

The City of Alamogordo, New Mexico
Agreement for Collection of Solid Waste

This Contract (the "Agreement" or "Contract") is made and entered into this ____ day of December, 2019, by and between the CITY OF ALAMOGORDO, a New Mexico municipal corporation, with its principal offices located at 1376 East Ninth Street, Alamogordo, Otero County, New Mexico 88310 (the "City") and XXXXXXXXXXXXXXXX , a New Mexico Corporation with its principal offices located at XXXXXXXXXXXX, Alamogordo, Otero County, New Mexico 88310 (the "Contractor").

RECITALS:

NOW THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and acceptability of which are acknowledged, the parties agree as follows:

1.00 Grant. The City hereby grants to the Contractor the sole and exclusive franchise, license and privilege to engage in the business of collecting from Residential Accounts within the corporate limits of the City. The City does further grant to the Contractor permission to use the public streets, alleys, and easements within the limits of the City for the purpose of collection and disposal of Refuse, subject to the limitations, terms and conditions hereinafter specified and contained in this Contract.

2.00 DEFINITIONS

Bulky Waste: Used and discarded mattresses, furniture and other waste materials other than construction debris, dead animals, white goods or hazardous waste.

City: City of Alamogordo, New Mexico

Commercial Account: Any account not included in the definition of Residential Account

Construction Debris: Waste building materials resulting from construction, remodeling, repair or demolition operations.

Container: Receptacle approved by City and provided by Contractor for use in collection of refuse for both residential and commercial units.

Contract Documents: The Agreement for Collection of Solid Waste, the General Specifications and any addenda or changes to the foregoing documents agreed to by the City and the Contractor.

Contractor: The person, corporation or partnership performing refuse collection and disposal under contract with the City.

Curbside collection refers to collection from a location within three (3) feet of the curb, pavement, or edge of the nearest street.

Dead Animals: Animals or portions thereof that have expired from any cause, except those slaughtered or killed for human use.

Disposal Site: The Otero/Lincoln Regional Landfill located on Highway 54 approximately 24 miles south of Alamogordo for residential and commercial hauling, or the City of Alamogordo Convenience Center at 200 South Lavelle Road for Bulky Waste and White Goods disposal,

Garbage: Every accumulation of waste (animal, vegetable and/or other matter) that results from the preparation, processing, consumption, dealing in, handling, packing, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter (including, but not limited to, used tin cans and other food containers and all putrescible or easily decomposable waste animal or vegetable matter which is likely to attract flies or rodents); except any matter included in the definition of bulky waste, construction debris, dead animals, white goods, hazardous waste or rubbish.

"Household waste" means any solid waste including garbage and trash, derived from households including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

Hazardous waste: Any chemical, compound, mixture, substance or article which is designated by the United States Environmental Protection Agency or New Mexico Environmental Improvement Division to be "hazardous" as that term is defined by or pursuant to Federal or State Law.

In Ground Containers: In ground containers are containers where the producer disposes of the residential waste in a container that maintains the waste underground below a tight sealed lid until such time as it is collected by the contractor and where such waste can only be picked up by manual labor removing the container or waste contained within the container and placing the waste into the contractor's vehicle intended for the transportation of said waste to the waste disposal facility.

Non-occupant Producer: Is a producer of refuse due to commercial activity conducted on residential/commercial premises through the conduct of such commercial activity, including, but not limited to lawn maintenance, building maintenance and repair and similar activities. All refuse created by a non-occupant producer performing work at a residential Account shall be considered as having been produced by a commercial producer and require a commercial account.

"Overflow" or "overflowing solid waste" means solid waste of residential customers that is deposited on the ground outside of a solid waste container or excess solid waste that has been piled onto a solid waste container that is already full. All containers must have a lid that closes flush with the body of the container, and any container on which the lid will not close due to excess trash will be considered an overflow container.

Producer: An occupant of a residential/commercial unit who generates refuse.

Refuse: This term shall refer to residential or commercial rubbish, garbage, dead animals, bulky waste and construction debris generated at a residential or commercial unit unless the context otherwise requires. (change)

Residential Refuse: All garbage and rubbish generated by a producer at a residential Account or account.

Residential Account: An account for a dwelling within the corporate limits of the City occupied by a person or group of persons comprising not more than four families. A residence shall be deemed occupied when water services are being supplied thereto. A condominium dwelling, whether of single or multilevel construction, consisting of four or less contiguous or separate single family dwelling units, shall be treated as a residential account, except that each single family dwelling within any such residential unit shall be billed separately as a residential account. If a condominium or apartment unit consisting of four or less family units has contracted for collection of refuse through a licensed commercial hauler said units shall be exempt from this definition.

"Residence" or "Residential" means any house, dwelling, multiunit residence, apartment house, trailer court, assisted living residence or any building put to residential use.

"Residential Structure" means all structures put to residential use, including Mixed Use Buildings, and City buildings that the City bills for Garbage collection services.

Rubbish: All waste wood, wood products, tree trimmings, grass cuttings, tree plants, weeds, leaves, dead trees or branches, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp and other products such as are used for packaging or wrapping crockery and glass, ashes, cinders, floor sweepings, glass, mineral or metallic substances, and any and all other waste materials not included in the definition of bulky waste, constructions debris, dead animals, garbage and hazardous waste, infectious waste, medical waste, liquid waste, household hazardous waste and toxic waste.

Service Area means the present municipal boundaries of the City of Alamogordo, New Mexico, and shall include any additions thereto by annexation or other legal means.

Special Waste: Those wastes that either cannot or are not usually handled by a packer truck including, but not limited to, hot loads, hazardous waste, asbestos waste, septage/sludge, petroleum waste, construction debris, and demolition waste.

White Goods: Stoves, ranges, refrigerators, water heaters, water tanks, washing machines and similar products, provided that any freon has been removed previously.

Unacceptable Waste means any solid waste that cannot be legally disposed of at a "category 5 landfill" under the New Mexico Solid Waste Act, NMSA 1978, Sections 74-9-1, et seq. Unacceptable Waste includes: a) prohibited waste such as hazardous waste, asbestos, biomedical waste, mercury-containing devices, radioactive waste, sludge and liquid waste as defined in Rule part 20.9.2.7, NMAC, b) special waste such as yard trash, and c) bulky waste such as furniture from residential sources with a weight or volume greater than allowed through normal curbside collection methods.

