

**AGREEMENT FOR
TRANSFER STATION OPERATION, HAULING, AND DISPOSAL SERVICES**

**between the
CITY OF OLATHE**

**and
N.R. Hamm Quarry, LLC**

THIS AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2020 (the "Effective Date"), by and between the City of Olathe ("City"), a political subdivision of the State of Kansas, and N.R. Hamm Quarry, LLC _____, a limited liability _____ corporation (the "Contractor").

RECITALS

WHEREAS, City is a major generator of solid waste collected within the City and is authorized to provide for collection and disposal of Solid Waste or contract thereof; and,

WHEREAS, City issued a Request for Proposals for Transfer Station Operation, Hauling, and Disposal Services ("RFP"); and,

WHEREAS, Contractor submitted a proposal in response to the RFP on or before the due date and time; and,

WHEREAS, City received and evaluated the proposals in response to the RFP; and,

WHEREAS, City desires to hire Contractor to provide services specified hereinafter to fulfill its responsibilities under Kansas law; and,

WHEREAS, Contractor has a sanitary landfill permit as required by Kansas law and desires a steady stream of waste to support its investment in providing the services specified; and,

WHEREAS, City and Contractor desire to develop policies and procedures to facilitate efficient and affordable disposal of Construction and Demolition Waste at Contractor's Olathe facility; and,

WHEREAS, Contractor desires to provide those services specified hereinafter; and,

NOW, THEREFORE, in consideration of the mutual agreements and covenants hereinafter contained the Parties hereby agree to as follows:

SECTION 1: DEFINITIONS.

As used herein, the capitalized terms, phrases, words, and their derivations shall have the meanings as set forth herein. The following terms may appear in the text of this Agreement with either upper case or lower case first letters in each word.

Acceptable Solid Waste. Solid waste excluding Special Waste.

Applicable Law. Any permits, licenses and approvals issued for or with respect to Contractor, equipment

utilized by Contractor, properties (or any component thereof) utilized by Contractor, or the performance of Contractor's obligations hereunder, and any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard, or similarly binding authority, which in any case, is or shall be enacted, adopted, promulgated, issued, or enforced by a governmental body, regulatory agency and/or court of competent jurisdiction that relates to or affects City, Contractor, any of their equipment or any properties (or any component thereof) utilized by Contractor, for the performance of Contractor's obligations hereunder.

City. The City of Olathe, Kansas.

City Council. The governing body of the City of Olathe, Kansas.

City Vehicle. Vehicles that collect, transport, and deliver materials collected through City operations, including Solid Waste and Recyclable Materials.

Commencement Date. The date on which the Contractor shall begin providing Transfer Station Operation, Hauling, and Disposal Services. The Commencement Date for Transfer Station Operation, Hauling, and Disposal Services shall be October 1, 2020.

Construction and Demolition Waste. Solid Waste resulting from the construction, remodeling, repair and demolition of structures, roads, sidewalks and utilities; untreated wood and untreated sawdust from any source; treated wood from construction or demolition projects; small amounts of municipal Solid Waste generated by the consumption of food and drinks at construction or demolition sites, including, but not limited to, cups, bags, and bottles; furniture and appliances from which ozone depleting chlorofluorocarbons have been removed in accordance with the provisions of the federal clean air act; Solid Waste consisting of motor vehicle window glass; and Solid Waste consisting of vegetation from land clearing and grubbing, utility maintenance, and seasonal or storm-related cleanup. Such wastes include, but are not limited to, bricks, concrete and other masonry materials, roofing materials, soil, rock, wood, wood products, wall or floor coverings, plaster, drywall, plumbing fixtures, electrical wiring, electrical components containing no hazardous materials, non-asbestos insulation and construction related packaging. "Construction and Demolition Waste" shall not include waste material containing friable asbestos, garbage, furniture, and appliances from which ozone depleting chlorofluorocarbons have not been removed in accordance with the provisions of the federal clean air act, electrical equipment containing hazardous materials, tires, drums, and containers even though such wastes resulted from construction and demolition activities. Clean rubble that is mixed with other Construction and Demolition Waste during demolition or transportation shall be considered to be Construction and Demolition Waste.

Contract Administrator. The person, or his designee, designated by City to administer and monitor the provisions of this Agreement.

Contractor. N.R. Hamm Quarry, L.L.C.

Customer. Means (i) City or (ii) any other person approved, in writing, by City for receipt of services from the Contractor via the City Transfer Station.

Disposal, Dispose, Disposed. The deposit of any material at a Disposal Site permitted or authorized to manage such materials.

Disposal Site. Any area permitted under all Applicable Laws and regulations for the Disposal of Solid Waste from more than one residential premises, or one or more commercial, industrial, manufacturing or municipal operations.

Loss. For purposes of indemnification requirements described in Section 42, any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or

otherwise (including reasonable attorney's fees and the cost of defense), in connection with any action, proceeding, demand, or claim for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with the performance of any contract which results from this Agreement.

Public Disposal Area. Area within the Transfer Station for self-haul customers to dispose of Solid Waste from vehicles unsuitable for the tipping floor of the Transfer Building.

Solid Waste. Garbage, refuse, and other discarded materials, including, but not limited to, solid, semisolid, sludges, liquid and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. Solid Waste does not include waste tires as defined by subsection (m) of K.S.A. 65-3424, and amendments thereto, hazardous wastes as defined by subsection (f) of K.S.A. 65-3430, and amendments thereto, recyclables or the waste of domestic animals as described by subsection (a)(1) of K.S.A. 65-3409, and amendments thereto.

Special Waste. Non-hazardous Solid Waste which requires special handling and documentation including, but not limited to, contaminated soil, sludge, and asbestos-containing material.

Transfer Building. The enclosed building being a part of the City's Transfer Station.

Transfer Station. The facility owned by the City and located at 1681 South Valley Road, Olathe, KS 66061 where Solid Wastes are consolidated prior to being transported to a final Disposal Site.

Transfer Station Operation, Hauling, and Disposal Services. The operating of the City's Transfer Station including, but not limited to, loading and consolidating waste received at the City's Transfer Station in trailers Contractor provides, shuttling empty and full trailers between the trailer parking area(s) and the Transfer Building loading chute; and hauling waste and Disposing of waste from the Transfer Station at the Disposal Site. Transfer Station Operation, Hauling, and Disposal Services exclude any services explicitly designated in the Agreement as the responsibility of the City. In addition, Transfer Station Operation, Hauling, and Disposal Services exclude any services explicitly designated in writing by the City from time to time as the responsibility of the City for the time period specified by the City.

Transfer Facility. Any facility which may be utilized as a Delivery Facility in accordance with the requirements of this Agreement, at which the City may deliver and the Contractor may accept Program Recyclable Materials for consolidation prior to being transported to a MRF for Processing.

Unaccepted Waste. A portion of a Load that does not comply with the requirements of this Agreement.

SECTION 2: TERM OF AGREEMENT.

This Agreement shall become effective at 12:00 AM, Central Time on the Effective Date. The Contractor shall commence Transfer Operating Services and Disposal Services at 12:00 AM, Central Time on the Commencement Date and shall terminate on September 30, 2025 at 11:59 PM, Central Time. Provided, however, that the term of this Agreement may be extended or renewed for up to (10) ten additional years through two (2) five (5)-year periods. The City reserves the right to extend the Agreement under the same terms and conditions from date of expiration provided such extensions are mutually agreeable to the City and the Contractor and if funds are available to support the continuation of the Agreement. The City and Contractor will have the opportunity to review and consider adjustments to the Annual Rate Adjustment formula (as detailed in Section 27) prior to executing an extension to this Agreement. Any proposed changes to the Annual Rate Adjustment formula upon Agreement renewal will be through an Agreement amendment between the City and Contractor not later than one calendar year prior to expiration of the existing term. Both parties affirmatively commit to begin discussing any proposed changes to the Annual Rate Adjustment at least 18 months prior to expiration of the existing term. To

exercise an optional renewal term, City shall provide written notice to the Contractor not later than one hundred eighty (180) calendar days preceding the scheduled date of expiration of the City's intent to exercise the renewal term. This Agreement or any portion thereof, shall not be sublet without the written consent of the City of Olathe.

