are further governed by applicable city, county, state and federal laws, ordinances or regulations. In the event such waste and/or products are found, Provider shall notify City within one business day of discovery of same. If Provider inadvertently allows landfill or disposal of Unacceptable Waste, Provider shall pursue identification of the parties responsible for such Unacceptable Waste and shall ensure the proper removal and/or disposal of such Unacceptable Waste, if required.

I. Traffic Flow: During Term, Provider shall conduct effective and efficient traffic flow procedures for Landfill, including procedures for vehicle maneuvering, tipping, weighing and other Landfill operations.

J. Expansion of Landfill: During Term, the City Council may, at its discretion, grant Provider the right to make and implement, at Provider's expense, design improvements and changes

to expand or enhance the capacity of Landfill, including vertical and horizontal expansions of Landfill cells, in compliance with applicable laws and Permits and in accordance with Section 7.B herein. All expansion concepts and designs must be approved by City prior to submittal to TCEQ for approval. If Landfill is expanded, Provider will be granted an extension to Term of this Agreement commensurate with such expansion, and the parties agree to negotiate any rate adjustments and/or additional royalty payments that will be due to City and Provider.

K. Citizen Convenience Center:

i. Access: Within sixty (60) days of Effective Date, Provider will submit a permit modification to the TCEQ for a Citizen Convenience Center. Within nine (9) months of TCEQ approval, Provider will initiate construction of a Citizen Convenience Center at Landfill.

ii. Mulch: Provider shall place an adequate amount of useable mulch and signage near the Citizen Convenience Center for residents to self-load at no cost. Provider's website shall include information about the free mulch.

iii. Bays: Provider will encourage and assist individuals to source separate their recoverable materials. Provider will have available four (4) bays into which residents can unload Acceptable Waste, commingled Recyclables, and small metals. Provider will also divert tires and white goods at the Landfill.

L. Perimeter Fence: As deemed necessary by City and Provider, in a mutually agreeable location, Provider shall erect a perimeter fence at Landfill to minimize wind-blown materials from traveling to adjacent properties.

M. Wheel Wash: Provider shall construct a wheel wash or use best management practice to reduce the tracking of mud from Landfill to public roads.

N. Landfill Gas Monitoring: During Term and Post-Closure, Provider shall provide and maintain a landfill gas-monitoring program for landfill gas migration as required by applicable laws and

regulations and the Permit. As required by law or as reasonably necessary in accordance with standard industry practice, Provider shall install and maintain a landfill gas collection and gathering system, including gas flaring facilities. Title to the gas shall at all times belong to City. Provider shall monitor the levels of volatile organic compounds to comply with national primary maximum contaminant levels in accordance with any TCEQ correction action plan.

O. Groundwater Monitoring: During Term and Post-Closure, Provider shall provide and maintain groundwater corrective action monitoring and testing as required by applicable laws, the Permit, or directives from any regulatory agency.

P. Fire Procedures: Provider shall use commercially reasonable efforts to control fires at Landfill, including the application of daily cover, inspection of loads of waste and maintenance of pumps, hoses and sedimentation ponds. All of Provider's personnel at Landfill will be trained in fire prevention, detection and suppression. All equipment and facilities at Landfill will have fire extinguishers that are regularly inspected and maintained. Additionally, all of Provider's land phones at the Landfill will have fire emergency numbers posted near them.

Q. Control Procedures: Provider shall implement the following control procedures: (a) suppression of fugitive dust by cleaning, watering and sweeping access roads to the landfill, applying water to unpaved road surfaces, and enforcing speed limits; (b) requiring all trucks that enter Landfill to have covered loads; (c) collecting blown litter; (d) minimization of vectors through the daily cover of approved material; (e) the grading of Landfill to eliminate standing water and compacting waste; (f) control and prevention of odors by use of alternative daily cover material; (g) expansion of the landfill gas collection system and application of odor control products around the working face of Landfill; (h) management of storm water through the placement of final cover geosynthetics and soil; and (i) control of noise and traffic by implementing a maintenance program on all heavy equipment used at Landfill and minimizing activities in the early morning and late evening.

R. Compliance with Laws and Permits: City has provided Provider with a copy of its Permit and subsequent amendments. City will provide Provider with any future amendments thereto. Provider shall keep a copy of the Permit on site at all times for inspection purposes. Provider shall do all work under this Agreement and incidental thereto and perform all collection and disposal of waste in compliance with the Permit and any and all city, county, state and federal laws, ordinances or regulations which are now in effect or that may become effective in the future. This Agreement is expressly made subject to the provisions of all pertinent municipal ordinances which are hereby made a part of this Agreement with the same force and effect as if specifically set out in this Agreement. Subject to Provider's right to apply for an increase in the tipping fee charged pursuant to city ordinance, any costs necessitated by compliance with such laws, ordinances or regulations shall be paid entirely by Provider except as otherwise provided in this Agreement.

S. Acts or Omissions/CERCLA: Provider covenants and agrees that it will not cause, suffer, allow or permit the occurrence of any act or omission in the execution and performance of this Agreement which act or omission may be or could result in or give rise to any violation of any federal, state or local law, regulation, ordinance or licensing or permitting requirement or which act or omission might give rise to any action at law or equity for personal injury or wrongful death or for damage to property. Specifically, Provider agrees to comply with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") and, in addition, with pertinent provisions of both the Texas Water Code and the Texas Acceptable Waste Disposal Act.

T. City Intervention. If the Solid Waste Administrator of City has reason to believe that Provider shall be unable or unwilling to timely comply with any City, county, state or federal law or regulation, or any permit requirement, or any directive of any nature from a state or federal regulatory agency, City may take whatever reasonable steps are necessary to comply with said law, regulation, permit requirement or directive up to and including taking over or subcontracting the operation of

Landfill for whatever period of time it deems necessary. City shall give Provider forty-eight (48) hours written notice of its intention to intervene prior to any intervention unless the delay would compromise City's ability to effectively comply with said law, regulation, permit requirement or directive. Within that forty-eight (48) hour period, Provider may present an alternative plan (the "Alternative Plan") to the Solid Waste Administrator for Provider to avoid the scheduled intervention and to avoid being deemed in breach of this Agreement. If any local, state or federal regulatory agency initiates a compliance action of any nature, the Alternative Plan must meet the requirements and comply with any schedule or deadline imposed by such agency. The Solid Waste Administrator shall have full discretion to accept or reject the Alternative Plan and shall reevaluate Provider's performance in fulfilling the Alternative Plan and complying with the law, regulation, permit requirement or directive as often as he shall deem necessary and expedient.

In the event that the Solid Waste Administrator determines, after implementation of the Alternative Plan, that it shall not effectively resolve the compliance problem, he shall again issue forty-eight (48) hours written notice to Provider of City's intention to intervene.

City shall have the right to assess all reasonable costs of such interventions to Provider and if Provider fails to pay, City may draw against the Letter of Credit. Intervention by City shall not relieve Provider of its duty to indemnify City for the results of such noncompliance in accordance with Section 8.

U. Reports: Provider will furnish to City, at City's request, reports as set forth in this subsection. In cases of reports requested monthly, Provider will provide said reports within twenty (20) calendar days of the end of the reporting month. For reports not identified as monthly, Provider will provide said reports within thirty (30) days of Provider finalizing such reports.

i. Monthly Reports: The monthly reports shall include, but not be limited to, the following current data for the month prior:

1. Payment Detail showing:
  - a. Provider's Revenue generated by Residential Customers, Commercial Customers, Industrial Customers, County Customers, and Area Customers, as applicable.
  - b. Host fee payments summary report owed City detailed by Residential Customers, Commercial Customers, Industrial Customers, and County Customers, and Area Customers, as applicable.
2. Total tons received by material type, e.g. solid waste, bulk waste, recyclables including single stream, white goods, and brush, mulch, and compost;
3. Total tons, if any, rejected as Unacceptable Waste;
4. Total tons of compacted waste;
5. Total tons of non-compacted waste;
6. Outages or downtime at Landfill or affecting Landfill which prevent receipt of Acceptable Waste;
7. Citizens complaint report;
8. A full and complete copy of any and all monitoring and testing of groundwater, surface water, air, landfill gas, condensate, and leachate which have been received or otherwise made known to Provider during the month, as required by the applicable Permit; and
9. To the extent possible, such other information regarding the operation of Landfill as City may reasonably require from time to time.

ii. Annual Reports: The annual report shall specify the capacity of Landfill at the start of the Operating Year covered by the annual report, volume used during that Operating Year, and the estimated remaining permitted capacity of Landfill. Provider shall perform an aerial or ground survey which meets industry standards to determine such available capacity or volume of waste area

and cover stockpile used during the period of measurement in each Operating Year and the results (including density calculations) shall be included in the annual report.

iii. Additional Reports:

1. Annual soil report for the purpose of depicting the amount of soil used pursuant to the Access Agreement attached as Exhibit C-1 utilizing annual flyover;

2. Quarterly report of all TCEQ imposed fees or similar charges based upon received tons, as applicable;

iv. Inspections Report: Provider shall file reports with City in a timely manner, but no less frequently than monthly, specifying all inspections by any Governmental Entity during the month of the report as a result of incidents and/or alleged or actual regulatory violations at Landfill. Reports shall detail the nature and reasons of these occurrences as well as all results, findings and actions taken to resolve such incidents. Provider shall also notify City immediately of any fines or penalties levied and any actions that could have an adverse impact on Provider or City, or both. Copies of any inspection reports, notices of violations and correspondence from any regulatory agency regarding Landfill shall be included with the monthly report.

v. Provider, or Provider's engineer, as approved by City, will prepare the annual report to the TCEQ, and submit the report to City for review, giving reasonable time for such review, prior to the filing deadline. All associated expenses will be paid by Provider.

V. Taxes, Licenses, Permits and Utilities: Provider shall obtain and/or promptly pay the cost of all taxes, state and federal fees, passthroughs and special charges, licenses, permits, and utilities other than those expressly provided by City under this Agreement. Provider warrants and represents that it is qualified to engage in the business of waste disposal. In the event that certain certification or licensing is necessary as a result of local, state or federal law, rule or regulation to perform Services to

be provided, Provider agrees to secure such certification or license within the prescribed time frame set by the certifying or licensing entity.

W. Guaranty: The obligations of Provider under this Agreement shall be guaranteed by Provider's ultimate parent company, Republic Services, Inc., in accordance with the form of Guaranty attached as Exhibit D to this Agreement, which Guaranty shall be executed simultaneously with this Agreement.

X. Nondiscrimination: Provider shall not discriminate against any person because of their race, sex, age, creed, color, religion; national origin, disability or any other impermissible basis.

Y. Solid Waste Administrator: Provider shall be directly responsible to the Solid Waste Administrator of City in the performance of its obligations under this Agreement.