3.00 COLLECTION SERVICES.

3.1 The Contractor shall provide the following collection services to the City:

3.1.1 Residential Collection. Contractor shall provide alley or curbside collection services of Household Waste from each Residential Account biweekly with at least a three (3) day period between each collection. The City retains an option for weekly collection of Household Waste from Residential Account by giving the Contractor notice of such change by sixty (60) days written notice of such election to Contractor on or before XXXXXXXX XX, XXXX, in which case upon the effective date of the change, the type and size containers for service shall remain the same for customers; Section 7.7 Penalties shall be deleted ; and the initial service rates (subject to adjustments per the Agreement) as set forth in Section 7.1 shall be reduced to 87.57% of the Residential Account amount and shall be reduced to 94.22% of the Underground Residential Account amount as set forth in the section respectively. Contractor shall transport all of the Household Waste it collects pursuant to this agreement to the Otero/Lincoln County Regional Landfill.

3.1.2 Bulky Waste, White Goods, and Rubbish. The Contractor shall provide, at no additional charge, separate collection of Bulky Waste, White Goods, and Rubbish on a call-in basis. Contractor may designate locations, either curbside or alley, for the placement by residents of Bulky Waste, White Goods and Rubbish. The Contractor shall be responsible for picking up any Rubbish placed in plastic bags designed for such use with a capacity not in excess 30 gallons and with a weight limitation of 35 pounds, and un-containerized Bulky Waste securely tied in bundles that does not exceed four (4) feet in length and 35 pounds in weight. The Contractor and the City may by mutual agreement establish other reasonable specifications regulating the size, quality, configuration and placement of Bulky Waste, White Goods and Rubbish eligible for collection. Contractor shall provide a telephone number during collection hours to accommodate requests for collection of Bulky Waste, White

Goods, and Rubbish. A Residential Account may request pickup of such items no more than once every two (2) weeks. If a Residential Account makes such a request more than once during a two (2) week period, removal will be at the requesting party's own cost. The Contractor shall provide the collection of Bulky Waste, White Goods, and Rubbish within fourteen (14) calendar days of such a request. All Bulky Waste, White Goods, and Rubbish shall be delivered to the City Convenience Center for disposal.

3.1.3 Special Collection. Contractor may offer collection services of dead animals, demolition and construction debris, and household hazardous waste from Residential Accounts on a fee-for-service basis. Cost estimates for such collection services shall be provided to the requesting resident at no charge. Disposal of all such waste shall be in accordance with all applicable federal, state or local codes and regulations. The Contractor shall be responsible for billing and collection of payment for all such services.

3.1.4 City-Sponsored Community Events. Contractor shall provide, at no additional charge, two-40 cubic yard roll-off dumpsters for six (6) City-sponsored community events. The waste receptacles shall be delivered and placed at pre-determined locations agreed to by the City and Contractor. If necessary, Contractor shall be responsible for emptying the waste receptacles during the event. Contractor shall transport all of the Municipal Solid Waste it collects pursuant to this Section 3.1.4 of this agreement to the Otero/Lincoln County Regional Landfill and the disposal cost at the landfill shall be paid by the City.

3.1.5 Service to City Facilities. Contractor agrees to collect and dispose of all Municipal Solid Waste at all buildings, parks and other facilities owned by City listed in Exhibit "A", attached hereto and made a part hereof. This service shall not apply to the collection or disposal of any form of solid waste that requires special handling or equipment, or solid waste resulting from natural disasters. The Contractor will be paid for these services in accordance with section 7.00 of this Agreement. Contractor shall transport all of the Municipal Solid Waste it collects pursuant to this Section 3.1.5 of this agreement to the Otero/Lincoln County Regional Landfill and the disposal costs at the landfill shall be paid by the Contractor.

3.1.6 Service to Disabled Customers. The Contractor shall provide curbside or special collection services to Residential Accounts who the City qualifies to receive curbside or special collection service due to a disability. Collection of waste for people with disabilities shall be provided by the Contractor at no extra charge to the customer or to the City. Such service shall be provided to the front door, side yard or back yard, if necessary depending upon the need and request of the customer. The City will identify Residential Accounts that will receive curbside or special collection services due to customer's disability or handicap, and shall so notify the Contractor. The City shall verify the list with the

Contractor annually. For purposes of determining who qualifies for this special service the parties agree that proof of a physical disability shall be by means of a notarized medical certification and further certification that such household does not have any other able-bodied adults in occupancy.

3.1.7 Commercial Collection. Contractor may provide for regular and special collection from commercial accounts within the City. Contractor shall be responsible for collecting all charges associated with commercial collection services.

3.2 Location of Collection Containers. Where alleys are available and accessible, Collection Containers shall be placed within the alley right-of-way and situated to allow for normal and unimpeded travel through the alley. Where alleys do not exist, are un-accessible, or the City and the Contractor have mutually determined that alley collection is not feasible, moveable Polycart containers shall be provided for Curbside Collection. For Curbside Collection, residents shall be required to place the container a minimum of six (6) feet from any mailbox, parked vehicle or any other obstacles, including other waste containers, with the opening facing the street or the center of the alley. Contractor may decline to collect any container not so placed. Any disagreements over correct placement of containers for collection will be determined by the City in accordance with the requirements of this Agreement. The City's decision shall be final and binding. If construction work is being performed in the street or alley, Collection Containers shall be placed at a location that allows for access by the collection vehicle. Contractor may decline to collect any container not so placed. Placement of containers for alley routes shall, where possible, be changed every two (2) years so that the containers will be moved from one side of the alley to the other. If not possible, location of the containers will be periodically changed amongst the residents being served. Contractor will use reasonable efforts to leave the Collection Container in an upright position with the lids closed.. The Collection Containers shall at all times remain the property of Contractor. Any Collection Container damaged by the Contractor will be replaced by the Contractor within five (5) Business Days at no cost to the Residential Account, provided however it shall be the responsibility of the Residential Account to properly use and safeguard the Contractor's Collection Containers.

4.00 GENERAL PERFORMANCE REQUIREMENTS FOR COLLECTION SERVICES AND SERVICE EXPECTATIONS.

4.1 Notification of Improper Set-Outs. The Contractor will be responsible for clearly communicating to a Residential Account, through tagging or other means approved by the City, any legitimate ground for refusal to provide Collection Services for any Household Waste placed by the Residential Account for Collection. Such legitimate grounds are not limited to the failure of the Residential Account to (i) timely place for Collection any Household Waste at the Designated Collection Location in accordance

with this Contract, (ii) the placement of Unacceptable Waste in the Collection Container, (iii) improper placement for Curbside Collection, or (iv) placement of Household Waste outside of a Collection Container.