SECTION 3: RIGHT TO USE CITY TRANSFER STATION.

- 3.1 Transfer Station Operating Services to City.** City grants Contractor the right to use the City Transfer Station for provision of Transfer Station Operating Services to City pursuant to this Agreement. City shall retain ownership of the City Transfer Station during the term of this Agreement and afterwards.
- 3.2 Transfer Station Operating Services to Other Customers.** Contractor shall provide Operation, Hauling, and Disposal Services at the City Transfer Station to all Customers approved by City provided that all safety requirements agreed upon between Contractor and City are followed. All Customers must complete the transaction, including, but not limited to weighing the vehicle, at the City Transfer Station scale house prior to delivering any materials to the Transfer Building.

SECTION 4: EXCLUSIVE TRANSFER STATION OPERATION INCLUDING CONSOLIDATED WASTE HAULING, AND DISPOSAL SERVICES.

Excluding Construction and Demolition Waste and Special Waste, the City shall use its best efforts to cause all Solid Waste collected by or on behalf of the City to be delivered to the City's Transfer Station. City solid waste operations include:

- (i) Residential Solid Waste collection;
- (ii) Commercial front-load Solid Waste collection;
- (iii) Commercial roll-off Solid Waste collection; and
- (iv) Any other Solid Waste collection program operated by the City.

Excluding (i) items separated from Solid Waste loads as required by KDOT and/or the City, (ii) Construction and Demolition Waste as determined solely by the City, and (iii) and Special Waste, the Contractor shall be the exclusive provider of Transfer Station Operation, Hauling, and Disposal Services for waste accepted at the Transfer Station. For materials excluded, Contractor shall manage such materials in accordance with this Agreement.

This provision in no way guarantees any minimum amount of Acceptable Solid Waste.

At the sole option of the City, the City may deliver Construction and Demolition Waste to the Contractor's Construction and Demolition Waste Landfill. As the owner-operator of the Olathe Construction Demolition Landfill, Hamm will work with City to craft a phased Construction and Demolition Waste diversion plan wherein Construction and Demolition Waste flows will be directed to the Hamm C&D Landfill in Olathe. Diversion of Construction and Demolition Waste will provide increased value for the City of Olathe, improving efficiency, providing cost savings, sustainability improvements, and longer service life of the Transfer Station. Hamm C&D Landfill fee is eighteen dollars (\$18) per ton. Hamm is not requiring all Construction and Demolition Waste received at the Transfer Station to be disposed of at the C&D Landfill; City and Contractor agree to work toward that goal by December 31, 2020. The Contractor shall inspect the material at the City's Transfer Station and approve the load to be transported, by the City, to the Hamm C&D Landfill.

SECTION 5: ESTABLISHMENT OF DIVERSION PROGRAMS.

- 5.1 City's Right to Establish Diversion Programs.** Contractor and City agree that City reserves the right to establish Diversion programs. Contractor and City agree that nothing contained in this Agreement shall be construed to prevent City from establishing diversion programs that reuse, Recycle, Compost, or otherwise divert all or a portion of Acceptable Waste collected by or on behalf of City. Any diversion programs which impact more than twenty percent (20%) of waste stream require both parties to discuss adverse transfer station impacts and negotiate adjustment to rates in good faith. Such impacts shall be measured by a 300-day rolling average.
- 5.2 Contractor's Right to Establish Diversion Programs.** Contractor shall not reuse, Recycle, Compost, or otherwise divert any materials Contractor receives title to via this Agreement without prior written approval of City.

SECTION 6: PROVISION OF TRANSFER STATION OPERATION, HAULING, AND DISPOSAL SERVICES.

City Transfer Station. The City shall provide the City's Transfer Station for the provision Transfer Station Operation, Hauling, and Disposal Services by the Contractor. Excluding items separated from Solid Waste loads as required by the KDOT and/or the City, the Contractor shall be responsible for providing the following services in accordance with the Agreement, and local, state and federal mandates:

- (i) Loading and consolidating waste received at the City's Transfer Station in trailers Contractor provides;
- (ii) Shuttling empty and full trailers between the trailer parking area(s) and the Transfer Building loading chute; and
- (iii) Hauling waste from the Transfer Station and Disposing of waste at the Disposal Site in accordance with this Agreement, and local, state and federal mandates.

SECTION 7: CAPACITY OF TRANSFER STATION AND DISPOSAL SITE.

- 7.1 Capacity of Transfer Station and Hauling Operations.** The Contractor shall ensure a daily capacity of 500 tons per operating day. In the event that the Solid Waste accepted at the Transfer Station exceeds the 500 tons per operating day, the City reserves the right to restrict the use of the Transfer Station by persons or customers other than the City to ensure sufficient capacity for Solid Waste generated from City operations.
- 7.2 Capacity of Disposal Site.** The Contractor shall ensure sufficient capacity at a Disposal Site(s) for all Solid Waste delivered from the Transfer Station. In addition, the Contractor shall identify an alternative Disposal Site. The Contractor shall provide proof of a minimum capacity of 8,000 tons per month at the alternative Disposal Site.

SECTION 8: INSPECTION OF LOADS AND UNACCEPTED WASTE.

- 8.1 Right to Inspect Loads.** Contractor may inspect for compliance with this Agreement each load upon discharge at the Transfer Building at the City Transfer Station.
- 8.2 Procedures for Unaccepted Waste.**
- (a) **Reasons for Unaccepted Waste.** Prior to departure from the City Transfer Station of the vehicle delivering such Load containing Unaccepted Waste, Contractor may designate that portion of a Load as Unaccepted Waste for the following reasons:
- (i) Portion of a Load contains material not allowed by Applicable Law to be accepted at City Transfer Station or the Disposal Site; and

- (ii) Portion of a Load contains material that does not meet the definition of Acceptable Solid Waste under this Agreement.
- (iii) Portion of a Load contains material which is hazardous or creates hazardous conditions.

Contractor may not designate any portion of a Load as Unaccepted Waste for any reason other than those identified in this section, Section 8.2(a).

(b) Notice of Unaccepted Waste. If Contractor designates a portion of a Load as Unaccepted Waste, Contractor shall provide written notice to the Contract Administrator within Two (2) hours of discharge at (i) the City Transfer Station if Customer delivers Load to City Transfer Station or (ii) the Disposal Site if City delivers Load to Disposal Site. Contractor shall provide detailed description and photographs evidencing the reason the portion of the Load was designated as an Unaccepted Waste. Contractor shall maintain the Unaccepted Waste separately from other material to afford City the right to inspect as provided in Section 8.2(c) of this Agreement. If Contractor fails to provide notice in accordance with this Section, Contractor shall accept the Unaccepted Waste. For purposes of this section 8.2(b), written notice to the Contract Administrator shall be made to the Contract Administrator's business email address.

(c) Right to Inspect Unaccepted Waste. Contractor shall retain the Unaccepted Waste for Eight (8) hours after receipt of written notice of Unaccepted Waste by Contract Administrator. The Contract Administrator may waive the right to inspect the contents of the Unaccepted Waste. Failure to inspect the contents of the Unaccepted Waste within this timeframe shall be deemed a waiver of the right to inspect the contents of the Unaccepted Waste. Any Unaccepted Waste not removed by City from Transfer Building prior to closing hour shall not be subject to penalty of Contractor due to waste remaining on Transfer Station floor overnight.

(d) Costs of Unaccepted Waste. City shall manage and handle disposal of the contents of the Unaccepted Waste. City shall not reimburse Contractor for any costs associated with the Unaccepted Waste, unless otherwise prior approved by City in writing.

SECTION 9: DAMAGE TO PROPERTY.