Z. Landfill Site: During Term of this Agreement and any extensions allowed hereunder, City agrees to lease Landfill to Provider in accordance with Section 5 herein. If Landfill is used up and exhausted during Term of this Agreement or the term of any renewals hereof, then City may at its option provide another sanitary landfill complying with local, state and federal laws. If City does not provide another sanitary landfill, Provider may, at its option, be released from providing any further services under this Agreement. Provided, however, any such release shall not be construed to be a release of Provider from its duties under the indemnification provisions of this Agreement or any other provisions of this Agreement that expressly survive termination of this Agreement. Any alternative landfill site furnished by City pursuant to this section may be leased to Provider for the remainder of Term of this Agreement or extensions hereof and shall be maintained by Provider according to the provisions in this Agreement. The terms and conditions, including application, development and cost responsibilities for such landfill site shall be negotiated between City and Provider. The lease of the new landfill site shall begin on the date that it becomes necessary for Provider to begin utilization of such landfill for the disposal of garbage and refuse.

AA. Soil: During Term, City shall provide soil to Provider for all landfill operations, pursuant to Section 5: Lease and Access” herein, from City’s property to the north of Landfill. City will make every reasonable effort to permanently close East 50th St between Pruitt/Schwertner Road and Covington Road.

BB. Liquidated Damages: The parties agree the Liquidated Damages for Provider’s failure to perform are set forth in Exhibit E. The Liquidated Damages as set forth in Exhibit E herein shall remain fixed for the first ten (10) years of Term and will be negotiated and adjusted by Amendment to this Agreement for the remainder of Term.

**8. INSURANCE AND INDEMNIFICATION.**

A. GENERAL INDEMNIFICATION. PROVIDER SHALL INDEMNIFY, DEFEND, AND HOLD CITY, ITS COUNCIL MEMBERS, BOARD AND COMMISSION MEMBERS, OFFICIALS, AGENTS, GUESTS, INVITEES, CONSULTANTS AND EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, PROCEEDINGS, SUITS, JUDGMENTS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, ATTORNEYS’ FEES AND EXPENSES ASSERTED BY ANY PERSON OR PERSONS, INCLUDING AGENTS OR EMPLOYEES OF PROVIDER OR CITY, BY REASON OF DEATH OR INJURY TO PERSONS, OR LOSS OR DAMAGE TO PROPERTY, RESULTING FROM OR ARISING OUT OF, THE VIOLATION OF ANY LAW OR REGULATION OR IN ANY MANNER ATTRIBUTABLE TO ANY ACT OF COMMISSION, OMISSION, NEGLIGENCE OR FAULT OF PROVIDER, ITS AGENTS OR EMPLOYEES, OR THE JOINT NEGLIGENCE OF PROVIDER AND ANY OTHER ENTITY, AS A CONSEQUENCE OF ITS EXECUTION OR PERFORMANCE OF THIS AGREEMENT OR SUSTAINED IN OR UPON THE PREMISES, OR AS A RESULT OF ANYTHING CLAIMED TO BE DONE OR ADMITTED TO BE DONE BY PROVIDER HEREUNDER. THIS

INDEMNIFICATION SHALL SURVIVE THE TERM OF THIS AGREEMENT AS LONG AS ANY LIABILITY COULD BE ASSERTED. NOTHING HEREIN SHALL REQUIRE PROVIDER TO INDEMNIFY, DEFEND OR HOLD HARMLESS ANY INDEMNIFIED PARTY FOR THE INDEMNIFIED PARTY'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

B. ENVIRONMENTAL INDEMNIFICATION. PROVIDER SHALL INDEMNIFY, DEFEND AND HOLD CITY AND ITS COUNCIL MEMBERS, BOARD AND COMMISSION MEMBERS, OFFICIALS, AGENTS, GUESTS, INVITEES, CONSULTANTS AND EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, PROCEEDINGS, SUITS, JUDGMENTS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, ATTORNEYS' FEES AND EXPENSES ASSERTED BY LOCAL, STATE OR FEDERAL ENVIRONMENTAL AGENCIES OR PRIVATE INDIVIDUALS OR ENTITIES IN CONNECTION WITH OR RESULTING FROM OR ARISING OUT OF PROVIDER'S HANDLING, COLLECTION, TRANSPORTATION, STORAGE, DISPOSAL, TREATMENT, RECOVERY, AND/OR REUSE BY ANY PERSON UNDER PROVIDER'S DIRECTION OR CONTROL OF WASTE COLLECTED, TRANSPORTED OR LANDFILLED OR ANY CLEANUP ASSOCIATED WITH ENVIRONMENTAL CONTAMINATION, WHETHER SUCH CLEANUP IS OF AIR, SOIL, STRUCTURE, GROUND WATER OR SURFACE WATER CONTAMINATION. PROVIDER SPECIFICALLY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AGAINST ALL CLAIMS, DAMAGES AND LIABILITIES OF WHATEVER NATURE ASSERTED UNDER CERCLA CAUSED BY ACTS OR OMISSIONS OF PROVIDER REGARDLESS OF WHEN SUCH INCIDENT IS DISCOVERED. PROVIDER SHALL BE RESPONSIBLE AND LIABLE FOR ANY SPILL, UNDERGROUND POLLUTION OR ANY OTHER ENVIRONMENTAL IMPAIRMENT

INCIDENT CAUSED BY ACTS OR OMISSIONS OF PROVIDER REGARDLESS OF WHEN SUCH INCIDENT IS DISCOVERED. IT IS THE INTENT OF THE PARTIES THAT THIS SECTION SHALL IN NO WAY LIMIT OTHER COVERAGE HEREIN AS IT MAY RELATE TO ANY ENVIRONMENTAL CLAIM, DAMAGE, LOSS OR LIABILITY OF ANY KIND.

C. PROSPECTIVE APPLICATION. ANY AND ALL INDEMNITY PROVIDED FOR IN THIS AGREEMENT SHALL SURVIVE THE EXPIRATION OF THIS AGREEMENT AND THE DISCHARGE OF ALL OTHER OBLIGATIONS OWED BY THE PARTIES TO EACH OTHER HEREUNDER AND SHALL APPLY PROSPECTIVELY NOT ONLY DURING THE TERM OF THIS AGREEMENT BUT THEREAFTER SO LONG AS ANY LIABILITY (INCLUDING BUT NOT LIMITED TO LIABILITY FOR CLOSURE AND POST CLOSURE COSTS) COULD BE ASSERTED IN REGARD TO ANY ACTS OR OMISSIONS OF PROVIDER IN PERFORMING UNDER THIS AGREEMENT.

D. RETROACTIVE APPLICATION. THE INDEMNITY PROVIDED FOR IN THIS AGREEMENT SHALL EXTEND NOT ONLY TO CLAIMS AND ASSESSMENTS OCCURRING DURING THE TERM OF THIS AGREEMENT BUT RETROACTIVELY TO CLAIMS AND ASSESSMENTS WHICH MAY HAVE OCCURRED DURING THE TERM OF PREVIOUS AGREEMENTS BETWEEN CITY AND PROVIDER.

E. APPLICATION TO SURROUNDING PROPERTY. THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT EXTEND TO CLAIMS AND ASSESSMENTS RELATING TO RUNOFF, LEACHATE, OR OTHER INFILTRATION THAT MAY OCCUR OR HAS OCCURRED AT OR NEAR THE SITE OF LANDFILLS, TRANSFER STATIONS, OR OTHER SOLID WASTE FACILITIES AND SURROUNDING AREAS WHICH ARE OR WERE USED BY PROVIDER, DURING THE TERM OF THIS AGREEMENT OR PREVIOUS AGREEMENTS BETWEEN CITY AND PROVIDER. THIS

SECTION DOES NOT MAKE PROVIDER LIABLE FOR ANY SITE IT HAS NEVER USED, CLOSED, MANAGED OR MONITORED.

F. **INSURANCE.**

i. **General Conditions.** The following conditions shall apply to all insurance policies obtained by Provider for the purpose of complying with this Agreement.

1. **Satisfactory Companies.** Coverage shall be maintained with insurers satisfactory to City and with insurers licensed to do business in Texas.

2. **Named Insureds.** All insurance policies required herein shall be drawn in the name of Provider or Provider's ultimate parent company, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees named as additional insureds, except on workers' compensation coverage (or equivalent).

3. **Waiver of Subrogation.** Provider shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its council members, Board and Commission members, officials, agents, guests, invitees, consultants and employees.

4. **Certificates of Insurance.** At or before the time of execution of this Agreement, Provider shall furnish City's Risk Manager and Solid Waste Administrator with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverages and limits of insurance. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days advance notice in writing of cancellation of insurance. In addition, Provider and insurance company shall immediately provide written notice to City's Risk Manager and Solid Waste Administrator upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Certificates of insurance and notices of cancellations, terminations or alterations shall be furnished to

City's Risk Manager and Solid Waste Administrator at City Hall, 72 West College Avenue, San Angelo, Texas 76903.

5. Provider's Liability. The procurement of such policy of insurance shall not be construed to be a limitation upon Provider's liability or as a full performance on its part of the indemnification provisions of this Agreement. Provider's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the premises. Failure of Provider to maintain adequate coverage shall not relieve Provider of any contractual responsibility or obligation.

ii. Subcontractors' Insurance. Provider shall cause each Subcontractor and Sub-Subcontractor of Provider to purchase and maintain insurance of the types and in the amounts specified below. Provider shall require Subcontractors and Sub-Subcontractors to furnish copies of certificates of insurance to Provider's Risk Manager evidencing coverage for each Subcontractor and Sub-Subcontractor.

iii. Types and Amounts of Insurance Required. Provider shall obtain and continuously maintain in effect at all times during Term hereof, at Provider's sole expense, insurance coverages as follows with limits not less than those set forth below:

1. Commercial General Liability. This policy shall be an occurrence-type policy and shall protect Provider and additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than Provider's employees) and damage to property of City or others arising out of the act or omission of Provider or its agents and employees. This policy shall also include protection against claims for the contractual liability assumed by Provider under Section 8 herein of this Agreement, including completed operations, products liability, contractual coverage, broad form property coverage, explosion, collapse, underground, premises/operations, and

independent Providers (to remain in force for two years after final payment). Coverage shall not be less than:

\$ 5,000,000.00	General Aggregate
\$ 5,000,000.00	Products- Completed Operations
\$ 5,000,000.00	Personal & Advertising Injury
\$ 5,000,000.00	Each Occurrence
\$ 5,000,000.00	Fire Damage (any one fire)

2. Business Automobile Liability. This policy shall be written in comprehensive form and shall protect Provider and the additional insureds against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the premises of all motor vehicles licensed for highway use, whether they are owned, non-owned or hired. Coverage shall not be less than:

\$5,000,000.00	Combined Single Limit
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3. Workers' Compensation (or Equivalent) and Employer's Liability. If Provider hires any employees, Provider shall maintain Workers' Compensation (or equivalent) and Employer's Liability insurance, which shall protect Provider against all claims under applicable state workers' compensation laws and employer's liability. The insured shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a workers' compensation law. Coverage shall not be less than:

Statutory Amount	Workers' Compensation
\$ 3,000,000.00	Employer's Liability, Each Accident

\$ 3,000,000.00            Employer's Liability, Disease – Each Employee

\$ 3,000,000.00            Employer's Liability, Disease - Policy Limit

4.     Workers' Compensation (or Equivalent) and Self-Insurer Qualification. The foregoing requirement shall not be applicable if, and so long as, Provider qualifies as a self-insurer under the rules and regulations of the commission or agency administering the workers' compensation program in Texas and furnishes evidence of such qualification to City in accordance with the notice provisions of this Agreement.