4.2 Spillage. The Contractor shall pick up any material scattered or spilled during collection and clean up the area affected within twenty-four (24) hours of notification of the incident. The Contractor shall immediately, or within one (1) hour of notification, commence cleanup of any hydraulic, transmission, or other oil spill, or commence cleanup of any spillage which creates a hazardous condition (such as a spillage involving glass).

4.3 Missed and Make-up Collections. Should the Contractor fail to make collections on a scheduled day for causes within the Contractor's control, the Contractor shall make a special make-up collection within twenty-four (24) hours of notification of the missed required collection by either the Customer or the City.

4.4 Unacceptable Waste. The Contractor shall not be required to collect or dispose of Unacceptable Waste set-out by any Residential Account or Customer. Title to Unacceptable Waste shall at all times remain with the generator of such Unacceptable Waste regardless of whether the Unacceptable Waste is loaded or unloaded. Contractor shall, however, notify the Residential Account or Customer of the reasons for rejection of the Waste. Further, the Contractor shall not be required to collect or accept any: a) liquid wastes; b) hazardous or toxic wastes as defined by any statutes, rules or regulations of the New Mexico Environment Department or the Environmental Protection Agency of the United States; c) household wastes, which are defined as wastes, which due to their quantity or concentration, physical, chemical or other characteristics pose a substantial or potential hazard to human health or the environment when improperly stored, treated, disposed or otherwise managed; or d) infectious or medical wastes which are defined as wastes which contain pathogens which can cause disease in humans or animals.

4.5 Overloads or overflows. The 300 - 450 gallon containers shall not be filled with more than 500 pounds of waste. The 90 - 110 gallon polycarts shall not be filled with more than 200 pounds of waste. If either size of container exceeds the specified weight, it shall be deemed to be an overload. Contractor shall collect all overloads or overflows. Charges for collecting any overloads or overflows shall be billed to the City monthly with its normal monthly billing together with a list of the locations of the overloads or overflows. Any waste spilled while emptying an overfilled or overflowed container shall be completely and immediately cleaned up by the Contractor.

4.6 Due Care. The Contractor shall exercise due care and caution in providing the Collection Services so that the City's public and private property, including streets and parking areas, will be protected and preserved. Subject to 4.8 below, Contractor shall be required to repair and/or correct any damage to private or City property occasioned by its operations or equipment. Prompt repair normally shall be deemed to

be accomplished within three (3) working days after the damage is brought to the attention of the Contractor or its representatives. In cases where such damage creates a safety or security hazard, Contractor shall make temporary repairs immediately.

4.7 Hauling. The Contractor shall not litter or cause any spillage to occur upon the premises, roadway or the right-of-way wherein the collection shall occur. During hauling, all Household Waste, Rubbish, Bulky Waste, or White Goods, shall be contained, tied, or enclosed so that leaking, spilling and blowing is prevented. If any Household Waste, Rubbish, Bulky Waste, or White Goods are spilled during Collection, or any spillage or leakage occurs, including but not limited to, spillage or leakage of hydraulic and other fluids from the Collection Vehicle or materials, the Contractor shall promptly cleanup all spilled materials. Each Collection Vehicle shall carry all necessary equipment at all times for this purpose.

4.8 Non-Liability for Surface and Subterranean Damage. The Contractor shall not be liable for any surface or subterranean damage done by its trucks including but not limited to damage to sidewalks, septic tanks, sewer lines, other underground utilities, unless the Contractor's truck is operated in other than the City streets and alleyways or the route required service to specially placed containers. During the term of this Agreement, the City shall maintain the alleyways in a reasonable graded condition. The Contractor is not exempted from liability that results from the lack of maintenance to vehicles or other equipment operated by the contractor or for environmental damage caused by the same.

5.00 TITLE TO WASTE. The Contractor shall hold title and ownership of Household Waste once placed in the designated Collection Container by the Residential Account. Notwithstanding the above, title to Unacceptable Waste shall not pass to the Contractor.

6.00 COLLECTION OPERATIONS

6.1. Contractor Representations and Warranties. The Contractor represents and warrants to the City as follows:

6.1.1 Organization and Qualification. The Contractor is duly incorporated, validly existing and in good standing under the laws of the state of New Mexico, and has all requisite corporate power and authority to enter into and to perform its obligations under this Contract.

6.1.2 Authority: (i) The Contractor has the authority to execute this Contract, to make the representations and warranties set forth in it and to perform the obligations of Contractor under this Contract in accordance with its terms; and (ii) this Contract has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.

6.1.3 Government Authorizations and Consents. The Contractor has or will obtain prior to the commencement date such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Contract.

6.1.4 Compliance With Laws. The Contractor is not in violation of any applicable law, ordinance or regulation the consequence of which will or may materially affect Contractor's ability to perform its obligations under this Contract. The Contractor is not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects its operations or assets in the state of New Mexico, or its ability to perform its obligations under this Contract.

6.1.5 Accuracy of Information. None of the representations or warranties in this Contract, and none of the documents, statements, certificates or schedules furnished or to be furnished by Contractor pursuant hereto or in connection with the performance of the obligations contemplated under this Contract, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.

6.1.6 Independent Examination. In accepting these responsibilities, the Contractor represents and affirms that it has made its own examination of all conditions, facilities and properties affecting the performance of this Contract and of the quantity and expense of labor, equipment, material needed, and of applicable taxes, permits, and laws. The Contractor affirms that within the Collection Area it is aware of the present placement of collection Containers for Garbage. The Contractor represents and warrants that it is capable of continuing to collect these Containers from their present locations.

6.2 Customer List. On the effective date of this Agreement, the City shall prepare a Customer List based on the City's list of Residential Accounts paying for water service which identifies each Residential Account entitled to received Residential Collection Service from the Contractor (the "Customer List"). Thereafter, the City shall provide an electronic list containing the addresses of any Residential Account where Collection Services need to be discontinued, commenced or recommenced. The Contractor shall work with the City to ensure that the Customer List is accurate at all times. The parties shall promptly notify each other if they identify any Residential Customer that should be added or deleted from the Customer List. The City shall revise its Customer List in January of each year.

6.3 Schedule of Collection.

6.3.1 Hours of Operation. Collection of Household Waste shall not start before 7 a.m. or continue after 7 p.m. on the same day. Exceptions to collection hours may be permitted by mutual agreement of the City and Contractor, or when

unusual or unforeseen circumstances requires collection services to extend beyond 7 p.m. Contractor may request that the City grant a variance to these normal hours of operations when special or unforeseen incidents occur. The City may allow or deny, in whole or in part, such a request.