Contractor shall take all necessary precautions to protect public and private property during the performance of this Agreement. Contractor shall repair or replace any private or public property at the Transfer Station which is damaged by Contractor. If the loss or damage is expected to be in excess of One Thousand Dollars (\$1,000), Contractor shall notify the Contract Administrator of damage to private or public property at the Transfer Station within forty-eight (48) hours of the earlier of knowledge or notice to Contractor of such damage. In addition, Contractor shall make a reasonable effort to contact the owner of the private or public property which is damaged at the Transfer Station within forty-eight (48) hours of the earlier of knowledge or notice to Contractor of such damage. Such property damages caused by Contractor shall be resolved by Contractor either by repair or replacement, at no charge to the property owner, within a reasonable amount of time agreed upon by property owner, City and Contractor, and any replacement of property shall be accomplished with property of the same or equivalent value at the time of the damage.

If Contractor fails to address the repair or replacement of damaged public or private property at the Transfer Station within agreed upon timeframe, and the Contract Administrator and/or City receives a complaint and/or claim from the damaged party, the Contract Administrator may, but shall not be obligated to repair or replace such damaged property, and the cost of doing so shall be deducted from

payments to be made to Contractor by City.

In the event of a casualty loss to the Transfer Station, which either substantially interferes with the Transfer Station Operating Services or results in temporary closure, for which neither party is responsible, City shall restore the Transfer Station as soon as reasonably practicable. Provided that the Transfer Station is completely closed during any restoration period, City will not compensate Contractor for operating the Transfer Station during the restoration period but will direct haul to the Disposal Site so long as the Disposal Site is operational (subject to Force Majeure), or the City will direct haul to a mutually agreed upon alternate location.

SECTION 10: MAINTENANCE OF TRANSFER STATION.

The Contractor shall maintain the Transfer Station in a clean and orderly manner so as to minimize litter and odor. The City shall maintain the landscaping at the Transfer Station which shall include regular grass cutting and shall maintain the scale house including the customer scale. The Contractor shall be solely responsible for maintaining the Transfer Station so as to meet all current and future local, state or federal governmental mandates, except to the extent that such mandates require repair, replacement, or other modification beyond routine maintenance, which shall be the sole responsibility of the City. Hamm shall be responsible for preventative maintenance and minor repairs of the equipment provided by the City, including: material handler hoses, grease, oil and filters; Transfer Building scale calibration and cleaning; routine preventative office maintenance; and door lubrication.

SECTION 11: CITY TRANSFER STATION SURVEY.

Prior to the Commencement Date and annually thereafter, City shall retain a consultant experienced in the operation of waste transfer stations, reasonably approved by Contractor, to perform an inspection report. The inspection report will include all City-provided equipment and the Transfer Building at the Transfer Station. Such inspection report will include, but not be limited to, the tipping floor, scales, doors, and knuckle boom. The inspection report will also include the various areas used by Contractor at the Transfer Station in performance of its obligations hereunder, including, but not limited to, the Transfer Building and trailer storage areas at the Transfer Station. Contractor agrees to reimburse City up to fifty percent (50%) up to \$5,000 of the cost of engaging such consultant. The inspection report will review whether the City-provided Equipment, Transfer Building, and areas used by Contractor or City's prior contractor has been operated and maintained in accordance with industry standards and not subject to excess wear and tear. If the inspection report determines that the City-provided Equipment, Transfer Building, and areas used by Contractor were not operated in accordance with Agreement and industry standards and not subject to excess wear and tear, Contractor, at its sole expense, will promptly address the issues identified in the inspection report if inspection report identifies issues are caused by Contractor. The inspection report will include an update to confirm whether such issues have been addressed. For purposes of the inspection report performed prior to Commencement Date, City, at its sole expense, will promptly address issues identified in the inspection report caused by the City or by City's prior contractor. The initial inspection report will include an update to confirm whether such issues have been addressed.

SECTION 12: CAPITAL IMPROVEMENTS TO TRANSFER STATION.

The City is solely responsible for assessing the need for and performing capital improvements to the City Transfer Station during the term of the Agreement. The City has previously identified the need for an expansion to the Transfer Station to provide for the increasing volume of Solid Waste, improvement of site circulation, and potentially allow for the separation of material types on-site. This expansion is expected to occur during the initial Agreement term or renewal period.

In the event capital improvements require the temporary closure of the Transfer Station, the City will work with the Contractor to minimize any impacts of the capital improvements. The City will not be liable to

the Contractor for any costs, lost revenues, or other monetary damages due to performing capital improvements to the City's Transfer Station.

The City may implement the improvements itself, working with design consultants and construction contractors and vendors where appropriate, or it may ask the Contractor to undertake some or all of the improvements through a negotiated design-build process.

SECTION 13: TRANSFER STATION PUBLIC DISPOSAL AREA.

The City will continue to operate and maintain the Public Disposal Area. The City shall be responsible for hauling the roll-off dumpsters from the Public Disposal Area to the Transfer Building tipping floor. City and contractor agree to develop and implement a plan to divert Construction and Demolition Waste by December 31, 2020.

SECTION 14: TRANSFER STATION PRIORITY ACCESS.

The Contractor shall provide priority access to the City during all hours of the Transfer Station's operation. "Priority Access" means that at any time during the hours of operation, City Vehicles will be allowed to simultaneously discharge materials prior to other non-City vehicles.

SECTION 15: TRANSFER STATION VEHICLE TURN AROUND TIME REQUIREMENTS.

The Contractor shall operate the Transfer Station so as to provide a vehicle turn-around time not to exceed ten (10) minutes for City Vehicles. The average vehicle turn-around time shall be calculated quarterly as follows:

- (i) Commencement time shall be upon City Vehicle leaving the scale house for the Transfer Building; and
- (II) End time shall be upon City Vehicle exiting the gates of the Transfer Station.
- (III) Any problems with discharge of waste from vehicles, queuing at the return scale, or other adverse conditions not within the Contractor's control shall be deducted from calculation.

SECTION 16: ACCEPTABLE MATERIALS, REJECTED LOADS, AND OWNERSHIP OF MATERIALS AT TRANSFER STATION.

16.1 Acceptable Materials.

The Contractor is required to accept Acceptable Solid Waste at the Transfer Station. If the City authorizes acceptance of other Solid Waste, the City reserves the right to restrict the use of the Transfer Station to accept such materials to ensure sufficient capacity for Solid Waste generated from City operations.

16.2 Screening/Separating Materials.

Contractor shall screen/separate all materials from Applicable Solid Waste as required by Applicable Law or City as safe practices allow. Upon the Commencement Date, Contractor shall screen/separate the following materials from Solid Waste:

- (i) Tires; and
- (ii) Freon containing appliances.

The City may modify the specified materials to be screened/separated from Solid Waste by the Contractor, at no additional cost to the City.

16.3 Rejected Loads.

The Contractor may reject a load that contains materials other than Acceptable Solid Waste or other materials authorized by City for Contractor to accept. To reject a load, the Contractor must

immediately notify the hauler prior to the hauler leaving the Transfer Station that the load is rejected and the reason for rejecting the load. If the hauler and the Contractor are unable to agree as to the designation of a load as rejected, the City shall make the final determination. Neither the Contractor nor the City will be responsible for any costs associated with rejected loads. If a load is not rejected in accordance with this section, the Contractor shall be deemed to have accepted the load.

SECTION 17: TRANSFER STATION OPERATION, HAULING AND DISPOSAL SERVICES.