5.     Environmental Liability. Provider shall maintain environmental liability insurance in force for the full period of this Agreement that covers losses caused by pollution conditions including, but not limited to, any spill, underground pollution or any other environmental impairment. It shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; including, but not limited to, any costs required under CERCLA; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. If coverage is written on a claims made basis, Provider warrants that any retroactive date applicable to coverage under the policy precedes Effective Date of this Agreement, and continuous coverage shall be maintained or an extended discovery period shall be exercised for a period of two (2) years beginning from the time the Agreement has expired.

\$10,000,000.00            Per loss

\$20,000,000.00            Annual aggregate

G. Financial Assurance.

i. Provider shall within fifteen (15) days following Effective Date provide to City and maintain in force for Term of this Agreement an irrevocable, direct pay Letter of Credit in substantially the form of Exhibit G as financial security for its true and faithful performance of Agreement. The Letter of Credit shall provide that City may draw upon the Letter of Credit for a material breach of this Agreement by Provider. It shall be a condition to the right of City to draw on the Letter of Credit for a material breach that (1) City has given written notice of such material breach to Provider and has allowed Provider an opportunity to cure for a period of ninety (90) days or such longer period as may be agreed upon by the parties, and (2) City has given Guarantor notice of a material breach of this Agreement, and attached a copy of the good faith assessment of the damages City has suffered as a result of such material breach and (3) Provider has had an opportunity at a meeting scheduled by City to be held not earlier than fifteen (15) days nor later than thirty (30) days following delivery of such notice, to present to City evidence disputing City's assertion of material breach or assessment of damages. City shall be entitled to draw upon the Letter of Credit to provide for its damages (including Liquidated Damages) and other losses, costs or expenses resulting from a material breach as set forth herein. Failure to replace the Letter of Credit with another Letter of Credit or Letters of Credit (or provide evidence satisfactory to City of renewability of the existing Letter of Credit or Letters of Credit) at least ninety (90) Days prior to the expiration of an existing Letter of Credit shall constitute a material breach for which City may draw upon that existing Letter of Credit or Letters of Credit. Upon such a draw for non- replacement City shall place the proceeds of that draw in a separate fund. That fund shall constitute a guarantee fund, the amounts in which may be used by City to compensate itself for any damages (including Liquidated Damages) and other losses, costs or expenses resulting from any material breach under Agreement. The issuing financial institution(s) of

the Letter(s) of Credit shall have a credit rating on its long-term debt in one of the three highest categories by a nationally recognized rating agency (e.g. Standard & Poor's rating of AAA, AA, or A).

ii. The Letter(s) of Credit shall allow for multiple draws. If the credit rating of the issuing financial institution falls below the required credit rating set forth above, then Provider shall obtain a replacement Letter or Letters of Credit within sixty (60) calendar days of being notified from any source of the credit rating change. Any successor Letter or Letters of Credit shall be issued for a term of not less than one (1) year, and Provider shall provide a new Letter or Letters of Credit, or evidence satisfactory to City of the renewability of the current Letter or Letters of Credit at least ninety (90) days before the expiration date of the Letter of Credit then in effect. The Letter of Credit or Letters of Credit shall not require City to state or clarify to the issuing financial institution that City has made any demand upon, or taken action against, Provider as a condition to draw down on the Letter of Credit.

iii. The provisions of the Letter of Credit or Letters of Credit shall not modify any other right of City or any duty of Provider which arises under the provisions of Agreement.

iv. The aggregate sum amount of the Letter or Letters of Credit during Term of this Agreement, when combined with the letter of credit requirement pursuant to that certain Special Exclusive Contract for Solid Waste Collection and Disposal Services between the Parties dated as of the date of this Agreement, shall be \$5,000,000.00.

## **9. PAYMENTS; CITY WARRANTIES.**

### **A. Payments.**

#### **i. Initial Landfill Payments: Provider shall pay City:**

- 1. A one-time royalty fee in the amount of \$3,600,000.00 on or before 15 days after Effective Date;**

2. An initial funding of the closure/post-closure obligations at the Landfill in the amount of \$4,735,000.00 to be applied to the Closure/Post-Closure Trust (the “Initial Trust Payment”) as established by Section 10 herein; and
3. A payment of \$670,000.00 to fund City’s last two landfill gas infrastructure payments at Landfill in two payments of \$335,000.00 each as they become due to City all of which payments shall not be subject to any adjustments.
4. If this Agreement is terminated for any reason prior to the expiration of Term (other than due to a termination by City pursuant to Section 11.A), City will refund the payments set forth in this Section 9.A.i, to Provider on a prorated basis (which will be determined by dividing the number of months left in Term by the total amount of months in Term, as substantiated by a third party engineering firm hired by City based on the expected life of the Landfill on the date of the Termination, and multiplying such amount by the total amount of the Landfill Payments).

B. Cell 11-A. Provider shall purchase the airspace of Cell 11-A upon completion of construction by City and TCEQ approval of the constructed Cell in accordance with the provisions of Exhibit F. As of Effective Date, the completed Cell is anticipated to be 580,000 cubic yards. In the event the Cell is smaller than the anticipated 580,000 cubic yards, the payment set forth in Exhibit F will be pro-rated accordingly.

C. Host Fees. Provider shall pay City a per ton rate for Acceptable Waste as further set forth on Exhibit F; provided, however, that no Host Fees shall be paid on tires, brush, free disposal services or white goods originating in the City limits of the City of San Angelo.

D. Waiver or Reduction in Disposal Fees. Provider shall provide a waiver or reduction in Disposal Fees for Acceptable Waste delivered from:

i. Citizen's Free Dumping Program: Provider shall permit disposal in accordance with the Citizen's Free Dumping Program as set forth in City of San Angelo Code of Ordinances Article 11.400, provided:

1. Provider shall not be required to pay City any Host Fees on such waived or reduced disposal fees;
2. The annual limit of free disposal for the residents of City is limited to a total of 6,000 tons of Acceptable Waste per calendar year, as prorated during the initial year of this Agreement;
3. Any amounts in excess of 6,000 tons of Acceptable Waste (as prorated during the initial year of this Agreement) shall be at the current Municipal Tipping Fee, which shall be paid by City to Provider and of which Provider shall remit to City the current Municipal Host Fee.

ii. City of San Angelo Waste: City and any designated contractors hauling for City shall have the right to landfill City garbage and refuse with no Disposal Fees charged by Provider so long as such action is in compliance with the Permit and any federal, state or local law or regulation.

E. Annual Adjustment to Rates. Provider shall charge the rates for service set forth on Exhibit F for the first year, and increase the rates charged beginning on October 1, 2015 and each October 1<sup>st</sup> thereafter by (a) an amount equal to 2.75% of the prior year's rates for every year thereafter, and (ii) and by the fuel surcharge adjustment set forth on Exhibit I.

F. Additional Adjustments in Rates by Provider. Other than the annual rate adjustment provided for under Section 9.E herein, a request for an adjustment due to material changes in

Provider's costs of operations such as labor markets or an adjustment to tipping fees for which Provider seeks a rate increase from the City Council from time to time, no other increase in rates shall be authorized under this Agreement unless such increase is the subject of a request by Provider for a rate adjustment subject to review and approval by City Council in accordance with Section 6.C herein.

G. Additional Adjustments in Rates by City. Provider agrees that City, upon agreement with Provider, shall be entitled to increase the amounts paid to City or to Provider or withheld from Provider as Special Consideration for this Agreement, as approved and authorized by City Council upon agreement with Provider. Provider agrees that City, upon agreement with Provider, shall be entitled to present to City Council a request to establish new fees not currently provided for in the current fee schedule under the City of San Angelo Code of Ordinances or to adjust fees in the current fee schedule under the City of San Angelo Code of Ordinances.

10. **CLOSURE AND POST CLOSURE TRUST:** Provider shall be responsible to deposit required funds for closure and post-closure care and associated corrective action of the Landfill, with Third Party Trustee as established in a Trust Instrument included herein as Exhibit H. Trust instrument shall be established within sixty (60) days of Effective Date of this Agreement and will be funded with the Initial Trust Payment. All fees and financial charges relating to the Closure and Post-Closure Trust will be billed directly to Provider by the Trustee. The Trust Instrument shall provide that: (1) Provider shall have access to the funds held in the Trust Instrument for the sole purpose of paying for closure – post closure obligations; (2) City shall have access to the funds in the event that Provider does not fulfill its closure - post closure obligations under this Agreement; and (3) any amounts in the Trust Instrument that are not required for the payment of closure and post-closure care and associated corrective obligations shall belong to Provider.

Reimbursement(s) to Provider for expenses related to Landfill closure and post-closure costs from the Closure and Post-Closure Trust will be initiated by City after appropriate documentation of such costs is provided. Reimbursement(s) will be made directly to Provider by the Trustee.

The amount required for closure, post-closure, and corrective actions and hence the payments there-to, shall be subject to adjustability as required and justified. All funds previously set aside by City for such purposes shall revert to City and shall not be available to Provider.

At the end of Term, or when this Agreement is terminated by either party, Provider shall perform such services as are necessary to physically close the City of San Angelo Landfill in accordance with Applicable Laws and the Landfill Permits then in effect and landscaping as required by City. In addition, to the extent required under Applicable Laws or the Landfill Permits, prior to the termination of this Agreement or the end of Term, Provider shall perform Closure activities on a cell by cell basis to the extent practical to do so. Provider shall also provide all necessary Post-Closure monitoring services and site maintenance in accordance with Applicable Laws and the Landfill Permits then in force.

In the event of termination of this Agreement, City shall have the right, at its sole option, to keep the Landfill in operation and waive any Provider Closure and Post-Closure responsibilities. In such event, (i) except as set forth in Section 9.A.i.4, City shall have the right to use for its own purposes all amounts held pursuant to any Trust Instruments, and (ii) City shall perform or cause to be performed the Closure and Post -Closure activities otherwise required to be performed by Provider under this Agreement and under applicable Landfill Permits, and (iii) Provider shall be released of any subsequent obligation to perform or cause to be performed the closure and post-closure activities which it would otherwise have been required to perform hereunder and under the applicable Landfill Permits (other than those responsibilities of Provider arising prior to the termination of this Agreement).

11. **TERMINATION:** This Agreement may be terminated at any time by mutual agreement of the parties or as follows:

A. By City. This Agreement may be terminated by City upon a breach by Provider of any of the conditions, covenants, or agreements contained in this Agreement and the failure to cure such breach within ninety (90) days after City provides Provider with written notice of such breach. Such notice must define with specificity the alleged breach, act or omission. In the event the alleged breach, covenant, condition, violation or failure cannot be cured within the ninety (90) day time period, the City Council shall hold a public hearing to determine whether to extend the time to cure the matter or to terminate this Agreement. If the City Council finds that Provider is making diligent efforts to cure the matter, and that an extension of time shall not be detrimental to the public health and safety, the City Council may allow such extension of time to cure the breach, covenant, condition, violation or failure as it deems reasonable.