6.3.2 Holidays. The Contractor shall not be required to perform Collection Services or maintain office hours on Holidays. Should the Contractor decide to observe any Holiday, the decision to do so will not relieve the Contractor of its obligation to provide Collection Services twice per week. It shall be the responsibility of the Contractor to provide all affected Customers with a written notice of the change. The notice shall be delivered at least (2) weeks prior to such change. Running a timely announcement in the local paper shall suffice as one means of written notice hereunder.

6.3.3 Collection Routes. Collection routes shall be established by the Contractor. Contractor shall submit a map designating the collection routes to the City for its approval, which approval shall not be unreasonably withheld. Contractor shall publish in the Alamogordo Daily News at its own expense at least once annually a map of its collection routes and schedules. The published map shall be of such size to clearly show all pertinent information. The Contractor may, from time to time, propose changes to routes or days of collection, subject to approval by the City, which approval shall not be unreasonably withheld. Upon City's approval of the proposed changes, Contractor promptly shall give written or published notice to the affected residents. Notice can be sent directly to the residents or included in the resident's monthly billing statement. If requested, the Contractor shall provide an electronic version of its route map and collection schedule to the City for posting on City's website.

6.4 Contractor's Office. Contractor shall maintain an office within in the City an office with local telephone service and such staff as needed to take care of complaints, requests for missed collections, and other coordination with City staff. The office shall be open and available for calls, at minimum, at any time when the Contractor is performing services under the agreement in the City. The office shall contain at least two telephone lines listed to a local or toll-free number listed under the Contractor's name in the City's local telephone directory. The Contractor shall provide at least one trained customer service representative to be on duty in the office at all times that the office is required to be open, to handle complaints and calls for service. The office shall have the ability to communicate with personnel in the field. Any voice mail messages left during normal business hours shall be returned by the Contractor's office staff, management and/or supervisors within sixty (60) minutes falling within normal business hours.

6.5 Personnel Requirements

6.5.1 Qualified Personnel. There shall be no limitation on the size of the Contractor's collection crew so long as they are sufficient to fulfill the

requirements of this Agreement. Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical and other personnel as may be necessary to provide the Collection Services in a safe, economical and efficient manner. All drivers shall be trained and qualified in the operation of Collection Vehicles and must have in effect a valid Commercial Driver's License, of the appropriate class, issued by the State of New Mexico. The Contractor's employees shall be attired in a manner that is professional and as neat and clean as circumstances permit.

6.5.2 Employee Decorum. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by the Contract, Contractor shall take all appropriate corrective measures. If Contractor has received directly or the City has notified Contractor of a complaint related to discourteous or improper behavior, Contractor will consider reassigning the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process.

6.5.3 Safety. The Contractor shall provide and maintain all sanitary and safety accommodations for the use and protection of its employees as may be necessary to provide for their health and welfare and comply with federal, state, and local codes and regulations, as well as those of other bodies and tribunals having jurisdiction.

6.6 Equipment and Containers.

6.6.1 Collection Equipment. The Contractor, at its sole cost and expense, shall provide an adequate number of vehicles, equipment, machines, and labor (the "Equipment"), which are reasonably necessary to collect and transport Household Waste from Residential Accounts serviced by the Contractor in accordance with this Contract. Contractor shall further, at its sole cost and expense, have standby equipment available to regularly complete the daily routes in the event of equipment failure or excessive volumes of collection, which it is obligated to collect and transport in connection with this Agreement. All vehicles and other equipment shall be kept in good repair, free of oil leaks, free from leaking solid waste compartments, clean appearance and in sanitary condition acceptable to the City. Each vehicle operated by Contractor shall have clearly visible on each side the identity and locally listed telephone number of the Contractor. Collection vehicles shall not be parked on City streets overnight except in the case of an emergency. In the event of equipment breakdown, it shall be repaired promptly. If the equipment cannot be repaired promptly, sufficient backup equipment shall be obtained to maintain continuous service. All solid waste collection vehicles, including, substitute vehicles, shall comply with the regulations and licensing of the New Mexico Department of Transportation

and New Mexico Environmental Department, and with applicable local ordinances governing weight and size for the street that must be traveled.

6.6.2 Collection Containers. The Contractor, at its sole cost and expense, shall provide suitable, durable containers for collection of refuse at their cost. Where alleys are available, containers normally shall be of the fixed type with a capacity of 300 to 450 gallons. Contractor shall be responsible for keeping all 300 - 450 gallon containers in a reasonably clean and sanitary condition, and shall wash or exchange the container as often as necessary to maintain reasonably good appearance, sanitary condition and adequate fly control. Where alleys do not exist, or where such containers are not practicable, Contractor, at its sole cost and expense, shall provide 90-110 gallon polycarts for Curbside Collection. Contractor shall not be required to clean the 90-110 gallon polycarts. Instead, it will be the responsibility of Residential Accounts utilizing the 90-110 gallon polycart to clean the container. Contractor shall notify the City if a Residential Account fails to keep the container in a clean, neat, and sanitary condition. Contractor shall not be responsible for any loss, fire damage, or other damage or destruction caused by a Residential Account's negligence or negligent use of any such container.

6.6.3 Container Repair and Replacement. The Contractor shall be responsible for picking up any Containers in need of repair (for whatever reason) and delivering replacement Containers within five (5) business days of notification by the City. The Contractor and the City shall attempt to jointly determine the cause of any container damage. The City will charge any customer for any repair or replacement of any 90-110 gallon polycarts due to damage beyond ordinary wear and tear attributable to the customer. In the event the Contractor is required to replace more than three (3%) percent of the 300 - 450 gallon containers during any Contract Year, such cost will be considered under Section 7.5.4 as a basis for an additional rate adjustment.

6.6.4 Ownership of Equipment. All vehicles, facilities, equipment, and property used in the performance of this Contract shall be wholly owned by the Contractor; provided, that leases, conditional sale contracts, mortgages, or other agreements for the use or financing the purchase of vehicles, facilities, equipment and property may be allowed with the prior written approval of the City.

6.6.5 Use of Equipment: At the end of the contract term if it is not renewed with this Contractor, or if this Contract is terminated by either party for breach, pursuant to Section 18.1 of the agreement, City shall have the right to use Contractor's four automated sideload residential collection trucks and 96 and 300 gallon residential containers in place for a period not to exceed one hundred eighty (180) days to permit the City time to purchase equipment or locate a new contractor to provide solid municipal waste collection within the City. In such event, the City shall insure the equipment for its reasonable fair market value; shall carry General Liability coverage in the amount shown in Section 14

specifically naming Contractor as either primarily covered or as an additional insured; shall compensate the Contractor with payments to be made no less than monthly in advance for the use of such equipment with a return on the fair market value of the equipment calculated based on the return on equity for Contractor's parent company, Waste Connections, Inc. as published in its last public Annual Report; shall during any such period of use of the Contractor's trucks timely perform (and provide proof of same) of all of Contractor's (Waste Connections, Inc.) required preventative maintenance (PMs) as scheduled; and shall return all such equipment to Contractor's facility in Alamogordo in the condition in which it took the equipment less reasonable wear and tear.