- 17.1 Operations and Communications Plan.** No later than thirty (30) calendar days prior to the Commencement Date, Contractor shall submit to the City for approval an Operations and Communications Plan, consistent with the requirements as set forth in the Agreement.
- 17.2 Scale Facility Operations.** The City shall be responsible for operation of the scale house at the Transfer Station. The scale house is equipped with a single, bi-directional vehicle scale to weigh vehicles entering and leaving the Transfer Station. The City will be responsible for normal maintenance and calibration of the scale at the scale house in accordance with the scale manufacturer's recommendations. The Contractor shall be responsible for operation of the scale in the Transfer Building and scale house at the Disposal Site including, but not limited to, semi-annual certified calibration and normal maintenance and calibration of the scale in accordance with the scale manufacturer's recommendations.
- 17.3 Public Disposal Area Operations.** The Public Disposal Area will be operated in conformance with Section 13. City and Contractor agree to develop and implement a plan to divert Construction and Demolition Waste by December 31, 2020.
- 17.4 Hauling and Disposal of Solid Waste.** Excluding items separated from loads as required by the City, the Contractor shall be solely responsible for transporting of materials accepted at the Transfer Station to a Disposal Site in accordance with this Agreement and local, state and federal mandates. The City shall be solely responsible for transferring and Recycling or Disposal of items separated from loads as required by the City. The Contractor will be solely responsible for receiving waste delivered by the Contractor and Disposing of that waste in accordance with this Agreement and local, state and federal mandates.

SECTION 18: SPILLAGE, LEAKAGE, TILLER AND ODOR, AND OTHER NUISANCES.

- 18.1 Spillage and Leakage.** Contractor shall clean up any materials including leakage of fluids spilled from Contractor's equipment, or by Contractor's employees or subcontractors while performing services pursuant to this Agreement. Contractor shall take reasonable steps to ensure all materials shall be contained, covered and enclosed so that leaking, spilling, and blowing of materials does not occur. Contractor shall tarp all Transfer Trailers prior to exiting Transfer Building and when Transfer Trailers containing any Solid Waste are outside the Transfer Building. Contractor shall be responsible for the cleanup of any spillage or leakage caused by Contractor's equipment or Contractor's employees or subcontractors. Contractor shall perform all clean-ups within two (2) hours of the earlier of either the (i) notification of spillage or leakage or (ii) knowledge of spillage or leakage by Contractor or Contractor's employees or subcontractors.
- 18.2 Litter.** Contractor shall be required to pick up any and all litter caused by the Contractor's provision of services in connection with the Agreement.

18.3 Odor. Contractor shall maintain City Transfer Station and Disposal Site and equipment found in City in a manner that minimizes odors.

18.4 Other Nuisances. Contractor shall ensure nuisances are not caused by Contractor's equipment, or by Contractor's employees or subcontractors while performing services pursuant to the Agreement.

SECTION 19: COMPLAINTS, ACCIDENTS, VIOLATIONS.

For each complaint, accident or violation, Contractor shall prepare a report including:

- (i) Date and time complaint, accident, or violation;
- (ii) Identification of the person/entity who issued the complaint or violation or person involved in the accident;
- (iii) Contractor's opinion of the complaint, accident, or violation as legitimate or nonlegitimate;
- (iv) Date, time and action taken to resolve complaint, accident, or violation;
- (v) Name of responsible contact at Contractor's location regarding the, accident, or violation; and
- (vi) Measures taken to prevent such future complaint, accident, or violation.

Contractor shall submit the report, in a format approved by the City, to City prior to 10:00 AM, Central Time Zone on the day following complaint, accident, or violation and shall maintain a database of all complaints, accidents, or violations.

City shall review the complaint report and provide approval to the Contractor that the complaint has been resolved to their satisfaction.

SECTION 20: STAFFING REQUIREMENTS/PERSONNEL.

20.1 Provision of Staff by the City. The City will provide the following staff in support of this Agreement:

- (i) Scale Facility Operator: The Scale Facility Operator shall oversee weighing of vehicles, collection of fees, and other related tasks as determined by the City;
- (ii) Maintenance Worker: Notwithstanding anything contained in this Agreement to the contrary, the Maintenance Worker shall be responsible for maintenance, litter control, and general groundskeeping of the Transfer Station site, excluding the Transfer Station building. The Maintenance Worker shall also be responsible for hauling roll-offs from the Public Disposal Area to the Transfer Building tipping floor and address any questions or issues regarding the Public Disposal Area; and
- (iii) Facility Manager: The Facility Manager shall oversee and manage the work of the Scale House Operator and Maintenance Worker and be the primary point of contact for the Contractor pursuant to the provision of services. The Facility Manager is the City's Solid Waste Manager and will not maintain an office at the Transfer Station.

20.2 Provision of Staff by the Contractor. Excluding staff required to be provided by the City as set forth in Section 20.1, the Contractor shall be solely responsible for providing three (3) staff to provide services in accordance with the Agreement, industry standards, and federal, state, and local requirements. At a minimum, the Contractor shall dedicate two full time, on-site staff to operate the Transfer Station.

Contractor shall assign a qualified person or persons to be in charge of its operations within the City, and provide the name, office telephone number, mobile phone number, e-mail address, and fax number of the Contractor's key personnel to the City. Key personnel shall include, at a

minimum, the Transfer Station Manager and Disposal Site Manager. Such records shall be updated as personnel or contact information changes. In addition, the Contractor shall adhere to the following requirements:

- (i) The Contractor shall provide regularly scheduled, on-going operating and safety training for all of its Transfer Station employees. Training manuals and schedules shall be maintained by the Contractor and available for review at any time by the City; and
- (ii) The Contractor's employees shall treat all customers, co-workers, City employees and any individual with whom they come in contact in the performance of their duties in a polite and courteous manner. The City reserves the right to direct the Contractor to remove any employee who violates this requirement from providing services to the City.

SECTION 21: EQUIPMENT REQUIREMENTS.

The City shall provide the following equipment that will be utilized by the Contractor for provision of services:

- (i) Knuckleboom Crane: BUILT RITE Handler 2100SE, manufactured by Northshore Handler, purchased and installed in 2017; and
- (ii) Transfer Trailer Scale: Two Rice Lake OTR Scales 11 feet wide by 35 feet long (70 feet total length), installed in the topload bay of the Transfer Building January 2012.

Throughout the course of the Agreement, and upon expiration of the Agreement for operation of the Transfer Station, the City will retain title to the Transfer Station and the equipment listed above.

The Contractor shall be solely responsible for providing any other equipment required to provide the services in accordance with this Agreement, industry standards, and Applicable Law beyond those listed above. At a minimum, the Contractor shall dedicate the following equipment to operate the Transfer Station:

- (i) One (1) rubber-tired loader;
- (ii) One (1) yard tractor;
- (iii) A sufficient number of open-top, 120 cubic yard or more capacity transfer trailers suitably configured so that they are capable of carrying legal payloads of not less than twenty-one (21) tons of consolidated mixed municipal waste to meet the turnaround times described in Section 15;
- (iv) A sufficient number of transfer trailer tractors to meet the turnaround times described in Section 15.

Contractor shall be solely responsible for ongoing maintenance costs for all equipment it supplies and uses in the provision of services. The Contractor shall be responsible for scheduled and preventative maintenance of the equipment provided by the City as listed in this Section, including periodic recalibration of the transfer trailer scales.

SECTION 22: STORAGE OF SOLID WASTE.

The Contractor shall store Solid Waste within the enclosed area of the Transfer Station during operating hours. There shall be no Solid Waste remaining on the Transfer Station floor at the end of the working day. The Contractor shall exercise care so as to prevent windblown litter or other nuisance issues from occurring as a result of stored waste and/or receiving and loadout operations. Tarping of open top trailers shall occur before exiting the Transfer Station enclosure or within the area protected by litter fencing.

SECTION 23: UTILITIES.

The City shall be responsible for the cost of utilities for the scale house. Excluding utilities at the scale house, the Contractor shall be responsible for the cost of all other utilities at the Transfer Station including the water/sewer service, electric service, and phone service.

SECTION 24: PROPERTY TAXES.

The City is responsible for any property taxes.

SECTION 25: FEES AT CITY'S TRANSFER STATION.

The City has the sole responsibility and right to determine and charge fees at the Transfer Station during the term of the Agreement.

The City reserves the right to determine and charge persons different fees at the Transfer Station during the term of the Agreement.

SECTION 26: FEES TO BE PAID TO THE CONTRACTOR.

Contractor shall not receive payment for any fees other than those specifically authorized in incorporated herein.