B. By Provider. This Agreement may be terminated by Provider upon the following occurrences:

- i. A breach by City of the conditions, covenants, or agreements contained in this Agreement upon one hundred eighty (180) days written notice to City by Provider to cure such breach, covenant, condition, or violation by City. Such notice must define with specificity the alleged breach, act or omission. In the event the alleged breach, covenant, condition, violation or failure cannot be cured within the one hundred eighty (180) day time period, Provider may extend the time to cure the matter or to cancel this Agreement if it finds that City is making diligent efforts to cure the matter. Such extension shall not be unreasonably withheld; or
- ii. If the City Council denies a rate adjustment duly requested by Provider pursuant to Section 6.C or Section 9.F of this Agreement.

iii. Such termination shall become effective upon one hundred eighty (180) days written notice provided by receipted hand delivery or certified mail, to City by Provider.

C. Amounts Due. Any termination of this Agreement shall not relieve City or Provider from payment of any sum or sums that shall be due and payable to the other party.

**12. MISCELLANEOUS PROVISIONS.**

D. City Right of Audit and Inspection. Provider agrees to provide access to City or to any of its duly authorized representatives, to any books, documents, papers, and records of Provider, which are directly pertinent to this Agreement (excluding any profit analyses), for the purpose of audit, examination, excerpt, and transcripts including the right to copy such books, documents, papers or records provided that any such copies may only be disclosed to third parties in accordance with City's normal processes, including its processes applicable to materials that Provider deems confidential. City may, at reasonable times, and for a period as required by Applicable Law following the date of final payment by City to Provider under this Agreement, audit and inspect, or cause to be audited and inspected, those books, documents, papers, and records of Provider which are directly pertinent to Provider's performance under this Agreement (excluding any profit analyses) including the right to copy such books, documents, papers or records provided that any such copies may only be disclosed to third parties in accordance with City's normal processes, including its processes applicable to materials that Provider deems confidential. Provider agrees to maintain any and all such books, documents, papers, and records at its principal place of business for a period as required by Applicable Law after final payment is made under this Agreement and all pending matters are closed. Provider's failure to adhere to, or refusal to comply with, this condition, may result in the termination of this Agreement by City in accordance with Section 11.

E. Cumulative Remedies. All rights, options, and remedies of the parties contained in this Agreement or otherwise shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and the Parties shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Agreement.

F. Waiver. No waiver by either party of a breach of any of the obligations or terms of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other obligation or term contained in this Agreement.

G. Force Majeure. Neither City nor Provider shall be liable for the failure to perform their duties if such failure is caused by a catastrophe, riot, war, strike, accident, or act of nature beyond the reasonable control of Provider or City. If such circumstances persist for more than thirty (30) days, or if after their cessation, Provider is unable to render full or substantial performance for a period of thirty (30) days, City may terminate this Agreement by giving Provider ten (10) days advance written notice. In the event Provider is required to perform additional services as a result of an occurrence as described above, Provider shall be compensated for the costs of materials, equipment, labor, and disposal fees based upon rates agreed to by City and Provider.

H. Independent Contractor Status. It is the intent of the parties that Provider, and any of its officers, agents, and employees, shall carry out the terms of this Agreement as an independent contractor and not as an agent, servant or employee of City.

I. Assignment. Provider may not assign this Agreement or any rights, duties and obligations thereunder without the prior written consent of City and, in the event of an attempted assignment by Provider of this Agreement without the express prior written consent of City, such attempted assignment shall be void and without effect. City may assign its rights and privileges under this Agreement by giving Provider ninety (90) days notice of the assignment.

J. Parties Bound. This Agreement is binding on and inures solely to the benefit of the parties and their respective successors, legal representatives, heirs and permitted assigns, and no other person shall have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision contained in this Agreement.

K. Construction. The language of this Agreement shall be construed according to its fair meaning and not strictly for or against either party. All words in this Agreement refer to whatever number or gender the context requires. Headings are for convenience and reference and are not intended to define, limit or extend the scope of any provision of this Agreement. All the terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number (singular and plural) or any other gender (masculine, feminine or neuter) as the context or sense of this Agreement, or any section or cause hereof may require. The locative adverbs “herein,” “hereunder,” “hereto,” “hereinafter,” and like words wherever the same appear in this Agreement, mean and refer to this Agreement in its entirety and not to any specific paragraph, section or subsection hereof unless otherwise expressly designated in context.

L. Governing Law; Venue. This Agreement is made and performable in Tom Green County, Texas, and shall be interpreted in accordance with the laws of the State of Texas. Venue for any legal action arising out of this Agreement shall lie in any court of competent jurisdiction in Tom Green County, Texas.

M. Incorporation by Reference. All permits, ordinances, agreements, exhibits, attachments or annexes referred to in this Agreement, whether or not attached to this Agreement, are incorporated by reference and made a part of this Agreement for all purposes, the same as if written in full in this Agreement.

N. Entire Agreement; Conflict. This Agreement and the exhibits incorporated by reference in this Agreement contain all of the covenants, statements, representations and promises agreed to by the parties and supersede any commitment, agreement, memorandum, understanding, stipulation or representation previously made by the parties or their agents or employees, including that certain Agreement for Waste Collection and Disposal and Landfill Lease and Operation between City and Provider dated July 6, 2004 which expired on July 31, 2014. No agent of either party has authority to make, and the parties shall not be bound by, nor liable for, any covenant, statement, representation or promise not set forth in this Agreement.

O. Amendments. No amendment to this Agreement shall be effective unless such is in writing and signed by both parties. This Agreement constitutes the sole and entire agreement between the parties hereto. This Agreement may be modified or amended only by a written instrument signed by City and Provider, without further approval of City Council, unless such approval is otherwise required by law. Such amendments shall not invalidate this Agreement, nor relieve or release City or Provider from their respective obligations under this Agreement.

P. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not become effective until executed by both parties.

Q. Severability. In the event one or more provisions of this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, as to any person or set of circumstances, such holding shall not affect the validity of any remaining provision of this Agreement or that provision's application to other persons not similarly situated or to other circumstances, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained in it.

R. Attorney's Fees and Costs. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

S. Notice. Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if in writing and personally delivered or deposited in the United States mail, postage prepaid and sent by registered or certified mail (return receipt requested) to the party to whom said notice is to be given. Notices delivered in person shall be deemed to be served effective as of the date the notice is delivered. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be served seventy-two (72) hours after the date said notice is postmarked to the addressee, postage prepaid. Until changed by written notice given by one party to the other, the addresses of the parties shall be as follows:

Provider:	General Manager Republic Waste Services of Texas, Ltd. 1422 Hughes Street San Angelo, TX 76903
With a copy to:	Deputy General Counsel – West Region Republic Services, Inc. 18500 N. Allied Way Phoenix, AZ 85054
City:	Solid Waste Administrator City of San Angelo 72 West College San Angelo, Texas 76903
With a copy to:	City Manager City of San Angelo 72 West College San Angelo, Texas 76903

T. Survival of Covenants and Conditions. It is expressly agreed that all covenants and conditions regarding the rights and obligations of the parties subsequent to the termination of this Agreement shall survive the termination and shall continue in full force and effect in accordance with the terms of the specific provision.

U. Payment. All sums payable under this Agreement are payable in U.S. currency and shall be paid to Provider or City at the places provided in this Agreement for service of notice to said party.

**[Signatures on following page]**

CITY OF SAN ANGELO

BY:   *DS*  

Daniel Valenzuela, City Manager

Date:   *July 25, 2014*  

BY:   *AS*  

Alicia Ramirez, City Clerk

REPUBLIC WASTE SERVICES OF TEXAS,  
Ltd., a Texas limited partnership

BY: Republic Services of Texas GP, Inc., its  
General Partner

ATTEST:

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

Title: \_\_\_\_\_

By:   *DS*  

Keith Cordesman, Vice President

Date:   *July 21, 2014*

**EXHIBIT A**  
**DEFINITIONS**

“Acceptable Waste” means Municipal Solid Waste, special wastes, and Class 2 and Class 3 industrial wastes, dead animals, regulated asbestos containing material (“RACM”), Non-RACM, empty containers, municipal hazardous waste from a conditionally exempt small quantity generator, and sludges, grease trap waste, grit trap waste, or liquid waste from municipal sources, Class 2 and Class 3 industrial waste, and wastes classified as Class 1 only because of asbestos content.

“Agreement” means this Lease and Operating Agreement for the City of San Angelo Landfill and the bond, letters of credit or other financial guarantees required, together with any and all addenda, appendices, attachments, exhibits, amendments, change orders or modifications of the foregoing documents agreed to by the parties in writing unless otherwise designated for informational purposes only.

“Appendix” or “Appendices” means any exhibit, appendix, attachment, form, schedule or annex, which is attached to, incorporated in, or made a part of the RFP or this Agreement.

“Applicable Laws” means any Permits, issued for or with respect to the City of San Angelo Landfill (or any component thereof) and/or issued for or with respect to the performance by a Party of its obligations hereunder, and any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similar legally binding authority, which in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental

Entity that relates to or affects City, Provider and/or the City of San Angelo Landfill (or any portion thereof) or City Collector, or the performance by a Party of its obligations hereunder.

“Area Host Fee” is the portion of the Area Tipping Fee paid to City by Provider for each ton of solid waste disposed at the Landfill originating outside Tom Green County. Area Host Fees shall not be paid on tires, brush, or white goods.

“Area Tipping Fee” is the fee charged to haulers for tons of solid waste originating outside Tom Green County disposed of at the Landfill.

“Brush” means trees or limbs when delivered to Landfill as a single commodity. If trees or limbs are delivered to Landfill mixed with Solid Waste, they collectively become Solid Waste with applicable billing and payments made, thereto.

“Bulk Waste” means solid waste that is too large, heavy or bulky to be collected during normal Garbage collection, including but not limited to refrigerators, stoves, water heaters, other large appliances, and materials resulting from minor remodeling by the householder except for roofing materials and materials generated by Providers.

“Business Day” means the first calendar day of each month excepting Saturdays, Sundays, and City holidays.

“Citizen Free Dumping” means program by which the residential citizens of the City of San Angelo meeting all qualifications required can dispose of self-haul waste at the Landfill free of charge.

“Citizen Convenience Center” means a facility which includes a vehicle receiving area and various bulk containers for deposit of selected waste and Recyclables so as to provide City residents with drop-off service for deposit of Municipal Solid Waste and Recyclables away from the working face.

“City” means the City of San Angelo, Tom Green County, Texas.

“City Fault” means any breach, failure, non-performance or non-compliance by the City with the terms and conditions of this Agreement.

“City Collector” means the solid waste hauler and/or residential recyclables hauler who by contract, license or otherwise is authorized by the City to collect waste or recyclables within the municipal boundary of the City of San Angelo.

“City Limits” means the outermost boundary of the City of San Angelo as reflected in the Official Zoning Map maintained by City in the office of the GIS Manager not to include the extra territorial jurisdiction (ETJ).