6.7 Point of Contact. All dealings and contacts between the Contractor and the City shall be directed by the Contractor to the City Manager or his designee and by the City Manager or his designee to the Contractor.

6.8 Complaints. All complaints shall be handled directly by the Contractor. Each complaint shall be given prompt and courteous attention and shall be resolved within twenty-four (24) hours of receiving the complaint when received during normal business hours. The City will refer to the Contractor any service complaints of which the City becomes aware that are not reported directly to the Contractor. Contractor will be responsible for maintaining a log of all complaints received, and will provide the City with a copy of the log on a monthly basis. Logs shall be submitted to the City by the 10th calendar day of each month. Failure to submit or the untimely submittal of the log will delay the payment of monthly invoices until receipt and will subject the Contractor to the imposition of a penalty. The log will contain at least the following information:

- Customer name and service address;
- Date and time of initial call;
- Date and time of any follow up call(s);
- Type of service complaint; and
- Action taken to satisfy request or resolve complaint.

Failure to remedy the cause of valid complaint shall subject the Contractor to a penalty and may be considered a breach of the contract.

6.9 Service Disputes. The Contractor will designate a representative to adjudicate customer service disputes. At the City's request, the representative will join the City Manager in meeting with an aggrieved customer within twenty-four (24) hours of notification to resolve a complaint about spillage, a refusal to serve or a missed pick-up, container placement, and/or any other issue related to collection services. The City will attempt to mediate and, if necessary, decide the issue, taking into consideration safety of the customer and the Contractor as well as the convenience of the customer and the efficient operation of the Contractor. The decision of the City shall be final and binding.

7.00 PAYMENT AND ADJUSTMENTS TO RATES

7.1 Service Fees. The initial service rate per Residential Account to be paid as a Service Fee to Contractor by the City for the Collection Services shall be \$XX.XX per Residential Account per month. For collection and disposal services required for in ground containers to be performed by Contractor the charges shall be \$ XX.XX per Underground Residential Account. The initial service rate per overload or overflow to be paid as a Service Fee to Contractor by the City shall be \$ XX.XX per overload or overflow. If a Residential Account receives Additional Collection Service whether on a one time or on a regular basis, the Customer shall be charged an additional fee for the additional service. In such cases, the fees for such Additional Service to be paid to the Contractor shall be in accordance with the Rates to be mutually agreed between the parties prior to the commencement of the Additional Collection Service and the billing shall be directly between the Contractor and such Residential customer. All Residential Account Service Fees shall include all Contractor costs required to meet the obligations of this Contract, excluding tipping fees. Fees for other types of special service as described in Section 3.1.3 shall be as negotiated between the Contractor and the Producer. Service Fees to the City will be invoiced and calculated as provided in section 7.3 below.

7.2 City Facilities. The service rate for collection services required to be performed pursuant to Section 3.1.5 (Service to City Facilities) shall be the rates set forth in Exhibit "A", attached hereto and made a part hereof, and shall be subject to adjustment in accordance with Section 7.5 (Adjustments to Service Fee).

7.3 Invoicing. Prior to the effective date of this Contract, the City will provide the Contractor with an electronic list containing the total number of Residential Accounts receiving Collection Services within the Service Area ("Initial Unit Count "). Without additional fees or payments the Contractor shall cooperate with the City in completing the Initial Unit Count and shall provide that electronic stored information in the Contractor's possession or control that is or may be helpful to City in compiling the Initial Unit Count . Thereafter, each month, no later than the fifth (5th) day of each calendar month, the City shall provide an electronic list containing any changes to the Initial Unit Count. No later than the tenth (10th) day of each calendar month, the Contractor shall submit to the City a statement of the Service Fees and Service Fee Adjustments the Contractor believes to be due and owing to Contractor for Collection Services rendered by the Contractor during the previous calendar month (the "Statement of Service Fees").

7.4 Payment/Disputed Fees. Within ten (10) days of receipt of the Statement of Service Fees issued by the Contractor, the City shall notify the Contractor of any dispute it may have with respect to the Contractor's Statement of Service Fees. Subject to any withholdings permitted by this contract, the City shall pay the Contractor any amounts due under the terms of this Agreement within thirty (30) days following the receipt of the Statement of Service Fees. Contractor shall be entitled to payment for services rendered irrespective of whether or not the City collects from the customer for such service.

7.5 Adjustments to Service Fee. The Service Fee shall be adjusted for increases in the CPI-U (as provided in section 7.5.2 below), increases and decreases in cost of Diesel Fuel (as provided in section 7.5.3 below) and increases due to Other

Service Fee Adjustments (as provided in section 7.5.4 below) (collectively "Service Fee Adjustments").

7.5.1. Payment of Adjustments to Service Fees. The Service Fee Adjustments shall be calculated annually by the Contractor and submitted to the City on or before November 1 of each Contract Year commencing November 1, 2012 ("Service Fee Adjustment Notice"). The Service Fee Adjustment for consumer price index under 7.5.2 below, shall be based on the 12 month period from October 1 – September 30 of each year during the Term ("Base Year"). The Service Fee Adjustments (except for those under 7.5.4 which will be effective as of the date approved) will be included in all payments of the Service Fee commencing January 1 of the year following the year in which the Adjustment Notice is submitted to the City, commencing January 1, 2013 ("Service Fee Adjustment Date"). Service Fee Adjustments for any Renewal Term will be made in the same way.