- 26.1 Transfer Station Operation, Hauling, and Disposal Services Fee.** The City shall pay the Contractor a Transfer Station Operation, Hauling, and Disposal Services Fee of Twenty-Eight Dollars and Ninety-Five Cents (\$28.95) for each outgoing ton of Solid Waste based on the scale at the Transfer Building from the Transfer Station. The Contractor shall provide the City with a copy of the transfer trailer load tickets for all outgoing transfer trailer loads from the Transfer Station, transported, and Disposed of at the Disposal Site.
- 26.2 Disposal Fee.** In the instance of Transfer Station expansion, improvements, or unexpected closures, the City shall pay the Contractor a Fee of Fifteen Dollars (\$15.00) per ton of waste Disposed of at the Disposal Site, as measured by the scale house at the Disposal Site.
- 26.3 Construction and Demolition Waste Fee.** The City will pay a Eighteen Dollars (\$18.00) per ton fee for Construction and Demolition Waste delivered by the City to Hamm's C&D Landfill, as measured by the scale house at the Hamm's C&D Landfill.
- 26.4 Governmental Fee (KDHE Tipping Fee).** Any increase or decrease in the KDHE assessed tipping fee shall be added/subtracted from the fees described in Sections 26.1, 26.2, and 26.3
- 26.5 No Other Fees, Taxes, Surcharges, Levies and Other Assessments Allowed.** Contractor shall be solely responsible and liable for fee adjustments related to changes in or new Applicable Law including but not limited to all taxes, surcharges, levies, and other assessments involved and/or related to performance of work under this Agreement.

SECTION 27: ANNUAL RATE ADJUSTMENT.

All costs proposed in Section 26 shall remain fixed from the execution of the Agreement through September 30, 2021 except as provided for in this Agreement. On October 1, 2021 and every October 1st thereafter for the term of the Agreement, all rates as established in Section 26 may be adjusted, increased or decreased, according to this section upon approval of City Council.

27.1 Transfer Station Operation, Hauling, and Disposal Fee Annual Rate Adjustment

Upon approval of City Council, the annual rate adjustment for the Transfer Station Operation, Hauling, and Disposal Fee shall be a composite of the following two (2) adjustments:

- (i) Inflation Adjustment: The Inflation Adjustment shall be based on the most recent July Consumer Price Index (CPI)-All Urban Consumers, Unadjusted 12 months ended July, Item: All items; and
- (ii) Fuel Adjustment: The Fuel Adjustment shall be based on the price index by the Department of Energy (DOE) adjustment shall be based on the most recent price as of July and change from the previous July for Diesel Fuel (cents per Gallon), U.S.

Unless otherwise approved by City Council, the annual rate adjustment for Transfer Station Operation, Hauling, and Disposal Fee shall not exceed five percent (5.00%) per year. If an annual rate adjustment is approved by City Council, the Inflation Adjustment shall equal ninety percent (90.00%) and the Fuel Adjustment shall equal ten percent (10.00%).

Example: Assume that the CPI-All Urban Consumers, Item: All items unadjusted index for July 2014 is 114.5 and on July 2013 it was 105.5. Assume that the Diesel Fuel price index by the DOE for Diesel Fuel (cents per Gallon), U.S. in 2014 is 3.085 and change from a year ago was -0.215. The calculation for the annual rate adjustment to be implemented on October 1, 2014 is as follows:

$$\begin{array}{rclclcl}
 \text{Inflation Adjustment:} & \frac{114.5 - 105.5}{105.5} & \times & .90 & = & 7.68\% \\
 & & & \text{and} & & \\
 \text{Fuel Adjustment:} & \frac{3.085 - (3.085 - (-0.215))}{(3.085 - (-0.215))} & \times & .10 & = & -0.65\%
 \end{array}$$

Transfer Station Operation, Hauling, and Disposal Fee Rate Adjustment: 7.68% + -0.65% = 7.03%, therefore 5.0%.

27.2 Disposal Fee and Construction and Demolition Waste Fee Annual Rate Adjustment

Upon approval of City Council, the annual rate adjustment for the Disposal Fee and Construction and Demolition Waste Fee shall be a composite of the following two (2) adjustments as follows:

- (i) Inflation Adjustment: The Inflation Adjustment shall be based on the most recent July CPI-All Urban Consumers, Unadjusted 12 months ended July, Item: All items; and
- (ii) Fuel Adjustment: The Fuel Adjustment shall be based on the price index by the DOE adjustment shall be based on the most recent price as of July and change from the previous July for Diesel Fuel (cents per Gallon), U.S.

Upon approval by City Council, the annual rate adjustment for the Disposal Fee shall not exceed five percent (5.00%) per year. If an annual rate adjustment is approved by City Council, the Inflation Adjustment shall equal eighty percent (80.00%) and the Fuel Adjustment shall equal twenty percent (20.00%).

In addition to the annual rate adjustment as set forth in this section, the City may recalculate the annual rate adjustment in accordance with Section 2 of this Agreement.

Example: Assume that the CPI-All Urban Consumers, Item: All items unadjusted index for July 2014 is 114.5 and on July 2013 it was 105.5. Assume that the Diesel Fuel price index by the DOE for Diesel Fuel (cents per Gallon), U.S. in 2014 is 3.085 and change from a year ago was -0.215. The calculation for the annual rate adjustment to be implemented on October 1, 2014 is as follows:

$$\text{Inflation Adjustment: } \frac{114.5 - 105.5}{105.5} \times .80 = 6.82\%$$

and

$$\text{Fuel Adjustment: } \frac{308.5 - (3.085 - (-0.215))}{(3.085 - (-0.215))} \times .20 = -1.30\%$$

Disposal Fee Annual Rate Adjustment: $6.82\% + -1.30\% = 5.52\%$, therefore 5.0%.

SECTION 28: PAYMENT TERMS.

On or prior to the 15th day of each calendar month, the City shall pay to the Contractor the Transfer Station Operation, Hauling, and Disposal Fee for services performed during the prior calendar month less any disputed amounts and administrative charges.

SECTION 29: LIQUIDATED ADMINISTRATIVE CHARGES.

The Contractor understands that if the Contractor does not perform certain actions in a timely manner its obligations pursuant to the terms of the Agreement, the City will suffer damages which are difficult to determine and adequately specify. Accordingly, the Contractor agrees that the City may withhold payment from the Contractor in the liquidated amounts specified below as administrative charges for failure of the Contractor to fulfill its corresponding obligations. The following acts or omissions shall be considered a breach of the Contract. The City reserves the right to include additional administrative charges as deemed appropriate for the Contract.

- (i) Failure to commence services on the Commencement Date of the Agreement: \$5,000 per day provided such failure is due to circumstances known by the City to be beyond Contractor's ability to control;
- (ii) Failure by the Contractor to accept Acceptable Solid Waste during required hours of operation of the Transfer Station: \$500 per hour;
- (iii) Failure to store Solid Waste in accordance with the Agreement: \$100 per hour until resolved;
- (iv) Failure by the Contractor to clear the Transfer Station enclosure floor of all Solid Waste at the end of the working day: \$5,000 per day, however, this does not apply to unaccepted Waste left overnight on the Transfer Station enclosure floor by the City;
- (v) Failure to screen/separate materials from Loads in accordance with the Agreement: \$25 per item, subject to safe practice exceptions in Sec. 16.2;
- (vi) Failure to meet minimum access requirements in accordance with Agreement: \$100 per vehicle;
- (vii) Failure by the Contractor to achieve City Vehicle turn-around time in accordance with Agreement: \$100 per vehicle, subject to occupational safety exception in Sec. 14 and any circumstances beyond Contractor's control
- (viii) Failure by the Contractor to accept Acceptable Solid Waste: \$500 per occurrence;
- (ix) Failure to maintain equipment in accordance with Agreement and correct such problem with a reasonable time as determined by the City: \$50 per equipment piece per calendar day;
- (x) Failure to comply with spillage, leakage, litter and odor, and other nuisance requirements in accordance with the Agreement: \$250 per instance per day until resolved within twenty-four (24) hours of the earlier of (i) discovery by the Contractor, or (ii) notification to the Contractor by the City;
- (xi) Failure by the Contractor to provide resolution of a complaint to the City's approval and within the designated timeframe, as described in Section 19.: \$100 per day;

- (xii) Violation of City Transfer Station permit from the Kansas Department of Health and Environment and a special use permit from Johnson County to operate the City Transfer Station: \$500 per calendar day after any corrective action period has expired; and
- (xiii) Violations of other permits or licenses required by Applicable Law for Contractor to operate the Transfer Station: \$100 per calendar day after corrective action period has expired;.