“City of San Angelo Landfill,” “Landfill,” or “Premises” means the City-owned landfill, located at 3002 Old Ballinger Highway, San Angelo, Texas, and all other real property that may now or in the future be acquired for landfilling operations as designated by City, and all improvements and appurtenances thereto.

“City of San Angelo Waste” means waste delivered to the Landfill via City trucks, pickups, or trailers, or approved contracted trucks, vehicles, and trailers for City.

“Class 1 Industrial Solid Waste or Class 1 Waste” is any Industrial Solid Waste designated as Class I by the Commission and/or any Industrial Solid Waste or mixture of Industrial Solid Wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in state or federal law relating to definitions and determinations of waste classification. Class I waste will not be accepted at the Landfill.

“Class 2 Solid Waste” is any individual solid waste or combination of Industrial Solid Wastes that cannot be described as Class 1 or Class 3, as defined in state or federal law relating to definitions and determinations of waste classification which the Landfill may accept with approval from the City’s Solid Waste Administrator.

“Class 3 Industrial Solid Waste” is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in state or federal law relating to definitions and determinations of waste classification.

“Closure” means the services necessary to physically close the City of San Angelo Landfill in accordance with Applicable Laws and the Landfill Permits, and the provisions contained in this Agreement.

“Collect” means to collect and remove solid waste or Recyclables for transport elsewhere, or cause such to be done.

“Commission” or “TCEQ” means the Texas Commission on Environmental Quality, its predecessor agency, the Texas Natural Resource Conservation Commission, and/or any other predecessor agency as the context may require.

“Commission Permit” means the Commission issued MSW Permit No. 79 relating to the City of San Angelo Landfill as the same may be amended, modified and supplemented from time to time.

“County Host Fee” is the portion of the County Tipping Fee paid to City by Provider for each ton of solid waste disposed at the Landfill originating outside the City Limits of the City of San Angelo, but within Tom Green County, for the prior month. County Host Fees shall not be paid on tires, brush, or white goods.

“Construction and Demolition Debris” or “C & D” means waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, bricks and masonry, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

“County Tipping Fee” is the fee charged to haulers for tons of solid waste originating outside the City Limits of the City of San Angelo, but within Tom Green County, disposed of at the Landfill.

“Current Landfill Permits” means those permits, including but not limited to the Commission Permit, licenses and approvals currently in effect naming the City as permittee relating to the operation of the City of San Angelo Landfill as a Type I Landfill.

“Day” means calendar day, unless otherwise specified.

“Disposal” or “Disposal Services” means the dumping or deposition of solid waste into or onto a Disposal Facility so that the waste or any constituent thereof is introduced into the environment.

“Disposal Facility” means a sanitary landfill or other solid waste disposal facility permitted by the Commission and/or other applicable regulatory agency with jurisdiction and utilized for the receipt or final disposition of solid waste.

“Disposal Fee” means the fee charged on a per-ton rate for each ton of Acceptable Waste brought to Landfill for disposal. Collectively includes Municipal Tipping Fee, County Tipping Fee, and Area Tipping Fee.

“Environmental Laws” means all local, state, and federal statutes, regulations, orders, directives and common laws concerning public health and safety, nuisance, pollution and protection of the environment.

“Garbage” means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

“Government Approvals” means all licenses, certificates, permits and approvals required from any Governmental Entity for operation or expansion of the City of San Angelo Landfill or the performance of Provider’s obligations under this Agreement.

“Governmental Entity” means, as appropriate, any one or several of any court of competent jurisdiction, the United States of America, the State of Texas and/or any appropriate jurisdiction over Provider or City or their activities relating to the City of San Angelo Landfill; or any agency, authority, regulatory body or subdivision of any of the above as may have jurisdiction over or power and authority to regulate City, Provider, the City of San Angelo Landfill or the operation thereof, the transfer, transportation, or disposal of solid waste or any services or utilities related to any of the foregoing.

“Guarantor” means the Person guaranteeing the performance and payment obligations of Provider to City.

“Guaranty” means the Guaranty Agreement, a copy of which is attached to this Agreement.

“Hauler” means any person, business, or entity carrying waste for disposal.

“Hazardous Waste” means any solid waste characterized, identified or listed as a Hazardous Waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the Federal Solid Waste Disposal Act, as amended.

“Host Fees” means the fee paid to City by Provider on a per-ton rate for each ton of Acceptable Waste brought to Landfill for disposal. Collectively includes Municipal Host Fee, County Host Fee, and Area Host Fee. Host Fees shall not be paid on tires, brush, free disposal services, or white goods.

“Household Waste” means any solid waste (including garbage and trash, but excluding sanitary waste from septic tanks) derived from households (including single and multiple residences, hotels, and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas) but does not include yard waste or brush.

“Industrial Waste” means solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

“Landfill Expansion” refers to any expansion or development of any site currently permitted or to-be permitted for landfilling services.

“Landfill Permits” means the Current Landfill Permits, as the same may be modified, amended and supplemented from time to time.

“Landfilling” means the dumping or disposal of waste at a landfill.

“Lease Payment” means the annual fee payable by Provider to City for the right to operate the City of San Angelo Landfill.

“Liquidated Damages” means the liquidated damages for the occurrences set forth on Exhibit E.

“Medical Waste” means solid waste generated by health-care-related facilities and associated with healthcare activities, not including garbage or rubbish generated from offices, kitchens, or other non-health-care activities. The term includes special waste from health care-related facilities which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (Definition, Treatment, and Disposition of Special Waste from Health-Care Related Facilities) or any successor. The term does not include waste produced on farmland and ranchland as defined in Agriculture Code, §252.001(6) (Definitions--Farmland or ranchland) or any successor, nor does the term include artificial, nonhuman materials removed from a patient and/or requested by a patient, including but not limited to orthopedic devices and implants.

“Monitoring Well” means an artificial excavation constructed to measure or monitor the quantity or movement of substances, elements, chemicals, or fluids below the surface of the ground. The term shall not include any monitoring well which is used in conjunction with the production of oil, gas (except landfill gas), or any other minerals.

“Monthly Trust Payment” means the monetary amount paid into the Trust Instrument as calculated with the Trust Payment Factor.

“Municipal Solid Waste” or “MSW” means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, and other solid waste other than Industrial Waste.

“Municipal Host Fee” is the portion of the Municipal Tipping Fee paid to City by Provider for each ton of solid waste disposed at the Landfill originating within the City Limits of the City of San Angelo for the prior month. Municipal Host Fees shall not be paid on tires, brush, free disposal services, or white goods.

“Municipal Tipping Fee” is the fee charged to haulers for tons of solid waste originating within the City Limits of the City of San Angelo disposed of at the Landfill.

“Operating Year” means a one-year period commencing on Effective Date of this Agreement or any anniversary thereof.

“Parties” mean City and Provider.

“Pass-Through Expense” means fees, charges, or tariffs imposed by the Federal, State or local government, or their respective agencies, after the Commencement Date of this Agreement, that

operators of public landfills must collect from users of a public landfill and remit to the appropriate government agency.

“Permits” means the applicable approvals, permits, authorizations, registrations, certifications, and licenses issued by Governmental Entities required by Provider for the operation and maintenance of the City of San Angelo Landfill, and with respect to any other obligations necessary to be carried out under this Agreement.

“Person” means any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Governmental Entities.

“Post-Closure” means that period of time after which the Landfill is closed for disposal activities but is monitored and maintained in compliance with Environmental Laws.

“Proposer” means a party that submits a proposal in response to City of San Angelo RFP OP-01-14.

“Provider” means City’s selected Provider to lease and operate the Landfill.

“Recyclables” means material that has been recovered or diverted from the non-hazardous solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products, which may otherwise be produced using raw or virgin materials. Recyclables is not solid waste. However, Recyclables 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 only to the person actually abandoning or disposing of the material.

“Recycling” means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete, are collected, separated, ground or processed and returned to use in the form of raw materials used in the production of new products or for any beneficial purpose. 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.

“Refuse” has the same meaning as Rubbish.

“Representative” means any person or organization, whether in a paid or voluntary status, working in conjunction with a particular Person to promote the interests of that Person.

“Residential Waste” means Municipal Solid Waste discarded by single-family homes, dwellings, or apartments.

“Rubbish” or “Refuse” means non-putrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials.

“Self-Haul Waste” means waste brought to the Landfill by personal transportation by a citizen of the City of San Angelo or individual residents outside the City Limits.

“Solid Waste” means any garbage, rubbish, sludge from a wastewater treatment plant, water supply treatment plant, 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: 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 the Texas Water Code; soil, 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 improvements; or 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 the Texas Natural Resources Code.

“Solid Waste Administrator” means the person designated by City to administer this Agreement on behalf of City.

“Special Circumstance Waste” means all solid waste delivered by or generated by persons exempted from paying Host Fees or by Persons paying a reduced rate on Host fees by City ordinance or resolution.

“Special Waste” means waste that is defined as such by applicable state or federal regulation and which because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or environment. Special Waste shall include dead animals.

“State” means the State of Texas.

“Suspicious Waste” means waste which Provider reasonably suspects may be Unacceptable Waste.

“Term” has the meaning set forth in Section 4 of this Agreement.

“Ton” means a short ton of 2,000 pounds.

“Treated Medical Waste” means waste from health care-related facilities that has been treated in accordance with the procedures specified by State laws or regulations and which has been identified and packaged in accordance with State law and regulations.

“Trust Instrument” shall be the instrument to guarantee closure, post-closure, and corrective action funds for the San Angelo Landfill in substantially the form in Exhibit H.

“Trust Payment Factor” means the monetary rate by which the tons of waste landfilled for the immediately preceding month is multiplied to determine the annual Closure and Post Closure Trust payment.

“Type I Landfill” means a landfill permitted to accept Type I Waste.

“Type I Waste” means Municipal Solid Waste.

“Type IV Waste” means brush such as tree and shrub limbs and trimmings, C&D, and/or Rubbish that are free of putrescible waste and Household Waste.

“Unacceptable Waste” means any and all waste, including but not limited to Hazardous Waste, Medical Waste (other than Treated Medical Waste), liquid waste, automotive tires, oil filters, lead acid batteries, petroleum products and by-products, or explosive materials and asbestos, the acceptance and handling of which by Provider would cause a Violation of any Landfill Permits or Applicable Laws, cause substantial damage to all or any portion of the City of San Angelo Landfill or any improvements thereon or equipment used in connection therewith, Provider’s equipment or facilities, or present a substantial danger to the health or safety of the public or Provider’s or City’s representatives, agents or employees.

“Universal Waste” means the classification for hazardous wastes that are widely generated. Universal Wastes include batteries, some pesticides, mercury-containing thermostats, paint and paint-related waste, and lamps (bulbs).

“Useful Life” means the period of time ending when the available airspace under Commission Permit MSW No. 79 for Solid Waste Disposal, as it currently exists or may be modified in the future, is exhausted.

“Vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or other rolling stock used in operation of the City of San Angelo Landfill.