7.5.2 Service Fee CPI-U Adjustment. Compensation payable to the Contractor for collection services shall be adjusted upward annually to reflect 93% of the change in the consumer price index for All Urban Consumers-All Items Index, 1982-1984 equals 100, as published by the U.S. Department of Labor, Bureau of Labor Statistics (CPI-U). Beginning on January 1, 2013 and on each January 1st thereafter, the rates shall be adjusted to reflect the increase, if any, in the CPI-U for the twelve (12) month period of October through September, but such CPI adjustment shall not be greater than three and a half percent (3.5%) per annum without a specific showing that Contractor's costs have exceeded three and a half percent (3.5%)

7.5.3 Service Fee Fuel Adjustment. During the Term (including any extension thereof), the Service Fee shall be adjusted as more fully described herein, as of the Service Fee Adjustment Date of each year during the Term, for increases and decreases in the average weekly cost of No. 2 Diesel Retail Sales by All Sellers for the Rocky Mountain area or region as determined by the U.S. Department of Energy, Energy Information Administration, www.eia.doe.gov (hereinafter called "Index"), for each Base Year over the Base Cost per Gallon of Fuel of \$3.15 per gallon. An adjustment may be made downward from the prior year's Service Fee Fuel Adjustment; provided, however, that in no case shall there every be an adjustment which would have the effect of reducing the Base Cost per Gallon of Fuel below \$3.15 per gallon. The Service Fee Fuel Adjustment shall be based on the 12-month period from October 1 to September 30 of each year during the Term (the "Base Year"). The parties acknowledge that the starting Service Fees related to fuel hereunder as of January 1, 2012 have been based on an agreed starting or initial Base Year rate of \$3.7907 average weekly fuel cost of No. 2 Diesel and the first future Service Fee Fuel Adjustment, if any, shall use this number as the starting place. Further, all Service Fee Fuel Adjustments shall be calculated and applied out to four decimal places (i.e. \$0.0000).

A.) Residential Service. For the purpose of calculating the Service Fee Fuel Adjustment for residential service, Annual Fuel Usage initially shall equal 36,480 gallons; provided, however, this number shall be adjusted upward if Contractor provides written evidence that its actual Annual Fuel Usage for the immediately preceding Base Year exceeded 36,480 gallons (or any higher amount for successive Base Years). To determine the Service Fee Fuel Adjustment for each Base Year, the higher of either the Base Cost per gallon of Fuel (\$3.15) or the weekly average cost of Fuel from the last Service Fee Adjustment Date will be subtracted from the weekly average cost of fuel per gallon for each Base Year as reported on the Index. The positive or negative result, if any, of the immediately preceding calculation (always subject to the \$3.15 floor limitation) will then be multiplied by the quotient of the applicable Annual Fuel Usage divided by 10,400 (the number of Residential Accounts within the City receiving Collection Services for the first year of this Agreement) to obtain the average Per Unit Fuel Adjustment. The resulting number will be divided by 12 to get the monthly Service Fee Fuel Adjustment number. For the purpose of this calculation only, the number of Residential Units within the City will remain fixed at 10,400 during the Term.

The above calculation is represented by the following formula for determining the Serviced Fee Fuel Adjustment to the monthly unit rate:

$$\frac{\text{Annual Fuel Usage} \times a}{10,400} = \text{Per Unit Fuel Adjustment}/12$$

a = the positive or negative result, if any, from subtracting the higher of either the Base Cost per gallon of Fuel (\$3.15) or the weekly average cost of Fuel from the last Service Fee Adjustment Date from the weekly average of Fuel during each Base Year as reported on the Index. In no event shall there be any fuel adjustment applied to the Rates if and while the price of diesel fuel, after any adjustment, shall be below \$3.15 per gallon.

For any applicable period in which there is a positive result from the above calculation or a negative result subject to the limitations herein, the Service Fees set forth in Section 7.1 above, as adjusted from time to time shall be increased (or decreased, subject to the \$3.15 per gallon base or floor limitation) as of the next following Service Fee Adjustment Date by the amount of the above calculated Per Unit Fuel Adjustment, and the same shall remain in effect until the next subsequent Service Fee Adjustment Date.

B.) City Facilities. For the purpose of calculating the Service Fee Fuel Adjustment for City Facilities service, Annual Fuel Usage initially shall equal 1,585 gallons; provided, however, this number shall be adjusted upward if Contractor provides written evidence that its actual Annual Fuel Usage for the immediately preceding

Base Year exceeded 1,585 gallons (or any higher amount for successive Base Years). To determine the Service Fee Fuel Adjustment for each Base Year, the higher of either the Base Cost per gallon of Fuel (\$3.15) or the weekly average cost of Fuel from the last Service Fee Adjustment Date will be subtracted from the weekly average cost of fuel per gallon for each Base Year as reported on the Index. The positive or negative result, if any, of the immediately preceding calculation (always subject to the \$3.15 floor limitation) will then be multiplied by the quotient of the applicable Annual Fuel Usage divided by 3,500 (the number of Residential Accounts equivalents agreed upon between the City and the Contractor for purposes of this computation for the first year of this Agreement) to obtain the average per cubic yard Fuel Adjustment. The resulting number will be divided by 12 to get the monthly Service Fee Fuel Adjustment number. For the purpose of this calculation only, the number of Residential Account equivalents within the City will remain fixed during the Term.

The above calculation is represented by the following formula for determining the Serviced Fee Fuel Adjustment to the monthly rate for City Facilities services calculated or applied based on the total monthly cubic yards provided in the service for each individually charged service at such facility.

$$\frac{\text{Annual Fuel Usage} \times a}{3500} = \text{Per Cu. Yd. Fuel Adjustment}/12$$

The monthly Per Cu. Yd. Fuel Adjustment shall then be multiplied times the total cubic yards per month for each City Facility service and applied as an adjustment to the then current rate (subject to the Base Cost floor).

a = the positive or negative result, if any, from subtracting the higher of either the Base Cost per gallon of Fuel (\$3.15) or the weekly average cost of Fuel from the last Service Fee Adjustment Date from the weekly average of Fuel during each Base Year as reported on the Index. In no event shall there be any fuel adjustment applied to the Rates if and while the price of diesel fuel, after any adjustment, shall be below \$3.15 per gallon.

For any applicable period in which there is a positive result from the above calculation or a negative result subject to the limitations herein, the service rates set forth in or through Section 7. 2 above, as adjusted from time to time shall be increased (or decreased, subject to the \$3.15 per gallon base or floor limitation) as of the next following Service Fee Adjustment Date by the amount of the above calculated Per Unit Fuel Adjustment, and the same shall remain in effect until the next subsequent Service Fee Adjustment Date.