The Contractor shall be liable for administrative charges amount(s) upon determination by the City that performance has not occurred consistent with the provisions of the Agreement. The City shall notify the Contractor in writing or electronically of each act or omission in this Agreement reported to or discovered by the City. It shall be the duty of the Contractor to take whatever steps or action may be necessary to remedy the cause of the complaint.

The City may deduct the full liquidated amounts (as determined and set forth above) from any payment due to the Contractor. The remedy available to the City under this paragraph shall be in addition to all other remedies which the City may have under law or at equity. Notwithstanding anything to the contrary in the foregoing, the Contractor will not be liable for any of the foregoing for any delay not caused specifically by Contractor's negligence or misconduct. Contractor is entitled to appeal any deducted liquidated charge amount based on extenuating circumstances not within Contractor's control. City shall make reasonable and good faith determinations concerning such appeals.

SECTION 30: HOURS OF OPERATION, OBSERVED HOLIDAYS AND EMERGENCY RESPONSE SUPPORT.

30.1 Hours of Operation. The Transfer Station will accept Solid Waste Monday through Friday from 7:00 AM to 4:00 PM and Saturdays from 7:00 AM to 12:00 PM. In certain instances, due to inclement weather, higher than typical set outs, or other unforeseen circumstance, the City may require that the Transfer Station remain open on Monday through Friday until 5:00 PM and on Saturday until 2:00 PM to accept Solid Waste from City operations. The Disposal Site shall accept waste on the days and times as required to provide the services in accordance with the Agreement, industry standards, and Applicable Law.

30.2 Observed Holidays. The Contractor shall adhere to the hours of operation as described for each Service Option herein, provided that the Contractor may close facilities consistent with the City's holiday schedule. At the beginning of each Agreement year, the City shall notify the Contractor as to holidays for the subsequent Agreement year. Currently, the City's observed holidays include:

- (i) Christmas Day – December 25;
- (ii) Thanksgiving Day – Last Thursday in November; and
- (iii) New Year's Day – January 1.

30.3 Emergency Response Support. Contractor shall, upon request of the Contract Administrator and with reasonable notice, extend the hours of operation for Transfer Station Operating Services and Disposal Services due to emergency response. Such extension of hours of operation may be subject to additional compensation if there is a debris removal event stipulated by the Federal Emergency Management Agency and as negotiated between City and Contractor in good faith depending on the duration and intensity of the emergency response.

SECTION 31: RECORD KEEPING AND REPORTING REQUIREMENTS.

31.1 Recordkeeping.

The Contractor shall create, maintain, and make available records as defined in and/or required by all Applicable Law, and any reports reasonably necessary to:

- (i) Document actions taken in accordance with Transition Plan. A monthly summary shall also

- be submitted to the City;
- (ii) Document employee and subcontractor training by description of training, date of training, time of training, names of personnel who attended training, name of training instructor, and other information as requested by the City;
- (iii) Provide data as needed by the City for preparing monthly, quarterly, or annual reports;
- (iv) For recording and/or reporting any missing criteria, data, guidance, information, or providing more frequent reporting to the City that arise based on the needs to complete the tasks of the Contract.

Further, the Contractor shall:

- (i) Immediately contact the City if a facility inspection identifies an issue requiring maintenance or repair. Upon notification, the City and Contractor will review the maintenance or repair needs and determine the responsible party based on the Contract
- (ii) Inform the City of any change to their contact name or address identified in the Agreement within 15 days of such occurrence;
- (iii) Acquire written consent from the City for any subcontractors to be used to complete any portion of the Agreement except for any subcontractor transporters of Contractor's waste from the Transfer Building to Contractor's landfill. Written qualifications of each subcontractor must be provided to the City prior to subcontractor work under the Agreement;
- (iv) Allow the City to review and comment on any documents prepared by the Contractor's engineering consultant; and
- (v) Provide any such other documents and reports as the City may reasonably require to verify compliance with the Agreement.

The applicable report formats shall be approved by the City. The Contractor shall submit all monthly reports to the City within seven (7) calendar days following the end of each calendar month and all annual reports to the City within thirty (30) calendar days following the Agreement year end. The Contractor shall submit all reports in electronic (e.g., Excel, delimited text files) and hard copy format approved by the City. The Contractor must retain all records related to the Agreement for the duration of the Agreement term and for a period of five (5) years following expiration and/or termination of the Agreement.

As part of the Agreement, the Contractor shall create, maintain, and make available records and provide reports as described herein at the following frequencies:

31.2 Reporting.

- (i) Monthly Reports. Contractor shall submit all monthly reports to the City within seven (7) calendar days following the end of each calendar month;
- (ii) Annual Reports. Contractor shall submit all annual reports to the City within thirty (30) calendar days following the calendar year end; and
 - (i) Report Format. Within sixty (60) calendar days of the Effective Date, Contractor shall submit to the City for approval the format and sample contents of the records to be maintained and the reports to be generated in fulfillment of the requirements of the Agreement. Contractor shall submit all reports in electronic and hard copy format approved by the City.

SECTION 32: VISITATION RIGHTS, INSPECTION RIGHTS AND RIGHT TO AUDIT.

32.1 Visitation Rights. City shall have the right to have its representative present at the City Transfer Station and Disposal Site to observe and monitor Contractor's compliance with the provisions of this

Agreement, provided that such observation monitoring shall be conducted in a manner to minimize interference with Contractor's operations.

32.2 Auditing of Contractor's Reports and Records. To confirm compliance with the Agreement, City shall have access to all records of the Contractor related to this Agreement for inspection and audit, at City's own expense.

32.3 Inspection of Contractor Facilities and Equipment. The City or any of its duly authorized representatives shall have access, within twenty-four (24) hours of notification, to inspect Contractor's facilities, including, as applicable, Transfer Facility, and equipment, and the Transfer Station building and equipment, and perform such inspections, as City deems reasonably necessary, to determine whether the services required to be provided by Contractor under the Agreement conform to the terms hereof. The City shall conduct the inspection of facilities and equipment during hours of operation for each facility. Contractor shall make available to City all reasonable facilities and assistance to facilitate the performance of inspections by City representatives.

SECTION 33: TITLE TO WASTE.

Contractor and City agree that title to Acceptable Solid Waste shall transfer to the Contractor upon acceptance by Contractor at the City Transfer Station, i.e., when the Contractor can no longer designate a portion of a Load as Unaccepted Waste, Contractor and City agree that title to materials screened/separated as required by this Agreement shall transfer from the Contractor to City upon screening/separating by the Contractor at the City Transfer Station. Contractor and City agree that under no circumstances shall title to Solid Waste other than Acceptable Solid Waste transfer to the Contractor.

SECTION 34: SECURITY.

City and Contractor shall be responsible for security of the Acceptable Solid Waste after acceptance at the City Transfer Station under this Agreement. Contractor shall maintain adequate security at the City Transfer Station and during transportation to the Disposal Site.

SECTION 35: LICENSES AND PERMITS.

Contractor agrees to procure and maintain, at the Contractor's sole expense, all necessary permits and licenses required by Applicable Law for the performance of work under the awarded Agreement. Contractor shall be solely responsible for procuring and maintaining licenses and permits, paying all fines, civil penalties, and other judgements for violations of licenses and permits. Required licenses and permits include, but are not limited to, the transfer station permits from the Kansas Department of Health and Environment and Johnson County to operate the Transfer Station. Notwithstanding the foregoing, the City shall be responsible for the City's special use permit.