“Violation” means any determination by a Governmental Entity, after notice to and permitted contest by City, Provider or other operator of the City of San Angelo Landfill, that City, Provider or such other operator of the City of San Angelo Landfill is in violation of or not in compliance with any portion of the Landfill Permits or Applicable Laws under its jurisdiction; however, an alleged Violation which is resolved shall not constitute a Violation.

“Yard Waste” means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than four inches in diameter, that result from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

**EXHIBIT B**

**Legal Description of Landfill**

**[See Attached]**

East tract of  
Lelandfill

**NOTICE** Prepared by the State Bar of Texas for use by Lawyers only. Reviewed 1-17-76.  
To select the proper form, fill in blank spaces, strike out form provisions or  
insert special terms constitutes the practice of law. No "standard form" can  
meet all requirements.

**WARRANTY DEED** 227532  
(LONG FORM)

THE STATE OF TEXAS }  
COUNTY OF TOM GREEN } KNOW ALL MEN BY THESE PRESENTS:

That I, DREW D. WALL, (not joined by my spouse herein because the hereinafter described realty is my separate property and is not a part of our homestead, never having been claimed, intended, occupied or used as such; our homestead consisting of other property in Ellis County, Texas);

of the County of Ellis and State of Texas for and in consideration of the sum of TEN AND NO/100-----  
----- (\$10.00)-----DOLLARS

and other valuable consideration to the undersigned paid by the grantee herein named, the receipt of which is hereby acknowledged.

have GRANTED, SOLD AND CONVEYED, and by these presents do GRANT, SELL AND CONVEY unto the CITY OF SAN ANGELO, a municipal corporation, subject to the reservation hereinafter made,

of the County of Tom Green and State of Texas, all of the following described real property in Tom Green County, Texas, to-wit:

126.7 acres of land, more or less, out of Survey 179, Washington County Rail Road Company, Abstract 4032, being all of a tract of 131.7 acres of land, more or less, out of said survey conveyed by S. A. McCarroll, et ux. to the Grantor, D. D. Wall, by deed dated July 13, 1939, recorded in Volume 201, at Page 550 of the Deed Records of Tom Green County, Texas, save and except a tract of 5 acres out of said 131.7 acre tract conveyed by D. D. Wall to I. J. Curtsinger, County Judge, Tom Green County, Texas, by deed dated March 3, 1948, recorded in Volume 257 at Page 77 of the Deed Records of Tom Green County, Texas, said tract of 131.7 acres of land being more particularly described by metes and bounds as follows, to-wit:

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UNRECORDED DOCUMENT

BEGINNING at a point in the North line of said Survey No. 179, 1357 vrs. East of the Northwest corner of said survey and 25 feet North of the Northeast corner of a certain 131 acre tract conveyed by M. B. McCarroll, et al. to Emmett Wilson by deed recorded in Volume 141 at Page 481, Deed Records of Tom Green County, Texas;

THENCE East with the North line of said Survey 179, 538 vrs. to the Northeast corner of said survey;

THENCE South with the East line of said Survey 1213 vrs. the North line of the G.C. & F. Ry. Co. right of way in all 1239 vrs. an iron pipe in the South line of San Angelo-Ballinger Road;

THENCE South 53° 31' West with the South line of said San Angelo-Ballinger Road to a point in the South line of said road 71 vrs. South of stake in stone mound set for the most Easterly southeastern corner for said 131 acre tract;

THENCE North at 71 vrs. past said stake in stone mound last described along the East line of said 131 acre tract in all 1696 vrs. to the place of beginning, containing 131-7/18 acres, more or less.

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Unofficial Document

FILED FOR RECORD  
1984 OCT 29 PM 4: 29  
MARIE RUSSELL  
COUNTY CLERK  
COUNTY OF TOM GREEN, TEXAS

227532

THE STATE OF TEXAS )  
COUNTY OF TOM GREEN ) I, HEREBY CERTIFY THAT THE INSTRUMENT WAS FILED  
ON THE DATE AND TIME STAMPED HEREON BY ME AND WAS DULY RECORDED IN  
VOL. 814, PAGE 454-457, OF THE Book  
RECORDS OF TOM GREEN COUNTY TEXAS ON October 30, 1984



*Marie Russell*  
MARIE RUSSELL, COUNTY CLERK  
TOM GREEN COUNTY, TEXAS

VOL 814 PAGE 457

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said grantee, its successors and assigns forever; and I do hereby bind myself, my heirs, executors and administrators to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

SAVE AND EXCEPT, and there is hereby reserved unto Grantors, their heirs and assigns all oil, gas and other minerals in and under subject property; provided that all rights of ingress, egress and other use of the surface of such lands for exploration and development of same for oil, gas and other minerals shall be subordinate to rights of the Grantee:

EXECUTED this 15 day of May, A. D. 19 84

*Drew J. Wall*  
DREW J. WALL

Grantee's Address:  
City of San Angelo  
P.O. Box 1751  
San Angelo, Texas 76902

(Acknowledgment)

THE STATE OF TEXAS  
COUNTY OF ELLIS

Before me, the undersigned authority, on this day personally appeared DREW J. WALL

known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this 15 day of May, A. D. 19 84



*Renny Atwood*  
Notary Public in and for Ellis County, Texas  
My commission expires 8-7-84  
Renny Atwood  
(Printed or stamped name of notary)

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UNRECORDED DOCUMENT

BEGINNING At a point in the North line of said Survey No. 179, 1357 vrs. East of the Northwest corner of said survey and 25 feet North of the Northeast corner of a certain 131 acre tract conveyed by M. B. McCarroll, et al. to Emmett Wilson by deed recorded in Volume 141 at Page 481, Deed Records of Tom Green County, Texas;

THENCE East with the North line of said Survey 179, 538 vrs. to the Northeast corner of said survey;

THENCE South with the East line of said Survey 1213 vrs. the North line of the G.C. & F. Ry. Co. right of way in all 1239 vrs. an iron pipe in the South line of San Angelo-Ballinger Road;

THENCE South 53° 31' West with the South line of said San Angelo-Ballinger Road to a point in the South line of said road 71 vrs. South of stake in stone mound set for the most Easterly southeastern corner for said 131 acre tract;

THENCE North at 71 vrs. past said stake in stone mound last described along the East line of said 131 acre tract in all 1696 vrs. to the place of beginning, containing 131 7/16 acres, more or less.

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## **EXHIBIT C**

### **LEASE AND ACCESS PAYMENTS**

Annual Lease payment to City: \$573,000.00 which shall be payable monthly in installments of \$47,750 each with an annual increase of \$3,230.00 beginning on October 1, 2015 and on each October 1<sup>st</sup> thereafter. Annual lease payment ends when the Landfill reaches capacity and is no longer accepting waste.

Annual access payment to City for 65 acres of property to the north for acquiring soil for all landfill operations: \$76 per acre. This amount will be increased annually by 2% on the anniversary date of the Access Agreement attached as Exhibit C-1. The access and the annual access payment will expire upon the Landfill reaching upon any expansion of the Landfill that includes the property to the north, at which time Provider will have full access to said property.

## EXHIBIT C-1

### ACCESS AGREEMENT

Republic Waste Services of Texas, Ltd., a Texas limited partnership (“Republic”) and the City of San Angelo Texas (“City”) have entered into that certain Agreement for Landfill Lease and Operation (“Agreement”) effective August 1, 2014, pursuant to which Republic and City agreed that Republic shall have access to the property owned by City that is described on Exhibit B-1 (the “Property”) only on the following terms and conditions:

(1) Access to Property. Republic shall have access to the Property solely for the purposes of acquiring soil to be used for operation of City of San Angelo Landfill in accordance with the terms of the Agreement. Such access is subject to the following provisions:

(a) Compliance with Law. Republic shall, and shall cause its representatives to, comply with all governmental approvals and all applicable local, state and federal laws and regulations now existing or hereafter enacted, including laws and regulations governing health, safety, and environmental protection.

(b) No Liens. Republic shall, and shall cause its representatives to, keep the Property and other assets free from any mechanics’ or materialmen’s liens caused by Republic’s access and other activities pursuant to this Agreement. Republic shall indemnify and hold the Indemnified Parties (as defined below) harmless from any and all Losses (as defined below) arising out of or in any way related to a breach by Republic of this Section 1.b.

(c) Personal Property. Republic agrees that City is not responsible for the personal property of Republic or its representatives while on the Property.

(2) Assumption of Risk; Indemnification; Insurance.

(a) Assumption of Risk; Waiver. Republic recognizes that hazardous conditions, whether obvious or latent, disclosed or undisclosed, may exist on the Property and assumes the risk of and waives all claims with respect to such conditions while conducting its activities pursuant to this Agreement. Republic shall indemnify and hold City and its affiliates, agents, employees, successors and assigns (collectively, the “Indemnified Parties”) harmless from any and all claims, suits, damages, losses, expenses, costs, and liabilities (including interest, penalties, and reasonable attorney’s fees) (collectively, “Losses”) arising out of or in any way related to, the access to and the activities on the Property of Republic and its representatives, including claims for personal injury, death, property damage, and environmental damage or non-compliance, excluding any such injuries or damages caused in part by the negligence of City, and regardless of whether liability without fault is sought to be imposed upon City.

(b) Indemnification. In addition to the indemnification provided for in Section 2a, Republic shall indemnify and hold the Indemnified Parties harmless from any and all Losses arising out of or in any way related to the breach of any representation, agreement, or covenant on the part of Republic or any of its representatives made in this Agreement or in any other document

delivered pursuant to this Agreement, including any claim by a third party that arises therefrom.

(c) Insurance. Republic agrees at all times during this Agreement to maintain in full force and effect the insurance required by the Landfill Agreement.

(3) Agreement to be Bound. Republic fully understand the meaning and effect of this Agreement and has freely agreed to be bound by its terms.

REPUBLIC WASTE SERVICES OF TEXAS, Ltd., a Texas limited partnership

BY: Republic Services of Texas GP, Inc., its General Partner

By:  \_\_\_\_\_

Keith Cordesman, Vice President

Date: 7-21-14

**EXHIBIT D**

**GUARANTY**

[See Attached]

## GUARANTY

THIS GUARANTY is made and entered into as of 7/18, 2014 (but effective as of August 1, 2014), by Republic Services, Inc., a Delaware corporation ("Guarantor"), in favor of the City of San Angelo, a Texas home rule municipal corporation (the "Guaranteed Party").

### **Recitals**

A. Republic Waste Services of Texas, Ltd., a Texas limited partnership ("Subsidiary"), and the Guaranteed Party are parties to that certain Special Exclusive Contract for Waste Collection and Disposal effective August 1, 2014 (the "Special Contract").

B. As an inducement to the Guaranteed Party to enter into the Special Contract, Guarantor has agreed to guarantee the performance of Subsidiary's obligations under the Special Contract.