7.5.4 Other Service Fee Adjustments for Extraordinary Circumstances.
At the same time the Contractor submits its Service Fee

Adjustment pursuant to Section 7.5.1., or anytime during the term of the Agreement (provided, however, that Contractor may not request more than two (2) adjustments due to extraordinary circumstances per Operating Year), the Contractor may petition the City for any additional rate adjustments on the basis of the following extraordinary circumstances: (i) any changes in existing, or adoption of new, federal, state, local or administrative laws, rules or regulations that result in an increase in Contractor's costs, including but not limited to the imposition or application of new or the increase to existing governmental, regulatory or administrative taxes or fees; (ii) a significant (greater than ten [10] percent) decrease in the number of units (in either Residential collection or service to City Facilities) serviced; (iii) an adjustment allowed under Paragraph 6.6.3 of this Agreement; and (iv) a change in location of the Disposal Site or an increase of Disposal Site fees. Contractor's application for an extraordinary rate adjustment shall include a statement of the amount of the requested rate adjustment, the basis therefore, and all financial and other records on which Contractor relies for its claim that Contractor's costs have increased. The City shall have the right, as a condition for its approval, to demand inspections by itself or through an independent auditor, of pertinent records that demonstrate the need for such rate adjustment. The City shall promptly consider such petition and the City Council may grant Contractor's requested rate adjustment or, based on the information presented, increase Contractor's rates in amounts differing from Contractor's request. The City shall not be obligated to approve any such increase or to increase it out of the normal sequence of the annual rate adjustment provided in paragraph 7.5.1 above. In the event of either a refusal to grant such extraordinary Service Fee Adjustment allowable hereunder as requested, or the delay of the implementation of such approval until the Service Fee Adjustment Date, the Contractor shall have the option of giving the City one hundred eighty (180) days' notice of cancellation of this Agreement.

7.6 Billing Services. The City shall submit statements to and collect from all Residential Accounts for Collection Services provided by the Contractor plus all applicable fees and taxes. Contractor shall provide the City with all necessary information with which to accurately bill customers for services provided. The Contractor shall submit statements to and collect from all residential accounts for any Special Services provided pursuant to Section 3.1.3. The Contractor shall submit statements to and collect from all Commercial Accounts.

7.7 Penalties. The City shall have the right to assess the penalties listed below in this section against the Contractor for various violations of the Contract

provisions. The City may deduct the following penalties from the monthly payment for the service delivery omissions or acts as described below. Performance Fees will be reasonably applied and may be appealed using the procedures outlined below. The individual deductions for Performance Fees will be documented and will be applied with consideration of the specific circumstances and related events as well as the Contractor's overall performance, including the Contractor's efforts to mitigate impacts of the omission or act.

The City has the right, but not obligation, to assess following penalties:

- Failure to collect waste from a residential within 24 hours after notification by resident or City of a missed collection day.
Penalty: \$200.00/day per residential Account to a maximum penalty equal to 5% of Contractor's monthly charges.
- Failure to respond to a complaint received during normal business hours within 24 hours of receipt (verbal or written).
Penalty: \$200.00/occurrence.
- Failure to supply the City with a written report of complaint resolutions.
Penalty: \$200.00/occurrence.
- Failure to provide a replacement container or container for an added residential Account within five (5) days from notification by the resident or City.
Penalty: \$200.00/day per residential Account
- Repetition of complaints on a route after notification by the City or the customer of spilling, non-collection, crossing planted area, thrown containers, containers blocking driveway, containers in street, leaving trash in container or similar violations.
Penalty: \$200.00/occurrence
- Failure to collect White Goods, Bulky Waste or Rubbish within 24 hours following notification of missed pickup from resident or City.
Penalty: \$200.00/occurrence.
- Collection of solid waste before 7:00 a.m. or after 7:00 p.m. when permission to do so was not granted by the City.
Penalty: \$200.00/occurrence.
- Failure to secure and prevent any leakage of fluids or littering of materials from any collection equipment or vehicle.
Penalty: \$200.00/occurrence.

7.7.1 Appeal. Contractor, within ten days of receiving a notice of an assessment of a penalty, shall have the right to request an informal hearing with the City Manager. Upon receipt of a timely request, the City Manager shall arrange an informal conference with the Contractor to afford it an opportunity to present any evidence or argument it may have regarding the penalty. The City Manager shall have the authority to waive the penalty if he concludes the penalty is not owed. Within seven (7) days after the conference, the City Manager shall give written notice to the Contractor of his final decision. In cases in which no

waiver is granted, the Contractor shall have fifteen (15) calendar days from the date the notice is mailed to appeal the City Manager's decision to the Alamogordo City Commission for a final decision. The decision of the City Commission shall be final and binding. If, pursuant to said appeal, payment of the penalty is ordered, the City may deduct the penalty from the next monthly payment due Contractor.

7.8 Audit of Service Records. Contractor shall maintain appropriate Service records in accordance with industry standards and shall make such Service records available to the City during reasonable business hours after not less than two (2) business days' (i.e., Monday through Friday) notice from the City or its designee requesting access to same. City shall have the right, at reasonable times and in a reasonable manner, to inspect Contractor's books, documents and records for adequate accounting methods and contract compliance. City also may require that an independent, certified audit of Contractor's operations be performed from time to time. Any such audits required by City shall be at City's expense if the last prior audit was less than one year earlier; otherwise, the audit costs shall be borne by Contractor

8.00 CONTRACT PERIOD AND RENEWAL. The Contract shall be for a seven (7) year period beginning on the effective date of the Contract and ending seven (7) years thereafter. The initial seven (7) year term of this Contract automatically shall be extended for one successive additional one (1) year term, unless the City notifies the other party in writing, at least sixty (60) days prior to the expiration of the initial seven (7) year term, of its intention not to extend this Contract. Any such written notice shall be served by certified or registered mail, return receipt requested.

9.00 COMPLIANCE WITH LAWS. The Contractor shall conduct operations under this contract in compliance with all applicable federal, state and local laws, ordinances, rules and regulations, including traffic laws, whether now in effect or adopted or amended hereafter. The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. Failure to comply with applicable federal, state and local laws, ordinances, rules and regulations, including traffic laws, including the provisions of the ADA, shall be a material breach of, and grounds for the termination of, this Contract.

10.00 EFFECTIVE DATE. This Contract shall be effective upon execution of the Contract and performance of such Contract shall begin on the first day of XXXXX

11.00 NON-DISCRIMINATION. The Contractor shall not discriminate against any person because of race, sex, age, creed, color, religion, disability or national origin.

12.00 INDEMNITY. The Contractor shall indemnify, save harmless, and exempt the City, its officers, agents, servants and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney's fees incident to any work done in the performance of this Contract arising out of a willful

or negligent act or omission of the Contractor, its officers, agents, servants and employees; provided, however, that the Contractor shall not be liable for any suits, proceedings, claims, demands, damage expenses and attorney's fees arising out of willful or negligent act or omission of the City, its officers, agents, servants and employees.

13.00 LICENSES AND TAXES. The Contractor shall obtain and maintain all applicable licenses and permits required by federal, state or local agencies (other than the license and permit granted by this Contract) and shall promptly pay all federal, state and local taxes when due.