SECTION 36: TRANSITION PLAN.

Contractor understands, acknowledges, and agrees that a smooth transition from one provider(s) to another is essential for the health and safety of City and its residents. Contractor understands, acknowledges, and agrees that the failure of Contractor to timely and promptly transition the services provided pursuant to the Agreement and Transition Plan(s) may create serious health and safety issues for City and its residents. Contractor understands, acknowledges, and agrees that City does not currently possess the necessary manpower or equipment to provide the services to be provided by Contractor pursuant this Agreement.

Contractor shall cooperate fully and timely with City and any previous and subsequent provider(s) in any transition of services to be provided by Contractor per the Agreement and the Transition Plan(s). Contractor shall cooperate fully with City in:

- (i) The transition to Contractor providing services upon the Commencement Date of the Agreement;
- (ii) The transition from Contractor to subsequent person(s) or City providing services upon expiration of the Initial Term or optional renewal term; and
- (iii) The transition from Contractor to subsequent person(s) or City providing services upon termination of the Agreement.

The Contractor is responsible for preparation of a Transition Plan under this Agreement. Under this Agreement, the Transition Plan will (i) identify key milestones and regular meetings with the City, and (ii) establish minimum requirements of the Contractor prior to the Commencement Date. If Contractor fails to fully and completely transition in accordance with the Agreement and the Transition Plan due to no fault of the City, previous contractor, or of any third-party for which the City is responsible, Contractor acknowledges that all equitable remedies, legal remedies and remedies pursuant to the Agreement are available to City.

The following is the general plan guide and key milestones:

Schedule of Transition Meetings between Contractor Site Manager and City Solid Waste Manager (Contract Administrator):

- Establish planning dates and adjustments (pre & post implementation)
- Confirm reporting timeframes, dates and format
- Coordination with current Transfer Station contractor

Acquisition/ transfer of Operating Permits:

- KDHE permit application including (operating plan) submitted to KDHE by August 31, 2020
- Johnson County permit application submitted to JCED by August 31, 2020

Recordkeeping and Reporting:

- Provide samples/templates of the following reports by September 1, 2020:
 - Monthly reports
 - Annual reports

Performance Bond

- Provide required performance bond by September 1, 2020

Insurance

- Provide required insurance certificates by October 1, 2020

Identification of Transfer Station site personnel:

- Site Manager by August 15, 2020
- Site Operating Personnel (2) by September 1, 2020
- On-site training plan - completed by September 30, 2020

SECTION 37: PERFORMANCE BOND.

Contractor agrees that after the execution of an Agreement, and one month or more prior to the Commencement Date, the Contractor shall make, execute, and deliver to the City a good and sufficient Performance Bond in a form approved by the City, to secure the full, complete and faithful performance of the terms and conditions herein. Such Performance Bond amount shall be equivalent to the following amount:

Six months of the City's anticipated Transfer Station Operation, Hauling, and Disposal Fees, assuming approximately 100,000 tons of outgoing Solid Waste per year.

Such Performance Bond shall be renewed each year thereafter throughout the term of the Agreement.

Contractor shall ensure the Performance Bond shall be signed by the President or General Officer of the Contractor, together with the signature of the corporate secretary and the corporate seal. The surety shall be a surety company duly authorized to do business in the State of Kansas; having an "A" or better rating by A. M. Best or Standard and Poor's; included on the list of surety companies approved by the Treasurer of the United States of America; and acceptable to the City.

SECTION 38: INSURANCE.

Contractor shall procure, and maintain as required, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the project. The City is not responsible for the cost of such insurance.

38.1 Coverages and minimum limits.

- (i) Commercial General Liability: [ISO "occurrence" form or its equivalent] \$1,000,000 per occurrence limit and products - completed operations limit. Any general aggregate limit should be at least \$2 million;
- (ii) Business Auto Coverage: (Owned, hired and non-owned autos) \$1,000,000 per occurrence limit. Include Environmental Impairment Liability and broadened pollution (endorsement CA 9948 or similar);
- (iii) Workers Compensation and Employers Liability: Workers compensation limits as required by the statutes of the state of Kansas and employer's liability limits of \$500,000/\$500,000/\$500,000. When workers compensation insurance policy is applicable "other states" coverage is required;
- (iv) Umbrella Liability: \$4,000,000 per occurrence / aggregate
- (v) Environmental Impairment Liability: \$1,000,000 per occurrence
- (vi) Professional Liability: Minimum limits to be \$1,000,000.00 each claim / annual aggregate;
- (vii) Coverage Limits: Coverage limits for General and Auto Liability exposures may be met by a combination of primary and umbrella policy limits; and
- (viii) Exposure Limits: The above are minimum acceptable coverage limits and do not infer or place a limit on the liability of the Contractor nor has the City assessed the risk that may be applicable to Contractor. Contractor shall assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverages. The Contractor's insurance shall be primary, and any insurance or self-insurance maintained by the City shall be excess and not contribute with the coverage maintained by Contractor.

38.2 Additional Insured.

The City shall be listed by ISO endorsement or its equivalent as additional insureds for the project. Any and all coverage available to the named insured is applicable to the additional insured. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

38.3 Verification of Coverage.

- (i) A certificate of insurance accompanied by an additional insured ISO form endorsement (CG 20 10; and CG 20 37) or equivalent effecting the coverage required by the City which includes products and completed operations;

- (ii) The insurance coverages are to be provided by Kansas admitted insurance companies with a Best's rating of at least A-: VII. Those not meeting this standard must be approved by City;
- (iii) Any self-insurance or self-insured retentions must be specified on the certificate of insurance. In addition, the name, address, and telephone number of the claims office must be indicated on the certificate or separate attached document. Any and all deductibles or self-insurance in the above describes coverages shall be the responsibility and at the sole risk of the Contractor. The City may require written guarantees for payment procedures of self-insured losses and related investigations, claims administration and cost of defense;
- (iv) The commercial general liability policy shall not contain an endorsement excluding contractual or completed operations liability;
- (v) When any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate with appropriate endorsements evidencing continuation of such coverage shall be submitted along with the application for final payment;
- (vi) Any coverage provided by a Claims-Made form policy must contain a three (3)-year tail option, extended reporting period, or must be maintained for three (3) years post-Agreement; and
- (vii) Cancellation. Each insurance policy required by this clause shall not be suspended, voided, or canceled by Contractor except after thirty (30) days' written notice has been given to the City. Prompt notice is required by Contractor in the event Contractor's carrier suspends, voids, modifies, or cancels any insurance policy required by this clause.

38.4 Subcontractors.

All coverages for subcontractors shall be subject to all of the requirements stated herein.

SECTION 39: FORCE MAJEURE.

Except for any payment obligation by either Party, if City or Contractor is unable to perform, or is delayed in its performance of any of, its obligations under this Agreement by reason of an event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for City or Contractor to correct the adverse effect of such event of Force Majeure.

An event of Force Majeure shall mean any of the following events or circumstances to the extent that they delay City or Contractor from performing any of its obligations (other than payment obligations) under this Agreement:

- a) Acts of God, tornadoes, hurricanes, floods, fires, and explosions (except those caused by negligence of Contractor, its agents, or assigns), landslides, earthquakes, epidemics, quarantine, and pestilence;
- b) Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, riots, civil disturbances, or national or international calamities; or
- c) Inclement weather which causes the Transfer Station or Disposal Facility to be closed.

Force majeure shall not include labor unrest (e.g., strikes, lockouts, or other labor disturbances) or inclement weather which doesn't cause the Transfer Station to be closed.

In order to be entitled to the benefit of this Section, a Party claiming an event of Force Majeure shall be required to give prompt written notice to the other Party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure the event of Force Majeure. The Parties agree that, as to this Section, time is of the essence. Notice of using this section will also require an estimate of the amount of time needed.

SECTION 40: TERMINATION.