In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **Agreement**

1. Guaranty. Guarantor irrevocably and unconditionally guarantees to the Guaranteed Party the due and punctual performance of each obligation of Subsidiary contained in the Special Contract in accordance with its terms and conditions. Guarantor agrees that if Subsidiary shall fail to perform any of its obligations under the Special Contract when due in accordance with the terms of the Special Contract, it shall, upon demand made by the Guaranteed Party, immediately perform the obligation, to the extent that such performance is required to be made or performed by Subsidiary. Notwithstanding anything to the contrary contained in this Guaranty, this Guaranty pertains only to those obligations owed by Subsidiary under the Special Contract, and shall in no way alter or expand any obligation owing under the Special Contract or diminish any defense available to Subsidiary under the Special Contract. This Guaranty in no way alters the respective obligations, rights, defenses, setoffs, counterclaims, or privileges of the parties to the Special Contract, all of which shall be equally available to Guarantor as to Subsidiary in the event the Guaranteed Party makes a claim under this Guaranty. The Guaranteed Party, however, may commence any action or proceeding based upon this Guaranty directly against Guarantor without making Subsidiary a party defendant in such action or proceeding and it shall not be necessary for the Guaranteed Party to bring any action or proceeding first against Subsidiary to recover from the Guarantor.

Guarantor agrees that the obligations of Guarantor pursuant to this Guaranty shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by any of the following (whether or not Guarantor shall have any knowledge thereof):

(a) any termination, amendment, modification or other change in the Special Contract;

(b) any failure, omission or delay on the part of Subsidiary, Guarantor, any or any other guarantor of Subsidiary's obligations to conform or comply with any term of the Special Contract;

(c) any waiver, compromise, release, settlement or extension of time of performance or observance of any of the obligations or Special Contract contained in the Special Contract;

(d) any dissolution of Guarantor or any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to Subsidiary, Guarantor or any other guarantor of Subsidiary's obligations, as applicable, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding;

(e) any merger or consolidation of Subsidiary, Guarantor or any other guarantor of Subsidiary's obligations into or with any person, or any sale, lease or transfer of any of the assets of Subsidiary, Guarantor or any other guarantor of Subsidiary's obligations to any other person; or

(f) any change in the ownership of the capital stock of Subsidiary, Guarantor or any other guarantor of Subsidiary's obligations or any change in the relationship between Subsidiary, Guarantor or any other guarantor of Subsidiary's obligations, or any termination of any such relationship.

2. Representations and Warranties. Guarantor represents and warrants to the Guaranteed Party that this Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

3. Miscellaneous

(a) Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of Texas without reference to the choice of law principles thereof. Any legal action, suit or proceeding arising out of or relating to this Special Contracts shall be instituted exclusively in the state or federal courts of the State of Texas.

(b) No Third Party Benefits. Nothing in this Guaranty is intended, and it shall not be construed, to confer any rights or benefits upon any person other than the Guaranteed Party and no other third party shall have any rights or remedies hereunder.

(c) Notices. All notices and other communications to Guarantor under this Guaranty shall be sufficiently given for all purposes hereunder if in writing and: (i) delivered personally; or (ii) sent by documented overnight delivery service, in each case, to the following:

Republic Services, Inc.  
18500 North Allied Way  
Phoenix, AZ 85054  
Attn: Treasury Department

or to such other address and/or to the attention of such other person as Guarantor may designate by written notice to the Guaranteed Party.

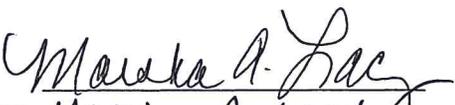
(d) Binding Effect; Assignment. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that no party hereto may assign its rights or delegate its obligations under this Guaranty without the express written consent of the other party hereto.

(e) Headings. The headings contained in this Guaranty are inserted for convenience only and shall not affect the meaning or interpretation of this Guaranty.

(f) Amendment; No Waiver. This Guaranty may not be modified or amended except by an instrument in writing signed by the party against whom enforcement of any such modification or amendment is sought. Any party hereto may, only by an instrument in writing, waive compliance by the other party hereto with any term or provision of this Guaranty. The waiver by any party hereto of a breach of any term or provision of this Guaranty shall not be construed as a waiver of any subsequent breach.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

Republic Services, Inc.

By:   
Name: Marsha A. Lacy  
Its: Vice President, Treasurer

## EXHIBIT E

### LIQUIDATED DAMAGES

- A. General Operational Matters – Liquidated Damages in the following amounts will be imposed with respect to the Landfill where the following failure of performance occurs. The parties agree that at no time will any liquidated damages be imposed or assessed for any condition(s) in existence prior to or on Effective Date:
1. Cell Construction – One thousand dollars (\$1,000) shall be imposed for each failure to adhere to cell construction requirements of this Agreement.
  2. Staffing of Citizen Convenience Center – Two hundred and fifty dollars (\$250) shall be imposed for each failure to provide sufficient staffing at the Citizen Convenience Center as specified in this Agreement.
  3. Daily and Intermediate Cover – One thousand dollars (\$1,000) shall be imposed for each failure to adhere to the daily and intermediate cover requirements of the Landfill Site Operating Plan as referenced in this Agreement.
  4. Drainage and Ponding – One hundred dollars (\$100) shall be imposed for each failure to pump water from retention basins due to ponding within 48 hours, as specified in this Agreement.
  5. Maintenance of Equipment in Operable Manner– Five hundred dollars (\$500) shall be imposed for each failure to maintain the proper equipment levels to achieve operating goals as set forth in this agreement, including but not limited to, the scales and scalehouse, located at the City of San Angelo Landfill as provided for in this Agreement.
  6. Maximum Turn-Around Time for Waste Delivery Vehicles – One hundred dollars (\$100) shall be imposed for each failure to comply with the Maximum Turnaround Time requirements for waste delivery vehicles as specified in this Agreement.
  7. Litter Control – Two hundred fifty dollars (\$250) shall be imposed for each failure to effectively implement litter control and clean-up as required in this Agreement.
  8. Recyclables Diversion – Two hundred fifty dollars (\$250) shall be imposed for each failure to comply with the operating procedures for all recyclables diversion programs at the Landfill as specified in this Agreement.
  9. Submission of Reports/Documents – Fifty dollars (\$50) shall be imposed for failure to submit required reports and/or documentation, as specified in this Agreement, for each day of said violation per report and/or document; provided, however, that if the violation continues beyond five days, the Liquidated Damages shall increase to two hundred fifty dollars (\$250) per day of said violation per report and/or document for each day after five (5) days.

- B. Failure to Turnover Records on Termination of the Agreement – In the event Provider fails to turn over all records relating to the Landfill within ninety (90) days after the termination of this Agreement Liquidated Damages in the amount of seventy-five thousand dollars (\$75,000) shall be assessed and shall be due and payable to City.
- C. Liquidated Damages for Regulatory Violations and Fines – Should Provider receive any Notice of Violation from the Commission, or be found in violation of Applicable Laws by a Governmental Entity, Provider shall be assessed Liquidated Damages as applicable to:
1. Notice of Violation without Fine – Five hundred dollars (\$500) for each Notice of Violation if no fine or monetary penalty is assessed by the Commission or Governmental Entity in conjunction with the notice.
  2. Notice of Violation with Fine - One thousand dollars (\$1,000) for each Notice of Violation when a fine is assessed by the Commission or Governmental Entity in conjunction with the notice (additionally, Provider shall pay any fine for Notice of Violation to the Commission or Governmental Entity or to City directly, if City is assessed the fine, provided that Provider shall have the opportunity to contest and negotiate the fine prior to payment thereof by Provider or City).
- D. Liquidated Damages Regarding Customer Service – Should Provider, through repeated actions or inaction, cause formal, written complaints to be received by Provider or City regarding Provider’s performance of its obligations under this Agreement, including without limitation in responding to inquiries, requests for information, or complaints, the following provisions shall apply:
1. Notice – City shall, upon City’s reasonable determination as to the legitimacy of such complaint(s); deliver a written notice to Provider by certified mail, return receipt requested, requesting Provider’s written explanation within seven (7) days and correction within fifteen (15) days, of the issue(s) raised in the complaint.
  2. Liquidated Damages – Provider shall be assessed Liquidated Damages in the amount equal to fifty dollars (\$50) per day for the first five (5) days, and two hundred fifty dollars (\$250) per day for each day after five (5) days; for each day beyond seven (7) days after receipt of the notice that Provider fails to respond to City’s written request.
- E. Failure to Achieve Minimum Density - The efficient use of the available capacity (air space) of the Landfill is of extreme importance to City. Provider shall agree to operate the Landfill in such a way as to maximize the amount of solid waste disposed within the available air space by maximizing the compaction of the solid waste and minimizing the use of cover soil within the limits of Applicable Laws and Regulation and the Site Operating Plan. The goal established for this Agreement shall be to achieve a Minimum Density (MD) measured in pounds per cubic yard at the Landfill of 1,200.
1. Determination of Density. Provider’s third-party engineer, shall survey the Landfill area at the beginning and end of the measurement period by standard methods. This survey information shall be used to establish the volume portion (V) of the Density calculation. Provider shall continuously track and record the weight of the solid waste being disposed at the Landfill. The solid waste weight used shall be the same weight reported to City in the monthly and annual reports and as reported to the TCEQ. This information shall be

used as the weight portion (W) of the Density calculation. City will be provided electronic files of the survey information.

Provider shall have completed an aerial or ground survey of the Landfill prior to Effective Date of this Agreement to establish the volume portion of the Density calculation at the start of the first measurement period.

The first Density measurement period will be approximately 6 to 9 months following the Agreement Effective Date of August 1, 2014. Each subsequent Density measurement period shall be approximately 12 months in duration (to the extent possible due to annual variations in actual flyover dates) and shall follow successively in each Operating Year without lapse throughout Term of this Agreement. Density shall be calculated using the volume measurement (V) in cubic yards and waste weight (W) in tons from the same measurement period. Average Density Achieved (ADA) is determined by the Weight (W) as reported to City divided by the Measured Volume (V).

2. Imposition of Liquidated Damages - If the annual (for the first 2 years) or trailing 3-year average (for years 3 through Agreement end) calculated Density at the Landfill equals or exceeds the Minimum Density (MD) of 1,200 pounds per cubic yard, there will be no Liquidated Damages imposed on Provider. Liquidated damages will be capped at a maximum of \$100,000.

If, however, the annual (for the first 2 years) or trailing 3-year average (for years 3 through Agreement end) calculated Density at the Landfill is less than the Minimum Density (MD) of 1,200 pounds per cubic yard then Liquidated Damages, in the amount determined using the following equation as shown by example below, will be imposed. The compensation amount shall be two dollars and twenty-six cents (\$2.26) per ton lost.

$$\text{Liquidated Damages} = \text{Tons Lost} \times \$2.26 / \text{ton}$$

#### EXAMPLE COMPUTATION OF LIQUIDATED DAMAGES FOR FAILURE TO ACHIEVE DENSITY

The following is an example of how Liquidated Damages would be determined for Provider's failure to achieve the Minimum Density requirements.