14.00 INSURANCE.

14.1 Limits of Liability. For the purpose of this Contract, the Contractor shall carry the following types of insurance in at least the limits specified below:

<u>Coverage</u>	<u>Minimum Limits of Liability</u>
Worker's Compensation	Statutory, and in accordance with the Worker's Compensation Act of the State of New Mexico.
Employer's Liability	\$1,000,000 each accident \$1,000,000 each employee \$1,000,000 disease-aggregate
General Liability	\$2,000,000 general aggregate \$2,000,000 products-comp/or aggregate \$1,000,000 personal & adv. injury \$1,000,000 each occurrence \$1,000,000 fire damage
Automobile Liability	\$1,000,000 combined single limit (any auto) or in amounts as required by the New Mexico Tort Claims Act as it may be amended from time to time.

14.2 Coverage following Termination of Agreement: Except for Worker's Compensation insurance, Contractor shall maintain the above coverage for claims arising during the existence of this Contract and any extensions but not made until the twelve-month period following the termination or expiration of the Contract. Nothing contained in this provision shall relieve Contractor of its financial security obligation under any applicable federal, state and local laws and regulations.

15.00 PERFORMANCE AND PAYMENT BOND/LETTER OF CREDIT.

15.1 Prior to the commencement of work under this Agreement the Contractor will furnish and thereafter maintain during the term of this Agreement either a *Letter of Credit* or a corporate *Surety Bond* as security for the performance of this Contract and for the benefit of Contractor's creditors pursuant to this Agreement. Said surety bond or letter of credit must be in the amount of one hundred thousand dollars (\$100,000) and must remain in effect for the first two (2) years of the term of this Contract.

15.2 Premium for the bonds described above shall be paid by the Contractor. A certificate from the surety showing that the bond premiums are paid in full shall accompany the bond.

15.3 If a surety bond is used the surety on the bond shall be a duly authorized corporate surety company authorized to do business in the State of New Mexico and acceptable to the City. If a letter of credit is used the bank issuing the letter of credit shall be a bank authorized to do business in the State of New Mexico and acceptable to the City.

15.4 The attorney-in-fact who signs the bond or letter of credit must file a certificate and effectively dated copy of their power of attorney.

16.00 TRANSFERABILITY OF CONTRACT. No assignment or subcontract of this contract or any change in Contractor's ownership and control shall be made in whole or in part by the Contractor without the express written consent of the City. In the event of any assignment, the assignee shall assume the liability of the Contractor. The City expressly consents to a transfer of the stock of the Contractor to a holding company owned by one or more of the current shareholders of the Contractor and the City expressly consents to the assignment of the right to receive proceeds under this Contract to a financial institution which finances Contractor's equipment or furnishes working capital to the Contractor.

17.00 EXCLUSIVE CONTRACT FOR RESIDENTIAL SERVICE. The Contractor shall have the sole and exclusive franchise, license and privilege to provide Household Waste collection services, and Rubbish, Bulky Waste, and White Goods collection services within the corporate limits of the City of Alamogordo and as specified by the City at the designated Disposal Site.

18.00 BREACH AND TERMINATION FOR CAUSE

18.1. Breach. Either party may terminate this Contract for cause when the other party has breached any provision and fails to cure the breach within a ten-day period following written notice and demand to cure. Breach includes, but is not limited to, failure to make required payments and remittances; failure to provide required service, equipment and facilities; failure to maintain required insurance and bonds; failure to

enforce Ordinances and failure to comply with applicable laws, regulatory requirements and operating procedures.

18.2 Pecuniary Offset Permitted. Notwithstanding any other rights or actions the breaching party may have, which rights or actions are reserved to the parties, the non-breaching party may withhold otherwise required remittances and may cover the costs incurred as a result of such breach from the amounts so withheld. In that event, a strict accounting shall be rendered in writing to the other party within thirty (30) days.

18.3 Right of Self Help. In the event of any breach of a provision of this Agreement, which has not been cured within fifteen days after notice of such breach, the non-defaulting party may cure such breach and shall have the right to collect or offset any costs incurred in effecting such cure.

19.00 PUBLIC NOTIFICATIONS. The City shall, within the constraints of the City's billing system, include with its billing statements such "Notices" as Contractor, at its expense, shall furnish to the City on a timely basis to give information concerning Holiday collection schedules, recycling information, and/or other items relevant to Contractor's scope of operation.

20.00 NON-WAIVER OF POWERS. Nothing in this Agreement shall be taken or held to imply the relinquishment or waiver by the City of its powers to regulate the collection, removal or disposal of municipal solid waste nor delegate its authority to provide for the safety, health and welfare of the public. Further, nothing contained in this Agreement shall constitute, or be construed as constituting, any waiver of any rule, regulation or ordinance heretofore adopted by the City, nor its right to make such charges and amendments of all such rules, regulations or ordinances which the City may, from time to time, deem advisable and necessary for the protection of the public health and general welfare of its citizens.

21.00 MISCELLANEOUS PROVISIONS.

21.1 Integration and Amendments. This Agreement constitutes the full and entire understanding of the parties in relation to the subject matter herein and shall not be amended except by a written instrument executed by both parties hereto.

21.2 Applicable Law. The law of the State of New Mexico and the ordinances of the City of Alamogordo, New Mexico shall govern this agreement and the Contractor agrees, in the conduct of providing service under this Agreement, to comply with all applicable Federal and State and City regulations, ordinances and laws.

21.3 Force Majeure. Neither Party shall be liable for failure to perform their duties nor for any resultant damage or loss if such failure is caused by catastrophe, riot, war, governmental order or regulation, strike, fire, accident, act of God or other similar or different contingency beyond the reasonable control of the party who fails to perform.

21.4 Partial Invalidity. In the event any provision or portion of this Agreement shall be found invalid or unenforceable, this Agreement shall be reformed in accordance with applicable law excluding such invalid or unenforceable provision(s), but any such partial invalidity shall not effect the validity and enforceability of any such provision or portion of the Agreement unless the purpose of the Agreement is rendered impossible.

21.5 Venue. Venue for any action brought under this Agreement shall be Otero County, New Mexico.

21.6 Notices. Any notices required to be given under this Agreement shall be given to:

The City of Alamogordo
c/o City Clerk
1376 East Ninth Street
Alamogordo, New Mexico 88310

If to the Contractor:

With copy to:

or to such other addresses as the parties may designate to each other in writing from time to time.

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized representatives on the day and year first above written.

By: _____

ATTEST:

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Brian Cesar, Interim City Manager

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney