CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY	
☐ Consent ☐ Regular ☐ Statutory	
Council Meeting Date:	10/25/10
Department:	Sustainability & Environmental Services
Department Head	Nancy Nevil
Agenda Coordinator (include phone #):	**Tiffany Stephens x 4264**

CAPTION

An Ordinance of the City of Plano, Texas, repealing Ordinance No. 2000-8-4 in order to terminate the existing Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano and approving a new Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano, providing terms and conditions upon which Allied Waste Systems, Inc. shall be granted an exclusive Private Franchise for collection and disposal of solid waste for commercial customers located within the City of Plano in accordance with Article 10-A of the City Charter and a non-exclusive Private Franchise for collection of recyclable materials from commercial customers located in the City of Plano; and authorizing its execution by the City Manager or his designee; providing a repealer clause, a severability clause, a savings clause, a penalty clause, providing for publication and an effective date. First Reading – September 13, 2010

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☒ REVENUE ☐ CIP

FISCAL YEAR:	**2010-11 to 2017-18**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget		0	0	5,759,755	**5,759,755**
Encumbered/Expended Amount		0	0	0	**0**
This Item		0	0	112,066	**112,066**
BALANCE		0	0	5,871,821	**5,871,821**

FUND(S): SUSTAINABILITY & ENVIRONMENTAL SERVICES FUND

COMMENTS: Approval of the Commercial Waste Hauling Franchise Agreement will generate $112,066 more revenue than was originally anticipated by passing through increases in disposal costs with the North Texas Municipal Water District.

STRATEGIC PLAN GOAL: Generation of revenues through the regulation of a Commercial Waste Hauling Franchise relates to the City's goal of a Financially Strong City with Service Excellence.

SUMMARY OF ITEM

The Sustainability and Environmental Services Department negotiated a new commercial waste franchise agreement with Allied Waste Services of Plano. The rates have been increased only to cover the pass-through NTMWD disposal increase. Allied has documented their proven ability to maintain at or above a 85% Good to Excellent customer service satisfaction rating for the previous ten-year contract period. Allied has always been very willing and helpful to work outside the normal standard operational protocol and above the performance requirements during special and unforeseen events.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Cover Memo, Private Franchise Agreement	

P.O. Box 860358
Plano, Texas 75086-0358
972-769-4264
Fax No. 972-769-4172

M E M O R A N D U M

DATE: October 11, 2010

TO: Thomas H. Muehlenbeck
City Manager

FROM: Nancy Nevil
Sustainability & Environmental Services Director

SUBJECT: Justification for Negotiated Commercial Franchise Agreement

At the September 13 City Council Meeting, I was asked to prepare a detailed justification for negotiating the commercial franchise agreement in lieu of bidding the service. Specifically, Council wanted to understand the value of the commercial franchise partnership as it currently exists to decide the validity of a challenge that Allied Waste rates are not competitive.

Following is a complete listing of considerations resulting in my recommendation to contract with Allied Waste as the exclusive franchisee for commercial waste hauling:

A. Value of Partnership with City Programs

Program	Annual Contribution	Total Contract (7 years) Contribution	Additional Impact
Reduced Recycling Processing Fee	$101,610	$1,016,000	
Commercial Recycling Program	$744,790	$5,213,530	$5,978,000 Disposal cost avoidance
Live Green Expo	$10,000	$70,000	
Environmental Community Awards	$10,200	$71,400	
Employee Awards Program	$7,000	$49,000	
Total	**$873,600**	**$6,115,200**	**$5,978,000**

1. Reduced Recycling Processing Fee

   In April 2010, the City conducted an audit of Allied Waste's processing costs and determined their actual expenses to be $56.00 per ton. In negotiating the processing agreement, Allied Waste agreed to reduce the processing fee to $51.00 per ton contingent upon a successful negotiation of the commercial waste franchise agreement. Based on an average of 20,322 tons delivered annually to Allied Waste over the last three years, the City would save **$101,610** each year for a total of **$1,016,100** during the ten year contract.

2. Commercial Recycling Program:

   The contract includes an annual payment to the City of approximately **$744,790** to fund the commercial education and technical assistance program for a total value of **$5,213,530** over the term of the agreement. At the end of last year, this program resulted in increasing the commercial recycling rate to 26%, diverting 47,615 tons from the commercial waste stream for a cost avoidance savings of **$854,000**. Assuming no increases in waste diversion over the term of the agreement, the cost avoidance to the city would be **$5,978,000**.

3. Live Green Expo

   Allied has agreed to be a Gold Sponsor of the Live Green Expo, contributing **$10,000** in 2010 for a total of **$70,000** over the term of the agreement. Allied Waste has been a sponsor of the Expo for the past four years, contributing a total of **$20,000**.

4. Environmental Community Awards

   The Environmental Community Awards is the City's annual recognition of individuals and organizations within our community that have made significant contributions to improving the environment. Allied Waste has sponsored this event for 19 years. They have agreed to continue this sponsorship at **$10,200** each year for a total of **$71,400**.

5. Annual Employee Awards Function

   The Sustainability & Environmental Services Department Business Plan includes an annual awards event to celebrate departmental gain-sharing accomplishments and recognize exceptional employees, perfect attendance, safe drivers, employees of the year, Most Improved, Best Customer Service, Most Spirited, and Most Dependable. Allied Waste sponsors this each year for **$7,000** annually for a total of **$49,000** over the term of the agreement.

6. Allied has partnered with several organizations in the community to assist them with special events, which totals approximately $5-10,000 annually. Some include: Plano Santa, Alcatel Race for the Cure, Shops of Legacy Christmas Tree Lighting, Recycles Day Events at Frito Lay, Taste of Plano, Plano Balloon Festival, Clean Out Your Locker Day, and various PISD events.

7. Allied Waste has also demonstrated a high level of cooperation and goodwill beyond the contracted services. Over the past nine years, Allied Waste has partnered on projects/programs important to the City, many times at their own expense. Some more notable examples include:
   - Piloting Construction & Demolition (C&D) collection programs performed at residential developments, multi-family/assisted living projects and large commercial projects that helped develop the City's formal C&D Recycling Program
   - Coordinating "compactor" loads of organic recycling materials from high volume commercial locations to benefit our *Texas Pure* composting process
   - Identifying and sorting high fiber loads from selected commercial accounts to recycle significant volumes of materials
   - Loaning the City two grapple trucks to assist with the 2007 Spring storm clean-up activities

- Developing and coordinating our formal Street Placement Program to accommodate requests from residents on major construction/deconstruction projects within existing neighborhoods.
- Providing 95-gallons carts for paper recycling at smaller offices and businesses and servicing them free of charge.
- Loaning trucks for use at the regional truck rodeo
- Assisting with and providing large container disposal services for various neighborhood clean-up projects such as Douglas Community and "Love Where You Live."
- Waiving the residential recycling processing costs of $6,282.28 during six months (December 08 to May 09) when the recycling market dropped due to the world economy fall-out and surplus of materials.
- Providing personnel, educational material and demonstrations for recycling program start-ups for multi-family unit dwellings.
- Donating the artwork for the Environmental Education Center ($4,500).

B. Commercial Comparisons with NTMWD Member Cities

Roll-Off Service	**Plano**	**Plano - No Program Support (1)**	**Allen (2)**	**Frisco (3)**	**McKinney (4)**	**Richardson (6)**
Container Delivery	**$78.62**	**$73.47**	**$117.62**	**$75.00**	**$53.63**	**$30.00**
Rental	**$5.22**	**$4.88**	**$6.40**	**$3.50**	**$3.21**	**$4.25**
Hauling	**$154-271***	**$115-224***	**$268.20**	**$196.00**	**$138.19 (5)**	**$168.00**
Disposal Cost Per Ton	**$43.34**	**$40.50**	**$44.20**	**$41.00**	**$200 per haul**	**$20.50**
Front Load Service (container size, frequency, service %)						
2 yd – 1xwk (7%)	**$54.66**	**$48.32**				
3 yd – 1xwk (5%)	**$71.48**	**$62.70**	**$93.22**	**$47.25**	**$79.19**	
4 yd – 1xwk (11%)	**$86.84**	**$75.74**	**$102.17**	**$63.00**	**$95.35**	**$78.00**
6 yd – 1xwk (12%)	**$118.99**	**$103.13**	**$126.16**	**$94.50**	**$125.78**	
8 yd – 1xwk (17%)	**$156.21**	**$136.79**	**$148.68**	**$126.00**	**$169.06**	**$125.00**
8 yd – 2xwk (23%	**$275.76**	**$239.12**	**$276.45**	**$252.00**	**$279.69**	**$226.00**
8 yd – 3xwk (24%)	**$413.02**	**$358.10**	**$396.27**	**$378.00**	**$410.32**	**$321.00**

*Zone 1	$154.85	$115.08
Zone 2	$193.32	$151.03
Zone 3	$232.06	$187.24
Zone 4	$271.31	$223.93

The majority of hauls are generated from Zone 2.

(1) Eliminated franchise fee (7%) and all program support outlined in A.
(2) Includes 15% franchise fee, support of Keep Allen Beautiful program and funding education coordinator
(3) No franchise fee or partnership funding
(4) Includes 5% franchise fee; no program support
(5) Reduced hauling distance from McKinney to Melissa
(6) City provided service

While it is difficult to compare rates with varying components, the information supports two conclusions: (1) proposed rates compare favorably with Allen and McKinney who also include franchise fees and program support (#s in orange), and (2) rates without support compare favorably with Frisco who does not include any fees or support (#s in blue).

C. Customer Service

1. The City conducts a Commercial Solid Waste Customer Service Satisfaction Survey every 2-3 years. Allied has consistently received good ratings with the last survey conducted (2008) rating 85% Good to Excellent. There were 52 customers that rated Allied Waste as "Needs Improvement" in the overall rating. The General Manager and Municipal Marketing Manager contacted each business to discuss concerns and identify procedural improvements in order to improve customer service. A follow-up survey was conducted six months later and all but five businesses rated service Good to Very Good.

2. The commercial survey is done to ensure the City's contractor understands the importance of customer service and the businesses receive the level of service expected in Plano. As far as we can determine, the Cities of Plano and Allen are the only cities in the DFW Metroplex that survey commercial customers.

D. Waste Industry Corporate Pro Forma

The $8 million investment in capital for servicing the commercial sector would limit the bidders to Republic, IESI and Waste Management (WM). Since all tonnage is required to be disposed of at NTMWD, there is no opportunity for the bidder to discount rates by lowering internal disposal costs. Also, IESI and WM are publicly traded companies like Republic and have minimum Pro Forma standards and levels of authority. A contract of this size would require approval from regional authority at a minimum but more than likely from the CEO.

E. Competitive Bid Law in Texas

The competitive bid law in Texas requires municipalities, before entering into a contract involving the expenditure of more than a certain amount, put the project out for competitive bid or sealed proposal (Sec. 252.021, et seq. Texas Local Government Code). There are exemptions to this rule, including procurements necessary to preserve or protect the public health or safety (Sec. 252.022 Texas Local Government Code).

The Texas Court of Appeals, in Browning-Ferris, Inc. v. Leon Valley, 590 S.W. 2d 729 (Tex.Civ.App. - San Antonio 1979, writ refused n.r.e. March 19, 1980) upheld the City of Leon Valley's ordinance granting an exclusive franchise for garbage collection to Sanitas Waste Disposal of San Antonio, Inc., without utilizing the competitive bid process. The court held that the City of Leon Valley was not required by State law to competitively bid their garbage collection business because garbage collection falls within the exception applicable to preserving and protecting the public health and safety.

This case is still good law in Texas and has been cited in several opinions issued by the Attorney General since the City of Leon Valley decision.

The cities of Allen and McKinney recently negotiated their waste hauling contracts in lieu of competitive bidding, conducting comparison rate studies to ensure competitive pricing. Cities in the DFW Metroplex with long-term relationships include: Arlington (59

years); Grand Prairie (48+ years); Lewisville (25+ years); Grapevine (20+ years); McKinney (20 years); Allen and Flower Mound (15 years).

F. Workforce:

Allied Waste operates its hauling operation for the northern section of DFW from Garland to Grapevine out of the Plano facility. The impact of losing the franchise would result in displacing 21-23 drivers with a median salary of $50K, 4 maintenance technicians with median salary of $45K, and 3 dispatch/clerical employees with median salary of $35K. There most likely would be a loss of management personnel as well.

G. Response to Roll-Off Cost Comparison (provided by Dwayne Clark)

At the September 13 City Council Agenda Meeting, Plano resident Dwayne Clark and a representative of ServAll presented data they felt supported a lack of competitive prices for commercial waste hauling, specific to the roll-off business. Mr. Clark made adjustments to the document and distributed to City Council. We called each hauler and were unable to verify the quotes provided by Mr. Clark. However, I visited with Mr. Clark by phone and he assured me each hauler provided him with a quote to haul from Plano.

We have taken Mr. Clark's document and adjusted to reflect the actual disposal rate of $40.50 per ton. Following is the comparison of a 21-day rental for 30 cubic yard roll-off dumpster disposing of 4 tons (average roll-off haul) from Zone 2 (highest % of roll-off containers in Plano). The franchise fees and program costs have been adjusted out of calculation to ensure consistent basis for comparison:

Allied Waste - Republic

	Unit	Rate	Total $
Delivery			$73.47
Pickup			$151.03
Daily Fee	21	$4.88	$102.48
Disposal	4	$40.50	$162.00
Fuel Charge			
Sales Tax		8.25%	$40.34
Total			**$529.32**

Bluebonnet

	Unit	Rate	Total $	
Delivery			$50.00	
Pickup			$295.00	Includes disposal for 6 tons
Daily Fee	0	3	$ -	3 weeks included; after $3.00/day
Additional Tons	0	40.5	$ -	6 tons included
Disposal Fee Adjustment	6	$18.50	$111.00	Difference between $22 & $40.50
Fuel Charge		5% Fuel	$17.25	
Sales Tax		8.25%	$39.04	
Total			$512.29	
Compared to Allied Waste		**$529.32**	**3% lower**	

Servall

	Unit	Rate	Total $	
Delivery			$400.00	
Pickup			$ -	
Daily Fee			$ -	30 days included
Additional Tons			$ -	10 tons included
Disposal Fee Adjustment	10	$18.50	$185.00	Difference between $22 & $40.50
Fuel Charge			$ -	
Sales Tax		8.25%	$48.26	
Total			$633.26	
Compared to Allied Waste		**$ 529.32**	**16% higher**	

Moore

	Unit	Rate	Total $	
Delivery			$90.00	
Pickup			$295.00	
Daily Fee	11	3.00	$ 33.00	10 days included; after $3.00/day
Additional Tons	0	40.5	$ -	5 tons included
Disposal Fee Adjustment	5	$13.50	$67.50	Difference between $27 & $40.50
Fuel Charge		6%	$23.10	
Sales Tax		8.25%	$41.96	
Total			$550.56	
Compared to Allied Waste		**$529.32**	**4% higher**	

Alpha Waste

	Unit	Rate	Total $	
Delivery			$346.42	
Pickup				
Daily Fee	0	3	$ -	3 weeks included; after $3.00/day
Additional Tons	0	40.5	$ -	5 tons included
Disposal Fee Adjustment	5	$19.50	$97.50	Difference between $21 & $40.50
Fuel Charge				
Sales Tax		8.25%	$36.62	
Total			$480.54	
Compared to Allied Waste		**$529.32**	**10% lower**	

Waste Management

	Unit	Rate	Total $	
Delivery			$100.00	
Pickup			$355.00	
			$ -	
Daily Fee	21	$5.00	$105.00	
Additional Tons	0	40.5	$ -	7 tons included
Disposal Fee Adjustment	7	$22.50	$157.50	Difference between $18 & $40.50
Fuel Charge	455.00	9.90%	$45.05	
Environmental	455.00	7.50%	$34.13	
Sales Tax		8.25%	$59.95	
Total			$862.40	
Compared to Allied Waste		**$529.32**	**39% higher**	

As you can see from the above comparison, Allied Waste rates are very comparable to what is currently being charged in the Metroplex when you adjust to NTMWD disposal rates and remove the franchise fee and program support.

It is true other vendors would be required to include franchise fees and program support for items listed in A.1 – A.6 above. Based upon the current rate comparison without these programs, it seems unreasonable to expect bidding the service would result in significant changes to the existing rates. An insignificant decrease would not justify the inconvenience to every commercial customer of changing out containers. In addition, we would have no guarantee the new contractor would perform at the same level of customer service or would offer program support not spelled out in the contract.

In Mr. Clark's email, he also recommends a two-year contract and open competition. I will address each one separately:

Bidding Two-year Contract for Front-load Service:
Allied Waste would be the only logical bidder or other bidders would have to depreciate their costs over two years, instead of 5-7 years which is normal for collection equipment.

Open Competition:
Our major concern with open competition is enforcement. The City of Plano is one of five surrounding cities (Allen, Frisco, McKinney and Richardson) to reach an agreement with North Texas Municipal Water District (NTMWD) to manage the long-term responsibilities, risks, and associated cost of operating a cost-effective regional disposal system. The NTMWD contract requires all Plano solid waste (commercial and residential) be disposed of through the NTMWD transfer stations and landfill. Multiple contractors would require additional staff to monitor hauling and disposal activities to ensure compliance with the NTMWD agreement. The City believes a franchise agreement with one hauler is the best method of ensuring and enforcing the disposal agreement with NTMWD.

In addition, the Supreme Court is clear that it does not favor flow control ordinances of the kind enacted by the Towns of Clarkstown (C & A Carbone, Inc. v. Town of Clarkstown, N.Y., 114 S.Ct. 1677 (1994)), and Smithtown (SSC Corp. v. Town of Smithtown, 66 F.3d 502 (2nd Cir. 1995)). The City of Plano has avoided this issue by utilizing an exclusive franchisee to perform its commercial solid waste collection and disposal.

Because customers would also be able to change providers at their discretion, an additional enforcement burden would be placed on staff to continually monitor dumpsters throughout Plano and reconcile franchise payments to ensure the City is not losing revenue.

The amount of franchise fees collected would also be impacted as multiple haulers would be establishing various rates, making reconciliation even more challenging. Currently, the exclusive franchise agreement ensures all individual businesses have proper solid waste service at a competitive rate (economies of scale) and provides a consistent revenue stream for budget purposes. The commercial rates are established by the City Council, not the franchise hauler.

Operating with one hauler reduces the number of trucks required to service front-load containers (efficient routing) resulting in less traffic, lower street maintenance costs, and less harmful air emissions. The franchised hauler is required to maintain clean and safe vehicles and replace vehicles on a regular schedule. This would be difficult to monitor with multiple haulers.

As referenced earlier in this document, a franchised hauler provides greater opportunities for waste diversion through community partnerships that encourage recycling.

Summary

Allied Waste has been a valuable partner. They have enabled the City to develop an exemplary waste diversion program as a result of their $7 million capital investment in the Materials Recovery Facility located at 4200 E. 14th Street. Allied Waste has also proven their commitment to continually focus on exceptional customer service and support community events.

I trust this information gives the Mayor and City Council a higher level of confidence in how competitive the rates are and how much effort the Sustainability & Environmental Services Department expends to ensure customer service and waste diversion remain preeminent in the selection process for a commercial waste hauler.

The second reading approving the franchise agreement will be on the October 25 Council Agenda.

Please let me know if you have any questions regarding this information.

x: Mark Israelson, Assistant City Manager
Robert Smouse, Environmental Waste Services Manager
Reid Donaldson, Allied Waste Area Municipal Marketing Manager

An Ordinance of the City of Plano, Texas, repealing Ordinance No. 2000-8-4 in order to terminate the existing Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano and approving a new Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano, providing terms and conditions upon which Allied Waste Systems, Inc. shall be granted an exclusive Private Franchise for collection and disposal of solid waste for commercial customers located within the City of Plano in accordance with Article 10-A of the City Charter and a non-exclusive Private Franchise for collection of recyclable materials from commercial customers located in the City of Plano; and authorizing its execution by the City Manager or his designee; providing a repealer clause, a severability clause, a savings clause, a penalty clause, providing for publication and an effective date.

WHEREAS, the collection, transportation, processing and disposal of solid waste and recyclable materials is a governmental function necessary to preserve and protect the public health, safety and general welfare; and

WHEREAS, negotiations of the recycling processing agreement with Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano ("Allied") resulted in reduced recycling processing fees contingent upon the successful negotiations of the commercial collection franchise agreement; and

WHEREAS, the City of Plano, Texas ("City") and Allied wish to terminate the existing exclusive Private Franchise Agreement and enter into a new exclusive Private Franchise Agreement under which Allied will provide solid waste collection and disposal services for the City's commercial customers under the new terms and conditions; and

WHEREAS, the City and Allied also wish to terminate the existing non-exclusive Private Franchise Agreement and enter into a new non-exclusive Private Franchise Agreement under which Allied will collect recyclable materials from commercial customers located in the City of Plano; and

WHEREAS, upon full review and consideration of the Private Franchise Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference ("Agreement"), and all matters attendant and related thereto, the City Council is of the opinion that Allied should be granted an exclusive private franchise for the collection and disposal of solid waste for commercial customers within the City, and a non-exclusive private franchise for collection of recyclable materials for commercial customers within the City; that the terms and conditions of the Agreement should be approved; and that the City Manager, or his designee, shall be authorized to execute it on behalf of the City; and

WHEREAS, pursuant to Article 10-A.02 of the City Charter, this Ordinance shall be read at two (2) separate regular meetings of the City Council and shall not be finally passed until thirty (30) days after the first reading; and this Ordinance shall not take effect until thirty (30) days after its final passage; pending such time, the full caption of the Ordinance shall be published once each week for four (4) consecutive weeks in the official newspaper of the City of Plano and the expense of such publication shall be borne by the proponent of the franchise.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS:

Section I. The facts, findings and recitations set out in the preamble of this Ordinance are hereby adopted and made a part of this Ordinance the same as if they were recited in full.

Section II. Ordinance No. 2000-8-4 is hereby repealed and the existing Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano is hereby terminated.

Section III. The terms and conditions of the new Private Franchise Agreement under which Allied shall be granted the exclusive rights to provide solid waste collection and disposal services for commercial customers within the City and the non-exclusive rights to provide collection of recyclable materials to commercials customers are found to be acceptable and in the best interests of the City and its citizens, and are hereby in all things approved.

Section IV. The City Manager, or his designee, is hereby authorized to execute the new Private Franchise Agreement and all other documents in connection therewith on behalf of the City, substantially according to the terms and conditions set forth in the Agreement.

Section V. Any provision of any Ordinance of the City of Plano, Texas, codified or uncodified, in conflict with the provisions of this Ordinance is hereby repealed, and all other provisions of the Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section VI. It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable and the invalidity of any section, clause or provision or part or portion of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

Section VII. The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any Ordinances at the time of passage of this Ordinance.

Section VIII. Any person, firm or corporation violating or failing to comply with any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor. Upon conviction in Municipal Court, violators may be subject to a fine not to exceed the sum of **TWO THOUSAND DOLLARS ($2,000.00)** for each offence, and each and every day such violation continues shall constitute a separate offense.

PASSED AND APPROVED ON FIRST READING by the City Council of the City of Plano, Texas, this 13th day of September, 2010.

_____
Phil Dyer, MAYOR

ATTEST:

_____
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

PASSED AND APPROVED ON SECOND READING by the City Council of the City of Plano, Texas, this ____ day of _____, 2010.

_____
Phil Dyer, MAYOR

ATTEST:

_____
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

DATED:

First Reading: September 13, 2010

Second Reading: October 25, 2010

EXHIBIT A

PRIVATE FRANCHISE AGREEMENT

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This Private Franchise Agreement (hereinafter the "Agreement") is made by and between the **CITY OF PLANO, TEXAS**, a home rule municipal corporation located in Collin and Denton Counties, Texas (hereafter the "City") and **ALLIED WASTE SYSTEMS, INC.,** a Delaware corporation **d/b/a Allied Waste Services of Plano**, with its principal place of business in Phoenix, Arizona (hereinafter, "Contractor"), both acting by and through their duly authorized agents and representatives. The City and Contractor may be hereinafter referred to together as the "Parties."

RECITALS

WHEREAS, the City desires to provide commercial establishments within its corporate city limits with Solid Waste and Recyclable Materials collection, transport and disposal services by engaging an independent contractor to perform such services; and

WHEREAS, Contractor has provided the City with commercial solid waste collection and disposal services under an exclusive License Agreement since February 1, 1991; and

WHEREAS, Contractor has performed the service in a satisfactory manner and the City wishes to continue this service for commercial customers under the terms and conditions set forth below; and

WHEREAS, the City wishes to divert greater amounts of solid waste generated by commercial customers to recycling and has set a goal of forty percent (40%) diversion; and

WHEREAS, the City desires to engage Contractor to provide the services set out herein and Contractor desires to render the services provided for herein in accordance with the terms and conditions more specifically described hereunder.

NOW, THEREFORE, in consideration of the terms, conditions and covenants herein contained and other good and valuable consideration, the Parties mutually agree as follows:

Section 1. Definitions

Unless otherwise specified herein, the following terms shall have the following meanings:

1.1. "Agreement Year" shall mean a twelve (12) month period of time commencing upon the Effective Date hereof and, thereafter, any anniversary of the Effective Date.

1.2. "Applicable Law" shall mean all statutes, rules, regulations, permits, judgments, or orders and all other requirements of the United States, State of Texas, City of Plano, County of Collin, County of Denton, or other federal, state or local governmental body, agency, or court

having jurisdiction that apply to or govern Contractor or Contractor's operations under this Agreement, including but not limited to: the storage, collection, transportation, processing and/or disposal of Solid Waste generated or received in the City of Plano; the storage, collection, transportation, processing, and marketing of Recyclable Materials generated or received in the City of Plano, all services to be performed and facilities, sites, and equipment to be used by Contractor under this Agreement; and the acquisition, permitting, construction, equipping, financing, ownership, possession, testing, and operation of Contractor's Recycling Processing Center.

1.3. "Biomedical Waste" shall mean those wastes (i) defined by the United States Environmental Protection Agency (USEPA) as infectious wastes in its Guide for Infectious Waste Management, /EPA/530-SW-86-014, May 1986, or defined by the USEPA as medical wastes in 40 CFR 359.30, and any other wastes identified as infectious or similar wastes in any other applicable federal, state, county or municipal laws, regulations and guidelines, and (ii) "Chemotherapy Waste" (also known as antineoplastic or cytotoxic waste). The term "Chemotherapy Waste", as used herein, means discarded items which have been contaminated by chemotherapeutic drugs or antineoplastic agents, provided that such items, including vials and syringes, shall be empty as defined in applicable federal, state, county or municipal laws, regulations and guidelines.

1.4. "City Representative" shall mean the Sustainability & Environmental Services Director of the City of Plano or his/her designee.

1.5. "Collect", "Collected", and "Collection" shall mean and refer to the picking up and transporting, storage and delivery of Solid Waste to the appropriate Disposal Site and proper disposal of Solid Waste and the picking up and transporting, storage and delivery of commercial Recyclable Materials to the appropriate processing site and/or market and the proper processing of Recyclable Materials from commercial Customers, all in compliance with applicable federal, state and local laws, statutes, ordinances, rules and regulations.

1.6. "Commercial Customers" shall mean all those persons, corporations, businesses, institutions, facilities (including without limitation schools, industrial sites, offices, office complexes, warehouses, municipal and state buildings, condominium offices and residences, apartment buildings and apartment complexes greater than two units) and other entities which utilize on-premise reusable containers for the purpose of accumulating or holding Solid Waste and Recyclable Materials for subsequent transport and disposal.

1.7 "Construction and Demolition Debris" shall mean solid waste generated from construction, remodeling, repair and demolition of structures; road building and land clearing. Construction and demolition debris includes but is not limited to bricks, concrete, rebar and other masonry material, gypsum based sheetrock, soil, rock, lumber, metal, paving material, and tree and brush stumps.

1.8. "Containers" shall include all three dimensional receptacles of metal, rigid plastic or similar construction, of rectangular or similar shape, with or without a top, and with or without wheels, designed to hold Solid Waste and/or Recyclable Materials, either loosely or in a compacted state, and shall specifically include, without limitation, all roll-off open top containers, roll-off closed top containers, roll-off compaction containers and all those receptacles with a volume of

between two (2) cubic yards and eight (8) cubic yards, inclusive, designed for use with a front-end loader; provided, however, that "Containers" shall not include any receptacles with a capacity of one hundred (100) gallons or less provided by or through the City of Plano for holding or accumulating Solid Waste and Recyclable Materials.

1.9 "Disposal Rate" shall be the per ton charge for disposal at the NTMWD Disposal Facilities agreed to by the City and Contractor, as adjusted on an annual basis.

1.10 "Disposal Costs" shall mean those charges incurred by Contractor for Solid Waste disposal at the NTMWD disposal facilities.

1.11. "Diversion Rate" shall mean the number of tons of Recyclable Materials reported in any Fiscal Year to the City by Contractor and other entities providing Recycling services in the City divided by the sum of (i) number of tons disposed of at the NTMWD disposal facilities and other disposal facilities that may be used by Contractor, other entities and/or City from time to time disposing of Solid Waste originating in the City and (ii) number of tons of Recyclable Materials reported to the City by Contractor and other entities providing Recycling services in the City, all multiplied by 100.

1.12. "Equipment" shall mean all vehicles, containers, machinery, tools and equipment, as well as related supplies and materials reasonably necessary for Contractor's performance hereunder.

1.13. "Escalation" shall mean an annual adjustment based upon the net percentage of increase or decrease in the Consumer Price Index – Urban Wage Earners and Clerical Workers, Dallas – Fort Worth metropolitan area ("CPI-W") by the Bureau of Labor Statistics of the United States Department of Labor, or any successor governmental agency, between the date of the last such adjustment or the date of execution of this Agreement (in the case of the first such adjustment) and the date such an adjustment is made by Contractor.

1.14. "Food Waste Recycling" shall refer to a special service that includes separation, separate storage, separate collection and processing into compost various types of food waste originating from Commercial Customers serviced by the City.

1.15. "Gross Billings" shall be defined as all billings by Contractor net of write-offs for uncollectable accounts for Solid Waste services in connection with the exclusive and noncompetitive Collection services provided hereunder, including without limitation delivery charges and any other additional revenue related thereto, but specifically excluding amounts received by Contractor for sale of Recyclable Materials from Commercial Customers and fees for late payments.

1.16. "Hazardous Waste" shall mean solid waste identified or listed as a hazardous waste by the Administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901, et seq.) or any comparable State of Texas law.

EXHIBIT A

1.17. "NTMWD" shall mean the North Texas Municipal Water District, a political subdivision of the State of Texas.

1.18. "NTMWD Disposal Facilities or Disposal Sites" shall mean all locations or facilities established and designated by the North Texas Municipal Water District ("NTMWD") and operated as transfer stations or landfills.

1.19. "Recyclable Materials" shall mean those materials diverted from Solid Waste, collected for processing, processed and sold or given to markets for reuse or Recycling in place of virgin materials including, but not limited to, corrugated containers, mixed paper, sorted and unsorted office paper, any other clean and dry paper materials, glass containers, metal containers, plastic containers, bottles, food materials left over from food processing and/or cooking operations set out for separate collection, and other such materials as the Parties may agree to divert for Recycling from time-to-time.

1.20. "Recycling" shall mean the reclamation and/or recovery from Solid Waste of Recyclable Materials.

1.21. "Solid Waste" shall mean any and all garbage, trash, refuse and other discarded material held or accumulated in Containers, including, without limitation: animal and vegetable waste materials resulting from the handling, preparation, cooking, processing or consumption of food; combustible waste materials such as paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings and leaves; noncombustible waste materials such as glass, crockery, metal cans and metal furniture; and building materials and construction and demolition/remodeling debris such as wood, rock, gravel and concrete; provided, however, that Solid Waste does not include Hazardous Waste or Biomedical Waste.