The Agreement may be terminated as provided in this Section.

- (i) Termination for Convenience. The City or Contractor may terminate the Agreement for convenience with one hundred eighty (180) days' advance written notice;
- (ii) Termination for Cause. The City may terminate, with advance written notice and reasonable opportunity to cure, for cause, following any material default under this Agreement or negligence on the part of the Contractor; or
- (iii) Termination Due to Unavailability of Funds. When funds are not appropriated or otherwise made available to support continuation of performance, the Agreement shall be cancelled at the discretion of the City with ninety (90) days' advance written notice.

SECTION 41: DISPUTE RESOLUTION.

The parties shall endeavor to settle all disputes under, or relating to, this Agreement by amicable negotiations. Except as otherwise provided herein, any claim, dispute, disagreement or controversy that arises among the parties under or relating to this Agreement that is not amicably settled may be submitted to mediation or litigation subject to Section 43.6.

SECTION 42: INDEMNIFICATION

Contractor shall agree to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all Loss where Loss is caused or incurred as a result of the intentional misconduct, recklessness, negligence, or other actionable fault of the Contractor (or by any person acting for the Contractor or for whom the Contractor is responsible).

SECTION 43: MISCELLANEOUS.

43.1 Compliance with Laws. City, Contractor, and their respective officers, agents, employees, contractors, and subcontractors, shall abide by and comply with Applicable Law including all existing laws and laws which may be enacted by the federal, state, and local governments. It is expressly agreed that nothing in this Agreement shall be construed in any manner to abridge the right of City to pass or enforce necessary police and health regulation for the protection of its inhabitants. It is further agreed and understood that, if City calls the attention of Contractor to any such violations on the part of the Contractor, its officers, agents, employees, contractors, or subcontractors, then Contractor shall immediately desist from such activity and correct such violation.

43.2 Personnel Practices. Contractor must comply with K.S.A. 44-1030 *et seq.*, mandatory provisions of the Kansas Acts Against Discrimination as applied to state and local government contracts, which: (1) precludes discrimination against any person in the performance of work under this Agreement because of race, religion, color, sex, national origin or ancestry; (2) require solicitations or advertisements for employees include the phrase "equal opportunity employer"; and (3) allows City to terminate this Agreement for default if provisions of the act are violated.

Chapter 2.44 of the Olathe Municipal Code also prohibits discrimination against individuals in the performance of this Agreement as a matter of concern to City, since such discrimination threatens not only the rights and privileges of the inhabitants of City, but menaces the institutions and foundations of a free democratic state. The affirmative action program is designed to ensure a good faith effort will be made to employ applicants and to treat employees during employment equally without regard to race, color, creed or religion, physical handicap, national origin or sex.

All vendors who are awarded a Class I Contract (\$10,000 or more in aggregate) are required to

complete a Questionnaire on Personnel Practices. Form must be completed and approved by the City before contract for goods or services is in effect. Approved vendors will be issued a certification number by the City. Certification must be renewed annually.

The City of Olathe actively supports the Immigration & Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e. citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). Contractor shall establish appropriate procedures and controls so no services or products in response to this IFB will be performed or manufactured by any worker who is not legally eligible to perform such services or employment.

- 43.3 Assignment.** Contractor shall not sell, assign, transfer or convey this Agreement, in whole or in part, without the prior written consent of the City. As an express condition of consent to any assignment, Contractor shall remain liable for completion of the Agreement work in the event of default by the successor Contractor or assignee.
- 43.4 W-9 Requirement.** The City of Olathe requires a Form W-9 (Request for Taxpayer Identification Number and Certification), updated annually, from all contractors that do business with the City of Olathe. The Form W-9 verifies the Tax Identification Number of the Contractor in order that City can correctly report to the IRS all funds paid to the Contractor. Form W-9 can also be found at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. No payment shall be made to Contractor without a current W-9 form being received by the City of Olathe.
- 43.5 Titles, Subheads and Capitalization.** Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.
- 43.6 Applicable Law, Jurisdiction, and Venue.** Interpretation of this Agreement and disputes arising out of or related to this Agreement will be subject to and governed by the laws of the State of Kansas, excluding Kansas' choice-of-law principles. Jurisdiction and venue for any suit arising out of or related to this Agreement will be in the District Court of Johnson County, Kansas.
- 43.7 Severability.** Should any portion of this Agreement be deemed invalid or unenforceable to any extent, the Parties hereto agree that such provision shall be amended to the minimum extent necessary to make such provision enforceable, and the remainder of this Agreement shall not be affected thereby.
- 43.8 Attorney Fees and Court Costs.** In the event suit is filed by either party as a result of the performance or non-performance of the terms set forth in this Agreement, the prevailing party shall recover attorney fees and court costs.
- 43.9 Notices.** Except as may be otherwise specifically provided for herein, all notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (iv) by prepaid telegram, telex, or facsimile to the addressee. Notice so-mailed shall be effective upon the date that is three (3) days following its deposit with the United States Postal Service; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery

service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee.

Notwithstanding anything contained herein to the contrary, any notice of default under this agreement must be both (i) mailed by Certified Mail, Return Receipt Requested and (ii) faxed to the alleged defaulting party to constitute proper notice hereunder. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) calendar days' notice to the other party in the manner set forth herein.

If to the City at: Solid Waste Manager, City of Olathe
1385 S. Robinson Drive
Olathe, Kansas 66061

With a copy to: City Clerk, City of Olathe
PO Box 768
Olathe, Kansas 66051

If to the Contractor at: _____

With a copy to: _____

or such other addresses as the parties may hereafter specify by written notice delivered in accordance herewith.

43.10 Entire Agreement and Amendments. This Agreement and all other documents and exhibits included by reference herein, constitutes the entire Agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both Parties to this Agreement.

43.11 Ambiguity. If any ambiguity, inconsistency or conflict arises in the interpretation of this Agreement, the same shall be resolved by reference first to the terms and conditions of this Agreement and any exhibits attached hereto.

43.12 Certificate of Good Standing. All contractors awarded a contract in the amount of \$25,000 or higher are required to submit a current Kansas Certificate of Good Standing to the City with a valid verification code, upon award of Agreement. The Certificate is issued by the Kansas Secretary of State's Office and affirms that a business has complied with the applicable provisions of the laws of the state of Kansas, is in good standing, and authorized to transact business or to conduct affairs within this state. Access the Secretary of State website (<https://www.getincnow.com/Kansas-Good-Standing-Certificate.php>) for information. Kansas companies can file online. Foreign companies cannot yet file online. Foreign companies would need to complete and submit the FA, FL, FLLP, or LPF forms to receive the information needed to register with the Secretary of State then get a Certificate of Good Standing thereafter. You may call the Kansas Secretary of State office at 785-296-4564 if you have questions.

43.13 Appropriations Clause. The City is subject to the Kansas Cash Basis Law. Accordingly, execution and continuation of the Agreement is contingent upon annual appropriation of funds by its legislative body in an amount sufficient to allow performance in accordance with the terms and conditions of the Agreement. The City shall, upon receipt of notice by its Resource Management Department or other appropriate authority that sufficient funds are not available to continue full and faithful performance of the Agreement, provide prompt written notice to the Respondent of such event, and effective ninety (90) days after giving such notice or upon the expiration of the period of time for which funds were appropriated, whichever comes first, be thereafter entitled to terminate this Agreement and shall be released of all further subsequent payment obligations in way related to the Agreement.

Remainder of page intentionally left blank.

SECTION 44: EXECUTION OF CONTRACT

The parties hereto have caused this Agreement to be executed this ____ day of _____ 202__.

CITY OF OLATHE, KANSAS

By: _____

Michael E. Copeland, Mayor

ATTEST:

Brenda D. Long, City Clerk

(Seal)

APPROVED AS TO FORM:

Chris Grunewald, Deputy City Attorney

N.R. Hamm Quarry, L.L.C.

By: Charlie M. Sedlock

Charlie M. Sedlock, Vice President

PO Box 17

Perry, KS 66067