Minimum Density (MD) = 1,200 lbs./cubic yard (0.600 Tons/cubic yard);  
Weight (W) = 175,000 tons example input from weight records  
Volume (V) = 300,000 cubic yards example input from surveyed measurement

Average Density Achieved (ADA) = 1,167 lbs./cubic yard ( 0.5833 tons/cubic yard  
calculated value (W) ÷ (V))

Average Density Achieved is less than the MD; therefore, Provider is subject to Liquidated Damages calculated as follows:

$$\text{Achievable Tons} = V \times MD = 300,000 \text{ cy} \times 0.6 \text{ tons/cy} = 180,000 \text{ tons}$$

$$\text{Liquidated Damages} = \text{Achievable Tons} - \text{Tons Disposed} \times \$2.26 / \text{ton}$$

$$\text{Liquidated Damages} = (180,000 \text{ tons} - 175,000 \text{ tons}) \times \$2.26 / \text{ton}$$

$$\text{Liquidated Damages} = \$11,300$$

- F. The goal established for this Agreement shall be to achieve a Cover Soil Ratio of no less than five to one (5:1) (five parts Solid Waste to one part Cover Soil) in accordance with the Site Operating Plan (SOP) requirements. Provider's third-party engineer shall survey the Landfill and soil borrow area at the beginning and end of the measurement period by standard methods. The survey shall be used to determine the total volume portion (V) of the Cover Soil Ratio calculation that shall be the same as the volume portion (V) of the Density calculation. The Cover Soil Volume (CSV) used shall be tracked by Provider and reported to City and verified by survey information provided to City. The Solid Waste Volume (SWV) shall be the difference between the total volume portion (V) of the Cover Soil Ratio and the Cover Soil Volume (CSV) used. For the purposes of this section, Cover Soil is defined as the sum of soil used by the landfill for daily and intermediate cover.

The measurement period for determining the cover soil ratio achieved by Provider shall be the same as that for tracking Density as noted above (approximately 12 months to the extent possible due to annual variations in actual flyover dates) and shall follow successively in each Operating Year without lapse throughout Term of this Agreement. Should the measurement period not directly coincide with the tracking of cover soil and ADC Usage, Provider shall allocate the periodic cover soil information, as necessary, to provide an accurate total for the measurement period.

If the calculated Cover Soil Ratio at the Landfill falls below five parts solid waste to one part Cover Soil (5:1) the Liquidated Damages, in the amount determined using the following equations as shown by the example below, will be imposed. The compensation amount shall be five dollars (\$5) per calculated cubic yard.

$$\text{Target Cover Soil Volume (TCSV) [in cubic yards]} = (V) \div 6$$

$$\text{Excess Soil Volume (ESV) [in cubic yards]} = (\text{CSV}) - (\text{TCSV})$$

$$\text{Liquidated Damages} = (\text{ESV}) \times \$ 5.00/\text{cubic yard}$$

#### EXAMPLE COMPUTATION OF LIQUIDATED DAMAGES FOR FAILURE TO ACHIEVE COVER SOIL RATIO

The following is an example of how Liquidated Damages would be determined for failure to achieve a cover soil ratio of no less than 5:1

$$\text{Volume (V)} = 300,000 \text{ cubic yards input from measurement}$$

Cover Soil Volume (CSV) = 52,000 cubic yards input from Provider records and verified by survey by Provider of the soil borrow area.

$$\begin{aligned} \text{Solid Waste Volume (SWV)} &= (V) - (\text{CSV}) = 300,000 \text{ cubic yards} - 52,000 \text{ cubic yards} \\ \text{Solid Waste Volume (SWV)} &= 248,000 \text{ cubic yards} \end{aligned}$$

$$\text{Cover Soil Ratio} = (\text{SWV}) \div (\text{CSV}) = 248,000 \text{ cubic yards} \div 52,000 \text{ cubic yards} = 4.77:1$$

Cover Soil Ratio is less than 5:1. Therefore, Provider is subject to Liquidated Damages calculated as follows:

$$\text{Target Cover Soil Volume (TCSV)} = (\text{V}) \div 6 = 300,000 \text{ cubic yards} \div 6$$

$$\text{Target Cover Soil Volume (TCSV)} = 50,000 \text{ cubic yards}$$

$$\text{Excess Soil Volume (ESV)} = (\text{CSV}) - (\text{TCSV}) = 52,000 \text{ cubic yards} - 50,000 \text{ cubic yards}$$

$$\text{Excess Soil Volume (ESV)} = 2,000 \text{ cubic yards}$$

$$\text{Liquidated Damages} = (\text{ESV}) \times \$5.00 = 2,000 \times \$ 5.00$$

$$\text{Liquidated Damages} = \$ 10,000$$

**EXHIBIT F**

**RATES FOR DISPOSAL SERVICES**

[See Attached]

[

<b>Landfill Tipping Fees:</b>		
Municipal Tipping Fee (per ton)		\$ 35.50
County Tipping Fee (per ton)		\$ 38.00
Area Tipping Fee (per ton)		\$ 40.50

<b>City Host Fees:</b>		
Trust Payment Factor (per ton/month)		\$ 1.05
Municipal Host Fee Payment (per ton)		\$ 2.26
County Host Fee Payment (per ton)		\$ 2.43
Area Host Fee Payment (per ton)		\$ 2.60

<b>Contractor Airspace Purchase from City of Cell 11-A :</b>		
Remaining Airspace Purchase (per cubic yard)*		\$2.25**
*Represents the Airspace Generated for the Construction of Cell 11.A		
**Not to exceed \$1,305,000 total paid to City		

<b>Delinquent &amp; Closed Accounts fees</b>	
<b>Non Sufficient Funds (NSF)</b>	<b>\$ 35.00</b>

<b>Tire Tipping Fees</b>							
	Small	Truck	Off-Road	Tire on Rim			
Municipal Tipping Fee (each)	\$ 4.00	\$ 8.00	\$ 21.00	\$ 22.00			
County Tipping Fee (each)	\$ 8.00	\$ 16.00	\$ 42.00	\$ 44.00			

Other Tipping Fees				
	Municipal	County	Area	
Brush per ton	\$ 35.50	\$ 38.00	\$	40.50
Class II Special Waste per ton	\$ 42.75	\$ 45.25	\$	45.25
Liquids per gallon	\$ 0.31	\$ 0.35	\$	0.35
Asbestos (non friable) per Yard	\$ 37.00	\$ 49.90	\$	49.90
Animal Waste(paunch recycled) per yard	\$ 5.05	\$ 7.60	\$	7.60
White Goods/Appliances (with freon removed by licensed technician) each	\$ 7.00	\$ 10.00	\$	10.00
White Goods/Appliances (with freon ) each	\$ 20.00	\$ 25.00	\$	25.00
Untarped/Unsecured Loads	\$ 10.00	\$ 10.00	\$	10.00

Host Fees Paid to City for Other Tipping fees				
	Municipal	County	Area	
Class II Special Waste per ton	\$ 1.29	\$ 1.32	\$	1.32
Liquids per gallon	\$ 0.01	\$ 0.01	\$	0.01
Asbestos (non friable) per Yard	\$ 2.15	\$ 2.25	\$	2.25
Animal Waste(paunch recycled) per yard	\$ 0.32	\$ 0.36	\$	0.36
Untarped/Unsecured Loads	\$ 10.00	\$ 10.00	\$	10.00

**EXHIBIT G**  
**LETTER OF CREDIT**

[To Be Attached]

**EXHIBIT H**  
**CLOSURE AND POST CLOSURE TRUST**

[To Be Attached]

**EXHIBIT I**  
**FUEL TABLE**

San Angelo Fuel Surcharge Calculation					Calculation Example				
July 2013 - June 2014 (12 Month Avg)*		\$ 3.80							
Benchmark Price Per Gallon		\$ 3.80							
Fuel Price	Price Change From Benchmark	Add/ Increase for Fuel							
Benchmark \$	3.80			Hypothetical Diesel Fuel Price 12 Month Average (Aug thru July)				Incremental Change	Total Rate Adjustment %
\$ 4.00	\$ 0.10	0.23%		\$4.20	1-Aug-14 Residential Rate				\$ 13.97
\$ 4.10	\$ 0.20	0.46%			Annual Fixed Adjustment	2.9%			
\$ 4.20	\$ 0.30	0.69%			Fuel factor (Aug 2014 thru July 2015)	0.66%	0.66%		\$ 0.50
\$ 4.30	\$ 0.40	0.92%			Total Rate Adjustment (2.9% + (0.66%-0) = 3.56% * Current Rate)			3.56%	\$ 14.47
\$ 4.40	\$ 0.50	1.15%							
\$ 4.50	\$ 0.60	1.38%			1-Dec-15 Residential Rate				\$ 14.47
\$ 4.60	\$ 0.70	1.62%		\$4.75	Annual Fixed Adjustment	2.9%			
\$ 4.70	\$ 0.80	1.85%			Fuel factor (Aug 2015 thru July 2016)	1.86%	1.15%		\$ 0.59
\$ 4.80	\$ 0.90	2.08%			Total Rate Adjustment (2.9% + (1.86%-0.66%) = 4.06% * Current Rate)			4.06%	\$ 15.06
\$ 4.90	\$ 1.00	2.31%							
\$ 5.00	\$ 1.10	2.54%			1-Oct-16 Residential Rate				\$ 15.06
\$ 5.10	\$ 1.20	2.77%		\$4.15	Annual Fixed Adjustment	2.9%			
\$ 5.20	\$ 1.30	3.00%			Fuel factor (Aug 2016 thru July 2017)	0.46%	-1.36%		\$ 0.25
\$ 5.30	\$ 1.40	3.23%			Total Rate Adjustment (2.9% + (0.46%-1.86%) = 1.51% * Current Rate)			1.51%	\$ 15.29
\$ 5.40	\$ 1.50	3.46%							
\$ 5.50	\$ 1.60	3.69%			1-Dec-17 Residential Rate				\$ 15.29
\$ 5.60	\$ 1.70	3.92%		\$4.36	Annual Fixed Adjustment	2.9%			
\$ 5.70	\$ 1.80	4.15%			Fuel factor (Aug 2017 thru July 2018)	0.92%	0.46%		\$ 0.51
\$ 5.80	\$ 1.90	4.38%			Total Rate Adjustment (2.9% + (0.92%-0.46%) = 3.36% * Current Rate)			3.36%	\$ 15.88
\$ 5.90	\$ 2.00	4.62%							
\$ 6.00	\$ 2.10	4.85%							
\$ 6.10	\$ 2.20	5.08%							
\$ 6.20	\$ 2.30	5.31%							
\$ 6.30	\$ 2.40	5.54%							
\$ 6.40	\$ 2.50	5.77%							
\$ 6.50	\$ 2.60	6.00%							
\$ 6.60	\$ 2.70	6.23%							
\$ 6.70	\$ 2.80	6.46%							
\$ 6.80	\$ 2.90	6.69%							
\$ 6.90	\$ 3.00	6.92%							
\$ 7.00	\$ 3.10	7.15%							
\$ 7.10	\$ 3.20	7.38%							
\$ 7.20	\$ 3.30	7.62%							
\$ 7.30	\$ 3.40	7.85%							
\$ 7.40	\$ 3.50	8.08%							

Although example above is for Residential, the fuel calculation method applies to all RATES FOR SERVICES in EXHIBIT F with the exception of Delinquent Account Fees

Look back Period: August - July

\*Source: Weekly Gulf Coast No 2 Diesel Ultra Low Sulfur (0-15 ppm) Retail Prices (Dollars per Gallon)