1.22. "Storage" shall mean the holding of Solid Waste and/or Recyclable Materials for a temporary period, at the end of which the Solid Waste and/or Recyclable Materials are processed, disposed of, or permanently stored elsewhere.

Section 2. <u>Grant: Agreement Documents</u>

2.1. For and in consideration of the covenants, agreements and promises contained herein, the City grants to Contractor an exclusive franchise to conduct the business of providing Solid Waste Collection to Commercial Customers in the City of Plano, Texas, and the right to use the public streets, alleys, and thoroughfares within the corporate limits of the City for the purpose of engaging in the business of Solid Waste Collection for Commercial Customers located within the City. Contractor agrees to make such Collection available to Commercial Customers within the City and agrees that such Collection will be performed pursuant to and consistent with the terms of this Agreement, as well as all ordinances and regulations of the City governing or relating to the Collection of Solid Waste.

2.2. For and in consideration of the covenants, agreements and promises contained herein, the City grants to Contractor a non-exclusive franchise to conduct the business of providing Recyclable Materials Collection to Commercial Customers in the City of Plano, Texas, and the right

to use the public streets, alleys, and thoroughfares within the corporate limits of the City for the purpose of engaging in the business of Recyclable Materials Collection for Commercial Customers located within the City. Contractor agrees to make such Collection available to Commercial Customers within the City and agrees that such Collection will be performed pursuant to and consistent with the terms of this Agreement, as well as all ordinances and regulations of the City governing or relating to the Collection of Recyclable Materials.

2.3. The Parties agree that the Private Franchise Agreement Documents shall consist of the following:

1. This Agreement;

2. The following listed and numbered Exhibits:

Exhibit "A" - Performance Standards

Exhibit "B" - Environmental Education & Community Awareness

Exhibit "C" – Container and Rolling Stock Equipment Inventory

Exhibit "D" - Rate Schedule for Commercial Waste and Recycling Services

Exhibit "E" - Insurance Requirements

Exhibit "F" – Commercial Recycling Promotional and Education Plan

Exhibit "G" – Performance Bond Specimen

Section 3. <u>Franchise Fees and Disposal Cost</u>

In consideration of the franchise grant contained in Section 2 hereof, Contractor agrees to pay, in the form of a direct wire transfer to the designated depository of the City, cashier's check, or a Contractor check, depending on the preference of the City, and City agrees to accept, a sum of money as follows:

3.1. A sum of money which shall be equivalent to seven percent (7%) of Contractor's Gross Billings to Commercial Customers in the City for the preceding month (hereinafter the "Variable Franchise Fee"); and

3.2. SEVEN HUNDRED FORTY-FOUR THOUSAND AND SEVEN HUNDRED AND NINETY DOLLARS ($744,790.00) in the first year of this Agreement, and a like amount in each subsequent year of this Agreement after adjustment for Escalation (hereinafter the "Fixed Franchise Fee"). Said annual payments will be divided into twelve (12) equal installments and paid monthly; and

EXHIBIT A

3.3. A sum of money equal to the "Disposal Rate" multiplied by the tons of Solid Waste collected in the City and delivered by Contractor to the NTWMD Facilities for disposal at NTMWD facilities in the preceding month. The monthly tons of waste disposed will be reconciled between Contractor and NTWMD reports, and will be adjusted in the subsequent monthly payment; and;

3.4. Contractor agrees to include the Franchise Fees in its fees and charges to all Commercial Customers in the City, except as explicitly waived in writing by the City's Representative. Franchise Fees are hereby waived for services provided to the Plano Independent School District.

3.5. In order to determine the Gross Billings of Contractor for those categories identified in Section 3.1 above, Contractor agrees to maintain financial records in sufficient detail to itemize billings from any and all sources and to also include any and all other fees, charges for services and revenue derived by Contractor within the corporate limits of the City to which the Franchise Fee has been applied. Within forty-five (45) calendar days of the close of each Agreement Year, Contractor shall prepare a final report for the preceding year, and such report shall be sworn to as being based upon audited performance of Contractor for the period for which the report is filed. Contractor also agrees to submit a monthly report by the 15th of each month that provides Contractor's total billings to the City by roll-off and front load and that includes the total tonnage by roll-off and front load.

3.6. Should any payment due date required by this Agreement fall on a weekend or declared bank holiday, payment shall be delivered to City no later than the close of business of the working day prior to any specifically required due date contained within this Agreement.

3.7. If the City determines that Contractor has failed to pay the full amount of money due under the terms of this Agreement, Contractor shall pay all such amounts, including interest thereon, in full, within ten (10) business days of demand by City. Interest shall accrue at the rate defined in Section 18 below and shall begin accruing from the time that such moneys were initially due and payable to City under the terms of this Agreement.

3.8. **Payments**. The Franchise Fees and Disposal Costs due under this Agreement shall be made by Contractor to City once per month beginning thirty (30) days after the Effective Date of this Agreement. Payments are due to the City by the 15th day of each month. Payments received 10 days after written notice in accordance with Section 3.7, shall accrue interest at the maximum rate allowed by law.

Section 4. <u>Term</u>

4.1. <u>Primary Term</u>. The term of this Agreement shall be for a period of seven (7) years commencing December 1, 2010, the "Effective Date", and, unless renewed according to the terms of Paragraph 4.2 or extended in accordance with Section 8.4, terminating on the seventh (7th) anniversary of said date (the "Primary Term"). This Agreement may be renewed, upon expiration of the Primary Term, in accordance with Section 4.2.

4.2. <u>Renewal</u>. The Primary Term of this Agreement may be extended by agreement of the Parties for a total of two (2) additional three (3) year periods upon the same terms and

conditions as herein set forth. In order for the Primary Term to be extended for a first renewal term, Contractor must notify the City in writing of its desire to extend the Primary Term for an additional three (3) year period, such notice to be given no more than two hundred ten (210) calendar days nor fewer than one hundred eighty (180) calendar days prior to the end of the Primary Term. The City shall, after Contractor gives such notice, have sixty (60) calendar days in which to notify Contractor of its agreement to extend the Primary Term of the Agreement, failing in which the Agreement will expire as provided for herein.

In the event the Parties elect to extend this Agreement into the first renewal term, they may thereafter extend the term hereof for a second three (3) year period. In order for this Agreement to be extended into the second renewal term, Contractor must notify the City in writing of its desire to extend the term hereof for a final three (3) year period, such notice to be given no more than two hundred ten (210) calendar days nor fewer than one hundred eighty (180) calendar days prior to the expiration of the first renewal term. The City shall, after Contractor gives such notice, have sixty (60) calendar days in which to notify Contractor of its agreement to extend the term of the Agreement for a final three (3) year period; otherwise, the Agreement will expire as provided herein.

Notwithstanding the provisions herein regarding renewal hereof, the Parties agree that the City may, at any time prior or subsequent to expiration of the Primary Term hereof or any extension term hereto, solicit bids or proposals in connection with the Collection of Solid Waste and Recyclable Materials and such other services as are provided for herein, subject to the franchise granted Contractor herein and Contractor's rights to provide service hereunder for the term hereof.

Section 5. <u>General Statement of Contractor's Obligations; Scope of Services</u>

5.1. Contractor hereby agrees to Collect all Solid Waste generated by Commercial Customers within the corporate city limits of the City. Contractor shall, at its own cost and expense, furnish trained personnel and appropriate well maintained Equipment of the highest quality to Collect Solid Waste from Commercial Customers; and will establish and maintain scheduled Collection routes and special schedules as may be necessary to meet the Collection service requirements of the Commercial Customers located within the corporate city limits of the City. Further, Contractor, at its own cost and expense, shall provide for the solicitation, servicing and billing of Commercial Customers, and shall recommend schedules of service to said Commercial Customers, such schedules being subject to the written approval of the City. Unless otherwise established by City ordinance, Collection schedules for commercial Solid Waste shall be determined by Contractor based upon negotiations with its Commercial Customers. Contractor acknowledges and agrees that Contractor shall be obligated to take such actions as necessary to fulfill its duties and obligations hereunder and that the City may from time-to-time issue written directions to Contractor clarifying the scope of Contractor's services to fulfill the intent of this Agreement. Contractor agrees that it will formulate one (1) or more standard contract forms providing for the Collection of Solid Waste from its Commercial Customers, and that said standard forms will be submitted for and subject to approval by the City prior to use. Contractor further agrees that any proposed significant deviations from or modifications to said standard forms will be submitted for and subject to prior approval by the City. All such contracts will provide, among other things, for cancellation by Contractor consistent with the provisions of Sections 20 and 21 hereof. Title to Hazardous Waste

and Biomedical Waste shall not pass to Contractor at any time and shall remain with the generator of such waste. Title to Solid Waste shall pass to Contractor when such Solid Waste is loaded onto Contractor's vehicle.

5.2. Contractor hereby agrees to Collect Recyclable Materials generated by Commercial Customers within the corporate City limits of the City with whom Contractor has contracted for this purpose. Contractor shall, at its own cost and expense, furnish trained personnel and appropriate well maintained Equipment of the highest quality to Collect Recyclable Materials from Commercial Customers; and will establish and maintain scheduled Collection routes and special schedules as may be necessary to meet the Collection service requirements of the Commercial Customers located within the corporate city limits of the City. Further, Contractor, at its own cost and expense, shall provide for the servicing and billing of Commercial Customers, and shall recommend schedules of service to said Commercial Customers, such schedules being subject to the written approval of the City. Unless otherwise established by City ordinance, Collection schedules for Recyclable Materials shall be determined by Contractor based upon negotiations with its Commercial Customers. Contractor acknowledges and agrees that Contractor shall be obligated to take such actions as necessary to fulfill its duties and obligations hereunder and that the City may from time to time issue written directions to Contractor clarifying the scope of Contractor's services to fulfill the intent of this Agreement. Contractor also acknowledges that the City will be responsible for conducting public education and information services related to commercial Recycling and will generally work closely with Contractor to promote the separation and diversion of Recyclable Materials from commercial Solid Waste and promote the provision of such services by Contractor and other commercial recyclers licensed by the City. Contractor shall coordinate its services working closely with the City as it promotes changes to current services for increased diversion of Recyclable Materials throughout the City from Commercial Customers.

5.3. The City will Collect Food Waste Recyclable Materials from Commercial Customers without interference to Contractor's Solid Waste and/or Recyclable Materials Collection services for the purpose of adding collected Food Waste to the City's composting operations until such time that the City and Contractor mutually agree that the Collection is substantial enough for Contractor to assume the provision of such services per Subsection 5.2 for reasonable costs.

5.4. The City may request additional services from Contractor in the event of a catastrophic event, non-recurring event or other special circumstances in which the City determines that additional Solid Waste and/or Recyclable Materials Collection, transportation, processing, or disposal services are necessary. Contractor agrees to make best efforts to provide such additional services. Such services will be related to the collection, transportation, processing, marketing and/or disposal of Solid Waste and/or Recyclable Materials that may be generated as a result of said catastrophic event, non-recurring event or special circumstances. If Contractor declines to provide such additional services, under the circumstances stated above, regardless of the reasons for declining, the City will not have the right to declare Contractor in default of any provisions of this Agreement.

In the event such additional services are provided by Contractor, the following rates will apply: the cost for providing roll-off container or grapple service and disposal will be one hundred fifty ($150.00) per hour plus the actual cost of disposal for materials collected from locations within

the City; and if two persons are required, the cost will be one hundred ninety ($190.00) per hour plus the actual cost of disposal. If and when such additional services are required, the rate will be adjusted based on the net percentage of increase or decrease in the Consumer Price Index – Urban Wage Earners and Clerical Workers, Dallas – Fort Worth metropolitan area ("CPI-W by the Bureau of Labor Statistics of the United States Department of Labor, or any successor governmental agency, between the date of this Agreement and the last published CPI-W. These charges are not subject to the assessment of Franchise Fees.

Section 6. <u>Disposal of Solid Waste</u>

6.1. Contractor shall deliver Solid Waste Collected pursuant to this Agreement to NTMWD Disposal Facilities or to any transfer station which may hereafter be utilized in the future by the City or jointly by the City and NTMWD (such site hereafter called the "Disposal Site"). In the event that at some future time there is no Disposal Site available for the disposal of commercial Solid Waste as contemplated by this Agreement, costs which may be incurred by Contractor in disposing of said commercial Solid Waste shall, at that time, be negotiated by the Parties in good faith. Any alternative disposal site must be approved in writing by the City prior to its use by Contractor. All laws, rules and regulations governing hours of operation and disposal practices at the Disposal Site shall be strictly observed by Contractor.

6.2. In the event of holidays observed by the City and NTMWD but not observed by Contractor, Contractor shall be allowed to dispose of such Solid Waste Collected that day only at another State of Texas approved Type I or Type IV landfill. Contractor will provide the City with gate receipts, cost per ton and/or yard, identification of and number of vehicles, and total number of all Commercial Customers serviced that day. The City shall have the right to review and approve Contractor's designated holidays for any calendar year in advance of the year beginning.

6.3 Processing and sale of any Recyclable Materials collected pursuant to this Agreement shall be the responsibility of Contractor.

Section 7. <u>Performance</u>

The Parties agree that all services provided by Contractor pursuant to this Agreement shall be carried out in a competent and businesslike manner and in compliance with the standards and specifications set forth in the attached Exhibit "A" (hereafter "Performance Standards"). Contractor shall not engage any subcontractor without written prior approval of the City. Further, the City Council of the City of Plano (hereinafter the "Council") shall have the right to revise the Performance Standards as it deems necessary, when such revisions are necessary or proper to preserve or protect the health, safety, and welfare of the citizens of the City of Plano; provided, however, that prior to amending the Performance Standards, the Council shall invite and allow Contractor to submit any information it may wish to submit for Council review. The Parties further agree that the Council may seek advice from the City Representative. Any revision or establishment of new Performance Standards shall be approved by the Council and upon such approval shall become a part of this Agreement as though fully set forth herein; provided, however, that the allocation, as between the Parties, of any and all costs which may hereafter be incurred by

Contractor in conforming with any changes in the Performance Standards, should any such changes be made, shall, at that time, be negotiated by the Parties in good faith.

Section 8. Recycling Program

8.1. General. The City and Contractor shall maintain a Recycling program for its Commercial Customers for the purpose of assisting the City to accomplish an overall Diversion Rate of forty percent (40%) by weight of Solid Waste generated in the City by Commercial Customers. This program shall be consistent with the City of Plano's stated goals of reducing solid waste tonnage and consistent with federal and state mandates imposed after the Effective Date or any renewal date of this Agreement.

8.2. Commercial Recycling Promotion Activities. The City agrees to implement, establish and promote, at its sole cost and expense, the Commercial Recycling Public Education and Promotional Activities included in Exhibit "F." Contractor agrees to cooperate fully with the City in coordinating the delivery of Recycling services that the Commercial Customers decide to utilize from Contractor. Under the program, Contractor shall provide to its Commercial Customers Recycling bins, carts or Containers as needed and mutually agreed upon by the City and Contractor. Charges for the commercial Recycling program shall not exceed those defined in Exhibit "D" which is attached hereto.

8.3 Sale of Recyclable Materials. Contractor shall use due diligence and its best efforts to maximize the economic return from the sale of the Recyclable Materials processed by the Recycling Center and shall maintain at its local office detailed records and files of all bids and quotes it receives from third parties for the purpose of such Recyclable Materials to show that Recyclable Materials have in fact been resold for the purpose of Recycling.

8.4 Waste to Fuel Plant If and when the City decides, after an anticipated feasibility study, to construct and operate a waste-to-fuel energy facility in the City (the "Energy Facility"), Contractor agrees to make a one-time contribution of up to $1,000,000, payable in twelve monthly equal installments following the commencement of operations at the Energy Facility (the "Waste to Fuel Payment") in exchange for the following:

8.4.1 An additional three years to the Primary Term, so that the Primary Term is ten years instead of seven years with the same extension rights set forth in Section 4.2.

8.4.2 Contractor's ability to deliver up to 100 tons of Solid Waste per day to the Energy Facility at a rate of $25.00 per ton.

8.4.3 Contractor's ability to purchase up to 10,000 gallons of produced diesel per month from the Energy Facility at a rate equal to the On-Highway Diesel Price Gulf Coast PADD III published by the US Energy Information Administration (EIA) less 20%..

EXHIBIT A

Notwithstanding the foregoing, Contractor's monthly payment obligations for the Waste to Fuel Payment shall be suspended during any period of time in which the Facility is not open or the City is unable to fulfill its obligations pursuant to Sections 8.4.1, 8.4.2, and 8.4.3 above.

Section 9. Environmental Education & Community Outreach

Contractor will assist in the funding of the Environmental Education & Community Outreach programs and activities, more particularly described in Exhibit "B". Further, Contractor shall comply with City Ordinance 97-9-17 and any amendments or revisions thereto. Contractor shall pay to the City a total of EIGHTY-SIX THOUSAND FOUR HUNDRED SEVENTY-SEVEN DOLLARS ($86,477.00), the first year of this Agreement and in each subsequent year of this Agreement provided, however, that the financial obligation of Contractor under this Section is subject to Escalation in the same manner and amount as the Collection Rates described in Section 13.2 below. Such payment shall be applied to the following programs: $10,000 to support the Live Green Expo; $10,200 to sponsor the Environmental Community Awards; $7,000 to sponsor annual employee awards program, and $59,277 to support various public awareness and educational activities.

Section 10. Labor Force

Contractor shall employ only such superintendents, foremen, and workmen who are careful and competent and fully qualified to perform the duties or tasks assigned to them. All employees of Contractor and/or its subcontractors, if any, shall comply with all applicable laws and regulations, and shall have sufficient skill, ability, and experience to properly perform the work assigned to them and operate any equipment necessary to properly carry out the performance of their assigned duties. Contractor agrees to maintain a work environment free from the use, possession, distribution and influence of controlled substances, alcohol, intoxicants, narcotics or other mind-altering substances (referred to hereinafter as drugs and alcohol) and to prohibit employees from using, possessing, distributing or being under the influence of drugs or alcohol at any time within the course and scope of their employment. Contractor shall keep on file with the City a copy of its most current substance abuse policy.

Section 11. Equipment

Contractor, at its sole cost and expense, shall furnish and maintain all Equipment as is reasonably necessary for prosecution of the work in an acceptable manner and at a satisfactory rate of progress. All Collection vehicles used for handling Solid Waste and Recyclable Materials and executing any part of the work shall be subject to the approval of the City. The Equipment shall be maintained in a first class, safe and efficient working condition throughout the Primary Term of this Agreement and any renewal period. Contractor shall establish a regular preventive maintenance program for all Equipment and shall maintain detailed records of all preventive maintenance and other maintenance and repairs to the Equipment. The Equipment shall be used by Contractor in such a manner as to minimize the risk of injury to employees, citizens or property. Contractor shall be responsible for initiating, maintaining and supervising all maintenance programs, safety precautions and programs, in connection with the work and services performed hereunder. Contractor shall establish reasonable procedures and programs to prevent property loss or damage or personal injury

to persons, including, but not limited to, employees performing such work and all other persons who may be affected. Contractor shall comply with all applicable OSHA rules and regulations when conducting operations pursuant to this Agreement. Contractor shall maintain files and records of all citations and violations of any laws, statutes, ordinances, or regulations in the ownership, title, maintenance, or operating of the Equipment, and such files and records shall be available at all times for review by the City. Contractor shall submit a complete written inventory of all Equipment used in the performance under this Agreement in the form described in Exhibit "C" hereof, and shall make such other submissions as required to reflect Contractor's current Equipment inventory throughout the term of the Agreement or any renewal period. City shall have the right to inspect Contractor's Equipment and operations at any time to ensure compliance with this Agreement. In addition, Contractor shall provide an annual statement, on or before the beginning of each City Fiscal Year, October 1, a listing of its Equipment, age of same, and date of past and planned changes to the Equipment.

Section 12. <u>Performance Bond</u>

Contractor shall furnish to the City a performance bond guaranteeing the faithful performance of this Agreement (hereinafter "Performance Bond"). The Performance Bond shall be in a form similar to the specimen attached hereto as Exhibit "G" and shall be executed by a surety company licensed or authorized to do business in the State of Texas. The Performance Bond shall be in the amount of FIVE MILLION AND NO/100 DOLLARS ($5,000,000.00) and shall be valid for the term of this Agreement. The Performance Bond shall be furnished to the City by Contractor prior to the Effective Date. Without limiting any other indemnity provisions herein, said Performance Bond may be called by City for any loss, expense, cost or damage resulting from any default by Contractor hereunder or any failure of performance hereunder by Contractor. The Risk Manager of the City is hereby delegated the authority to approve not only the content of the Performance Bond, but also the financial capabilities of the surety company to perform.

Section 13. <u>Collection Rates</u>

13.1. <u>Rate Structure</u>. The Parties agree that Exhibit "D" , attached hereto, shall establish the maximum permissible rates to be charged by Contractor to Commercial Customers for services provided hereunder during the term of this Agreement or any extensions hereto. The Parties agree that such rates may be modified or adjusted only as provided in Subsections 13.2 and 13.3 herein below and in Section 7 above. The City agrees to include Exhibit "D", and Contractor acknowledges that Exhibit "D" shall be included, in a City Ordinance establishing such rates for Commercial Customers in the City prior to the Effective Date of the Agreement.

13.2. <u>Adjustment to Rate Structure</u>. The Parties agree that the Collection portion of the rate structure shall be subject to Escalation on an annual basis, beginning on the first anniversary of the Agreement. Contractor agrees to provide supporting documentation for any adjustments to collection rates as part of Contractor's request for same. The disposal portion of the rate structure shall be adjusted immediately upon changes in the Disposal Rate charged by the NTMWD at NTMWD Disposal Facilities.

EXHIBIT A

13.3. <u>Adjustments for Changes in Regulations Affecting Contractor</u>. Notwithstanding the foregoing, the Parties agree that the rates to be charged by Contractor hereunder may be changed by Contractor, upon thirty (30) calendar days notice to City, to compensate for any costs incurred by Contractor in performance of this Agreement which result directly from changes (including changes in official interpretation) of any applicable laws, ordinances, or regulations, including changes relating to permit fees or reporting requirements; provided, however, that City may, at any time and at its sole discretion, suspend imposition of such changed rates pending satisfactory documentation submitted to City by Contractor that such changed rates are justifiable under this Subsection 13.3. Satisfactory documentation shall include a certificate signed by the principal financial officer of Contractor setting forth the amount of the changed rate and the reason why such rate change is properly chargeable, and, if requested by the City, Contractor shall provide to City such additional back-up documentation to reasonably demonstrate the incurrence of any cost change. In the event the City determines that there has been a regulatory change, the City has the right to request Contractor to propose a change under this clause. Nothing included in this Agreement as it currently is executed and as implemented constitutes grounds for any additional adjustment

Section 14. <u>Commercial Customer Billing</u>

Contractor shall be responsible for billing and collecting payments from Commercial Customers. The City shall have the right to approve the format and textual content of the bills. The billing methods and arrangements may from time-to-time be changed by Contractor upon written approval of the City, but in any event, Contractor hereby agrees to bill Commercial Customers no later than thirty (30) calendar days after Contractor provides the Commercial Customer with the Collection service. Such bills shall include any and all appropriate state or federal sales or service taxes, if any, now in existence or that may hereafter be imposed.

Section 15. <u>Vehicular Identification</u>

All vehicles and Equipment used by Contractor for the Collection of commercial Solid Waste and Recyclable Materials shall be clearly marked with Contractor's name in letters of a size sufficient to reasonably identify the vehicle and Equipment, but not less than five inches (5") in height, except as provided for in Section 16(iv). All vehicles and equipment shall be commonly colored or decorated, with any exceptions subject to the written approval of the City. Contractor shall also assign each of its vehicles an identifying number and shall mark the same upon said vehicles in two prominent locations, as approved by the City in figures not less than five inches (5") in height.

Section 16. <u>Regulation of Collection Containers</u>

Contractor shall provide its Commercial Customers with appropriate reusable Containers for Collection of commercial Solid Waste and Recyclable Materials, subject to the following requirements:

(i) All front loader Containers shall be constructed and maintained in a manner which allows Contractor to achieve the Performance Standards included in Exhibit "A";

(ii) All such Containers shall be equipped with suitable covers to prevent the scattering of the Container's contents while in transit or in the Commercial Customer's location;

(iii) All such Containers shall be cleaned and maintained on a regular basis by Contractor so as to be in good repair, of a good appearance, and free of such refuse residues in the container as may cause odor, provide a breeding place for insects and harborage for rodents; and

(iv) All such Containers shall be clearly marked with Contractor's name and telephone number in letters not less than two inches (2") in height.

The Performance Standard attached hereto as Exhibit "A" contains detailed standards for regulation of collection Containers.

Section 17. <u>Health and Sanitation</u>

Contractor shall establish and enforce in its operations and among its employees such regulations in regard to cleanliness and Collection of Solid Waste and Recyclable Materials as will tend to prevent the inception and spread of diseases and to effectively prevent the creation of a nuisance on any property either public or private. Contractor shall maintain at its sole cost and expense copies of all permits and licenses required for its Collection of Solid Waste and Recyclable Materials services.

Section 18. <u>Right of Inspection and Audit</u>

The City hereby reserves the right to inspect and evaluate Contractor's operations relating to its performance hereunder either on a continuing or random inspection basis. The City from time-to-time may unilaterally determine which operations of Contractor's related to this Agreement are to be evaluated during a particular period. The City, utilizing its own employees or an independent third party contractor of its own selection, may evaluate technical performance, including reliability and schedule performance, program management, cost control and small business and small disadvantaged business subcontracting. The cost of such third party contractor shall be borne entirely by the City.

Contractor shall keep accurate books of account relating to this Agreement at its principal office in the City or such other location of its choosing for the purpose of determining the amounts due to the City under this Agreement. The City may inspect Contractor's books of account specific to Contractor's billing to Commercial Customers in the City and associated Franchise Fees relative to the City at any time during regular business hours on ten (10) business days' prior written notice and may audit the books for such purpose from time-to-time. All records reasonably necessary for such audit shall be made available by Contractor in a format deemed appropriate at a location in the City of Plano, or Contractor shall pay City's expenses in traveling to any other location necessary to conduct the audit. Contractor agrees to give its full cooperation in any audit and shall provide complete responses to inquiries within ten (10) business days of a written request.

EXHIBIT A

If the results of the audit indicate that Contractor underpaid the proper amounts due per this Agreement by more than one and one-half percent (1.5%), and Contractor is unable to produce contrary evidence that in City's reasonable judgment is satisfactory to demonstrate to City that the results of the audit are not accurate, then Contractor shall pay to the City a penalty equal to fifty percent (50%) of the total amount underpaid in addition to the total amount underpaid. Interest on the total amount of underpayment shall be paid at the prime interest rate as published in The Wall Street Journal and in effect on the date the original payment was due plus 2%, and interest shall be calculated from the time the original amount is due. Any additional amount due to City hereunder shall be paid within thirty (30) calendar days from the date of invoice. Any amount not paid within thirty (30) calendar days from the date of the invoice will cause interest to be payable at the prime interest rate in effect on the date of the invoice plus 2% on the entire amount from the date of invoice.

The City agrees to hold in confidence any non-public information it learns from Contractor to the fullest extent permitted by law. The City shall not be liable to Contractor for the release of any information obtained as a result of an audit where the City is required to release that information by law or court order.

Section 19. Non-Compliance Default by Contractor

19.1. Treatment of Failure to Perform. In the event Contractor fails, during the Primary Term hereof or any extensions hereto, to perform its duties and discharge its obligations in accordance with the terms, provisions and conditions hereof, the City shall be entitled, at its sole option, either to declare Contractor to be in non-compliance with the terms of the Agreement (hereinafter "Non-Compliance") or declare Contractor to be in default of this Agreement; provided however, that neither (a) the failure of Contractor or the City to attain a Recycling Diversion Rate of forty percent (40%) nor (b) a force majeure event as described in Section 27.13 shall be considered cause to declare Contractor in non-compliance or default of this Agreement

19.2. Declaration of Non-Compliance; Liquidated Damages. In the event the City declares Contractor to be in Non-Compliance, the City shall notify Contractor in writing of such declaration and specify the precise nature of the Non-Compliance. Contractor shall thereafter have two (2) business days in which to correct or cure such Non-Compliance, failing in which Contractor agrees to pay to the City as liquidated damages, not as a penalty, the sum of **THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($3,500.00)** per day for each event of Non-Compliance; provided, however, that if the event of the Non-Compliance is such that it does not affect the level of service to be provided the City's Commercial Customers and, further, is such that it can be cured in twenty (20) calendar days or less from date of notice and, further, that Contractor commences action to cure such Non-Compliance and diligently pursues such curative measures, then and in that event, liquidated damages shall cease to accrue. In any event, if a condition of Non-Compliance is not corrected or cured within a reasonable time, the City shall be entitled to declare Contractor to be in default hereunder and to take such further action as provided hereinafter.

19.3. Declaration of Default. In the event the City declares Contractor to be in default, whether such declaration of default is subsequent to or in lieu of a declaration of Non-Compliance,

the City shall notify Contractor in writing of such declaration and specify the precise nature of the default. Contractor shall thereafter have thirty (30) calendar days from date of notice in which to cure such default (or, if same cannot be reasonably cured within such period, commence cure within such period and thereafter diligently complete such cure), failing in which the City shall be entitled to declare this Agreement terminated and shall be further entitled to take such actions or pursue such remedies as allowed by law or this Agreement.

19.4. Immediate Termination. Notwithstanding the provisions hereinabove relating to declarations of default, notice, opportunity to cure and termination, in the event City declares Contractor to be in default hereunder, and the City determines that such default is of a nature and magnitude so as to frustrate or defeat the essential purposes of the Agreement, and further determines that such default may or will result in substantial injury to the public health, safety or welfare, the Parties agree as follows:

1) City shall be entitled to declare immediately that this Agreement and Contractor's right to proceed hereunder are terminated;
2) City shall be entitled to the full Performance Bond of Contractor; and
3) City shall be entitled, at its sole option, to immediate possession of all vehicles, Equipment, containers, facilities or other instrumentalities in possession of Contractor used in connection with this Agreement as may be necessary to permit City to provide and perform Collection of Solid Waste and Recyclable Materials on an interim basis until such time as a satisfactory substitute contractor may be put into place or the Parties hereto otherwise agree, in which event City shall fairly compensate Contractor for the fair market rental value of such vehicles, Equipment, Containers, facilities or other instrumentalities, subject to any offsets or claims by City against Contractor, for up to a nine (9) month period following the date of such termination.

Section 20. Obligations of Parties Upon Default by Contractor

20.1. Termination of the Agreement. In the event of termination of this Agreement as provided for in Section 19 hereof, Contractor shall immediately discontinue all service or performance hereunder and shall immediately cancel and discontinue service under any and all contracts for the Collection of Solid Waste entered into pursuant to the authority and right hereby granted. Further, and within ten (10) business days of termination hereof, Contractor shall submit to City a statement setting forth in detail all services performed hereunder prior to the date of termination.

20.2. Extension of Time. Notwithstanding the provisions of this Section and of Section 19, the Parties agree that in those instances where said Sections impose a time limit for an act or performance by Contractor, the City shall have the right, at its sole discretion, to extend the time for such act or performance, without prejudice to City's right to enforce such time limits thereafter.

EXHIBIT A

20.3. Rights and Remedies Cumulative. The Parties understand and agree that the rights and remedies conferred upon City by this Section and by Section 19 hereof are cumulative and in addition to any and all other rights or remedies conferred upon City at law or in equity.

Section 21. Termination by Contractor

Contractor may terminate this Agreement only in the event of default by the City and a failure by the City to cure such default after receiving notice thereof, all as provided in this subsection. Default by the City shall occur if the City fails to observe any of its duties under this Agreement. Should such a default occur, Contractor shall deliver a written notice to the City Representative describing such default, specifying the provisions of the Agreement under which Contractor considers the City to be in default, giving sufficient details of the alleged breach to enable the City to cure and the proposed date of termination. Such date may not be sooner than thirty (30) days following receipt of the notice. Contractor, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the City cures such default, then the proposed termination shall be ineffective. If the City fails to cure such default prior to the proposed date of termination, then Contractor may terminate its performance under this Agreement as of such date.

Section 22. Indemnification

22.1. Contractor's Indemnification of the City. CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE (AT CITY'S EXPENSE); HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN

EXHIBIT A

DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

22.2. Contractor's Indemnification of NTMWD. Additionally, Contractor agrees to indemnify and hold harmless the NTMWD, its officers, agents, servants and employees from and against any and all claims, liabilities, demands, suits, judgments, cost or expenses, including expenses of litigation and reasonable attorneys' fees, arising from any claim, loss or injury related to the negligent acts or omission of Contractor, its officers, agents, employees, subcontractors or any other third party for whom Contractor is legally responsible; provided, however, City shall exercise (or allow Contractor to exercise) all rights City may have under its contract with NTMWD in mitigation of such indemnity obligations of Contractor to NTMWD. Contractor expressly grants standing to the NTMWD to bring suit to enforce this covenant and waives any claim it may have that the NTMWD is not a party to this Agreement or has failed to give adequate consideration for Contractor's covenant to indemnify. It is expressly understood that the foregoing provisions shall not in any way limit the liability of Contractor.

22.3. Patent Infringement Indemnity. Contractor agrees to release, defend, indemnify and hold harmless the City, its employees, officers and agents from and against all suits, actions and claims of every nature and description brought against them or any of them for or on account of Contractor's use of patented appliances and/or products and/or processes. Contractor shall pay all royalties and charges which are imposed by any party for Contractor's use of patented appliances and/or products and/or processes. Evidence of such payment or satisfaction shall be submitted upon request of the City Representative, as a necessary requirement in connection with the final estimate for payment in which a patented appliance and/or products and/or processes are used.

22.4 Waiver of Subrogation. Contractor hereby agrees to waive any and all rights of subrogation it may have against City by virtue of any claims which may arise as a result of services performed in connection with this agreement.

Section 23. Insurance

Contractor agrees to procure and maintain during the term of this Agreement insurance as set forth in Exhibit "E" attached hereto and incorporated herein by reference. Contractor will provide the City with evidence that the required insurance coverage is in force on or before the beginning of each Fiscal Year, October 1.

Section 24. Contractor's Local Office

24.1. Office/Managing Agent. Throughout the term of this Agreement, Contractor shall establish and maintain a local office and authorized managing agent within the City and shall designate in writing the agent upon whom all notices may be served from the City. Service upon Contractor's agent shall always constitute service upon Contractor.

24.2. Hours. Contractor's local office shall be open during Collection hours so that Commercial Customers can lodge complaints, requests for information, and requests for service. At

a minimum, Contractor's local office shall be open during the hours of 7:30 a.m. and 5:30 p.m., local time, Monday through Friday and 8:00 a.m. to Noon, local time, on Saturday.

24.3. **Staffing**. Contractor's local office shall have a responsible person in charge during Collection hours on Collection days, shall be equipped with sufficient telephones, a local telephone number, and sufficient attendants to receive telephone calls. Attendant(s) shall receive calls in a courteous and polite manner, record all complaints, and resolve all complaints in an expeditious manner within the following twenty-four (24) hour period.

Section 25. Assignment

Contractor agrees that it may not, without prior written consent from the City, assign any rights or delegate any duties arising under this Agreement to a third-party, unless one-hundred percent (100%) of the stock or shares of the third-party entity is owned by Contractor. Contractor further agrees that any such assignment or delegation of rights or duties shall not relieve Contractor of its obligations to City under this Agreement. In the event that Contractor's Plano operations are sold, assigned or otherwise transferred to a third-party entity not owned completely by Contractor, the City shall have the option to give Contractor notice of termination, without penalty to the City, as if the Agreement had been terminated as a result of term expiration and/or non-renewal.

Section 26. Miscellaneous Provisions

26.1. **Independent Contractor**. The relationship of Contractor to the City shall be that of an independent Contractor, and no principal-agent or employer-employee relationship between the Parties is created by this Agreement. By entering into this Agreement with the City, Contractor acknowledges that it will, in the performance of its duties under this Agreement, be acting as an independent Contractor and that no officer, agent or employee of Contractor will be for any purpose an employee of the City and that no officer, agent or employee of Contractor is entitled to any of the benefits and privileges of a City employee or officer under any provision of the statutes of the State of Texas and ordinances of the City.

26.2. **Non-waiver of Powers and Regulations**. This Agreement shall not be taken or held to imply the relinquishment or waiver by the City of its police powers to make other reasonable requirements or regulations pertaining to the subject matter hereof, and the City hereby expressly reserves the right to make all regulations which may be necessary or proper to secure the safety, welfare and accommodation of the public, including, but not limited to, the right to adopt and enforce regulations to protect and promote the health, safety and general welfare of the public from danger and inconvenience in the management and operation of Solid Waste and Recyclable Materials collection, transportation and disposal services detailed herein. Further, nothing herein contained shall constitute a waiver of any of the requirements of the rules and regulations heretofore adopted by the City, including the right to make such changes and amendments to said rules and regulations as said City may deem to be advisable and necessary to protect the public health and general welfare of its inhabitants.

EXHIBIT A

26.3. **Choice of Law: Venue**. The Parties agree that this Agreement shall be governed by the law of the State of Texas: the Parties further agree that venue for all actions arising out of this Agreement shall be Collin County, Texas.

26.4. **Rules of Construction**. As used in this document, a word importing the masculine gender only shall extend to, and be applied to, females as well as males. A word importing the singular number shall include the plural, and a word importing the plural number shall include the singular.

26.5. **Paragraph Headings**. The section and paragraph headings contained herein are for the convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

26.6. **Entire Agreement**. This Agreement, the Exhibits hereto, including all amendments and modifications thereto, constitute the entire Agreement and understanding between the Parties relating to the subject matter, and it shall not be modified, altered, changed or amended in any respect unless done so in writing and approved by Resolution of the City Council of the City.

26.7. **Bankruptcy; Insolvency**. The Parties agree that City shall have the right to terminate this Agreement at its option and without prejudice to any other remedy to which it may be entitled at law or in equity, or elsewhere under this Agreement, including the remedy available to City under Section 19.4 hereof, by giving written notice of termination to Contractor if the latter should:

(i) Make an assignment for the benefit of creditors;

(ii) Become insolvent or have a receiver of its assets or property appointed without filing bankruptcy; or

(iii) Allow any money judgment against it to remain unsatisfied for a period of thirty (30) calendar days or longer.

26.8. **Discrimination Prohibited**. Contractor, in the execution, performance, or attempted performance of this Agreement, shall not discriminate against any person or persons because of sex, race, religion, age, color, or national origin. Contractor must be an equal opportunity employer and have an affirmative action plan.

26.9. **Time is of the Essence**. Time shall be deemed to be of the essence whenever time limits are imposed herein for the performance of any obligations by any of the Parties hereto, or whenever the accrual of any rights to either of the Parties hereto depends on the passage of time.

26.10. **Right to Require Performance**. The failure of one of the Parties at any time to require performance by the other party of any provisions hereof shall in no way affect the rights of such party thereafter to enforce the same. Nor shall waiver by a party of any breach of any provisions hereof be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of any provisions itself.

EXHIBIT A

26.11. Unenforceable Provisions. If any provision of this Agreement shall be declared illegal, void or unenforceable, the other provisions shall not be affected and shall remain in full force and effect.

26.12. Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered, whether or not actually received, when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the respective Party at the address set forth below:

City: Sustainability & Environmental Services Manager
City of Plano
P. O. Box 860358
Plano, Texas 75086-0358
Telephone: (972) 769-4264
Facsimile: (972) 769-4172

With a copy to: Director, Sustainability & Environmental Services Department
P. O. Box 860358
Plano, Texas 75086-0358
Telephone: (972) 769-4264
Facsimile: (972) 769-4172

City Attorney
City of Plano
P. O. Box 860358
Plano, Texas 75086-0358
Telephone: (972) 941-7125
Facsimile: (972) 424-0099

Contractor: Allied Waste Systems, Inc.
Attention: Area President
1212 Harrison Avenue
Arlington, Texas 76011
Telephone: (817) 317-2030
Facsimile: (817) 459-4663

With a copy to: Allied Waste Services of Plano
Attention: General Manager
4200 East 14th Street
Plano, Texas 75074
Telephone: (972) 422-2341
Facsimile: (972) 881-9077

EXHIBIT A

And a copy to: Republic Services, Inc.
Attention: Vice President, Deputy General Counsel - South
18500 N. Allied Way
Phoenix, AZ 85054
Telephone: (480) 627-2700
Facsimile: (480) 627-2714

or such other address as the Parties have heretofore specified by written notice delivered in accordance herewith.

26.13 Force Majeure. Except as to payment obligations, neither Party to this Agreement shall be liable or considered in default under this Agreement when the delay of performance is caused by circumstances beyond its reasonable control and occurring without its fault or negligence, including national emergencies, natural disasters (earthquakes, hurricanes, floods), acts of God, insurrection and war, provided the party invoking this Section immediately provides written notice thereof to the other and does everything reasonably possible to resume its performance hereunder at the earliest practical time; provided, however, that strikes, lockouts, or other labor disturbances of employees of Contractor or any of its subcontractors shall not be considered a cause for delay of performance by Contractor under this Agreement.

26.14 Contractor's Financial Obligation. All obligations of Contractor under this Agreement are to be provided at Contractor's sole cost and expense unless otherwise provided herein.

26.15. Approval by the City Council. This Agreement shall not be considered fully executed or binding or effective on the City until the same shall have been approved and adopted by Ordinance by the City Council of the City of Plano in open meeting as required by law and executed by Contractor and the City. After such approval and acceptance, the City shall deliver to Contractor a certified copy of the Ordinance as evidence of the authority of the City Manager, or his designee, to bind the City to the terms, covenants and provisions of this Agreement and to perform the same in accordance herewith.

26.16. Compliance With Laws. Contractor, its officers, agents, employees, contractors and subcontractors, shall abide by and comply with Applicable Law and all laws, federal, state and local. It is agreed and understood that, if City calls the attention of Contractor to any such violations on the part of Contractor, its officers, agents, employees, contractors or subcontractors, then Contractor shall immediately desist from and correct such violation.

26.17. Effective Date. The Effective Date of this Agreement shall be December 1, 2010.

26.18. Consent. In each instance where City's consent is required hereunder, such consent shall not be withheld unreasonably.

26.19. Inspection: Audit. All inspections and audits which City may conduct hereunder shall be upon reasonable notice and during normal business hours.

EXHIBIT A

[Signatures on following page]

THE CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

ATTEST:

_____
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane Wetherbee, CITY ATTORNEY

ALLIED WASTE SYSTEMS, INC.
d/b/a Allied Waste Services of Plano

By:_____
Name_____
Title:_____

ACKNOWLEDGEMENTS

STATE OF TEXAS)
)
COUNTY OF COLLIN.)

This instrument was acknowledged before me on the _____day of _____, 2010 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said municipal corporation.

_____
Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF)

This instrument was acknowledged before me on the _____day of _____, 2010 by **ALLIED WASTE SYSTEMS, INC.**, a Delaware corporation, on behalf of said corporation.

_____
Notary Public in and for the
State of Texas

LIST OF EXHIBITS

Exhibit “A” - Performance Standards

Exhibit “B” - Live Green in Plano

Exhibit “C” - Container and Rolling Stock Equipment Inventory

Exhibit “D” - Rate Schedule for Commercial Waste and Recycling Services

Exhibit “E” - Insurance Requirements

Exhibit “F” – Commercial Recycling Promotional and Education Plan

Exhibit “G” – Performance Bond Specimen

EXHIBIT "A"
CITY OF PLANO
PERFORMANCE STANDARDS AND
RESPONSIBILITIES OF CONTRACTOR AND
COMMERCIAL CUSTOMERS

1. Contractor Responsibilities

I. Collection Schedules

a. Schedules Available: Monday through Saturday.

b. Hours of Operation: Not before 7:00 a.m. in locations adjacent to residential subdivisions.

c. Extra Collection: If notified by 10:00 a.m. of service day, extra pickup will be performed that day. Requests after 10:00 a.m. will be performed the following morning before 9:00 a.m. There is a charge for extra pickups and refills, as approved by the City Council.

d. Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. Pickups scheduled for these days will be either the day before or the day after.

II. Container Service & Maintenance

a. Container sizes available: 2, 3, 4, 6, and 8 cu. yd.; 10, 20 and 30 cu. yd. open-top roll-off containers; and 6, 8, 20, 30, 32 and 42 cu. yd. Compactors.

b. Container maintenance: Containers that have been damaged will be exchanged or repaired within 5 working days of notification. If the damage is not due to Contractor servicing or a defect in materials and workmanship, a fee will be charged to the Commercial Customer. The amount will depend on the repairs needed. If an unsightly condition develops due to fire, paint or other causes beyond Contractor control, the Container will be exchanged.

c. All Containers will be evaluated once a year and exchanged as needed. A request from the Commercial Customer for an exchange in addition to those provided by Contractor will be charged an additional fee, as approved by City Council.

d. Casters: Casters will be made available upon request for 2, 3 and 4 cu. yd. containers only. Customers requiring casters will be charged an additional service fee, as approved by City Council.

e. Blocked Containers: If access to a Container is blocked, the driver will radio company dispatcher. A call will be placed to the location describing the obstruction.

The driver will wait until the Commercial Customer is contacted and the obstruction cleared. If not cleared within ten minutes, the driver will proceed on route. Contractor will ensure Collection occurs prior to 9:00 a.m. the following day.

f. Odor and Insect Control: Contractor shall report any evident problems to the Health Department via e-mail. Contractor will notify all Commercial Customers of proper procedures for minimizing odors and insects in and around Containers.

g. Overloaded and/or Underserviced Containers: Within 24 hours of incident, the Contractor shall document the problem with photos and/or scale tickets, notify and recommend resolution of problems to the Commercial Customer, copying the Commercial Recycling Supervisor. If the Commercial Customer has front-load service and the container is overloaded, Contractor will notify the Commercial Customer, while still servicing the container (if possible) on the first occurrence at no additional charge. Within 60 days of first occurrence, if the Commercial Customer overloads the container again, Contractor shall notify the Customer, empty the container if possible, and charge the overload fee as identified in the approved rate schedule. If Contractor is unable to safely service the container, and the Customer fails to resolve the matter within 48 hours of notification, they will be charged an extra pickup fee, if serviced, as identified in the approved rate schedule.

III. <u>Customer Service</u>

a. Complaints: All service complaints shall initially be directed to Contractor and shall be resolved within 24 hours.

b. Complaints reported to City: All complaints reported to the City will be e-mailed to Contractor Customer Service Supervisor with a copy to General Manager. It shall be the duty of Contractor to take whatever steps may be necessary to remedy the cause of the complaint and notify the City via e-mail of its disposition within 24 hours after receipt of the complaint.

c. Contractor shall provide for voice mail capabilities after business hours so that Commercial Customers may leave messages. The voice mail message shall also provide a contact name and phone number in case of an emergency, and that contact name and number shall be reasonably available. Voice mail messages shall be responded to by 10:00 a.m. on the business day immediately following the message.

d. Contractor shall have available and maintain an Internet site that is available 24 hours per day, 7 days per week, subject to Internet Service Provider availability.

e. Contractor shall have available and maintain a facsimile machine for receiving and transmitting information from the City and/or Commercial Customers.

f. Contractor shall provide written notice to all Commercial Customers regarding complaint procedures, rules and regulations, and day(s) of Collection on an annual

basis and whenever there is a change in scheduled service, or procedures. Such notice must be approved by the City prior to distribution.

g. Contractor shall notify the City's Health and Sustainability and Environmental Services Departments by e-mail of violations relating to cleanliness and the creation of a nuisance on any property, either public or private.

h. Commercial Customer hauls and deliveries of roll-offs will be made within 24 hours.

i. All vehicles used by Contractor shall be washed at least one time per week.

IV. Reporting

a. Contractor shall provide the Sustainability and Environmental Services Department with an administrative organizational chart to include key personnel name, position, telephone number, e-mail, pager, and home phone when appropriate. Contractor shall provide an updated chart within 14 days after any key personnel change.

b. Contractor shall supply the Sustainability and Environmental Services Department with a monthly summary of all complaints indicating the date and hour of inquiry or complaint receipt, the nature of the complaint or inquiry, and the manner and timing of resolution.

c. Contractor shall supply the Sustainability and Environmental Services Department with a report of any missed collections by 9:00 a.m. of the following business day.

d. Contractor shall provide the Sustainability and Environmental Services Department with a full explanation of the disposition of any complaint involving a Commercial Customer's claim of damage to private property as a result of actions of Contractor's employees, agents, or subcontractors.

2. Commercial Customer Responsibilities

a. Commercial Customer is responsible for keeping the area around and on top of container clear of obstructions so Contractor can service the container as scheduled. If container is blocked and is not cleared, service will be delayed and Contractor may require Customer to call for extra pickup if access is not cleared by the following day.

b. Overfilled Containers: Container will not be emptied if a safety hazard exists. Commercial Customer will be contacted to remove excess. The pickup will be rescheduled when excess refuse has been removed.

c. Gates and Enclosures: There will be an additional charge per lift.

d. Odor and Insect Control: The Commercial Customer will be responsible for odor and insect control around Containers.

e. Casters: Casters will be available for an additional fee on 2, 3 and 4 cubic yard containers only.

f. Non-Payment: Commercial Customers will be notified in writing when forty-five (45) calendar days past due. If unpaid after sixty (60) calendar days, customer will be notified in writing that service is being suspended until account is paid in full. A copy will be sent to City's Health Department. If a Commercial Customer is suspended twice, a deposit in the amount of one month's average billing will be required to reestablish service. This deposit will be refunded when the account is closed.

g. Weight: Commercial Customers shall not load front load Containers in excess of 4,000 pounds or roll-off containers in excess of 20,000 pounds. Commercial Customers shall pay Contractor for waiting time in excess of fifteen (15) minutes at $25 with a maximum of thirty (30) minute wait. There will be a charge equal to fifty percent (50%) of the haul rate should Contractor respond to Customer request and Contractor is unable to haul due to circumstances caused by Customer. If the Commercial Customer refuses to remove such material, Contractor or Contractor's agents may remove such material. Commercial Customers shall reimburse Contractor of all reasonable expenses incurred plus 25% for removing excess material.

h. Appropriate Material: For the purposes of this Agreement the phrase "appropriate material" shall include all Solid Waste and Recyclable Materials generated by the Commercial Customer with the express exclusion of radioactive, volatile, highly flammable, medical, explosive or toxic materials and shall also exclude excessive amount of earth and sandstone. Expressly excluded material shall be handled by special arrangements only at the discretion of Contractor.

i. Hold Harmless: Commercial Customer shall be responsible for the safekeeping of any service equipment furnished by Contractor and any rental equipment leased to customer herein. Customer shall indemnify and hold Contractor and the City harmless from and against any and all claims, demands, suits or judgment arising out of or resulting from the customer's use, operation or possession of the service equipment and any rental equipment, except when such equipment is being serviced by Contractor. Commercial Customer agrees that such equipment is in the customer's possession, custody and control except while being delivered, emptied, removed or serviced by Contractor. Commercial Customer agrees that its pavement or roadways are to be trafficked by vehicles necessary for Contractor to perform its obligations under this Agreement and further agrees to waive any claim or cause of action it may have an assert against Contractor for action it may have and assert against Contractor for damages that may occur to such pavement or roadways.

j. Modification: It is anticipated that the Parties may from time-to-time desire to modify these standards.

EXHIBIT “B”

ENVIRONMENTAL EDUCATION & COMMUNITY AWARENESS

The Environmental Education & Community Outreach Division is responsible for:

* Implementing and maintaining the Keep America Beautiful (KAB) and Keep Texas Beautiful (KTB) Systems in Plano,

* Initiating, planning, directing and coordinating programs to residents, schools and civic organizations covering recycling, composting, litter prevention, managing household chemicals, best practices yard care, water quality and conservation, energy conservation, energy-efficiency, air quality, green building and environmental awareness.

* Educating and involving citizens, businesses, community organizations, schools and government in responsible voluntary actions that will influence citizen participation in promoting a cleaner, safer, healthier and more sustainable community,

* Furthering the advancement of geographical Recycling through education, promotion, solicitation of funds and implementation of facilities and programs on the local level,

* Soliciting and accepting donations and appropriations of monies, services, products, property and facilities, and disbursement of said funds for the Live Green Expo and other sustainable initiatives and for the accomplishment of the objectives of the KAB and KTB Systems,

* Making recommendations to the appropriate community officials, as well as the private sector, regarding measures which it deems necessary to accomplish the objectives of the sustainable initiatives and the KAB and KTB Systems,

* Promotion and implementation of the Environmental Community Awards,

* Pursuing the First Place Winner designation in the annual KTB "Governor's Community Achievement Award".

Goals and Strategies will be developed for each Fiscal Year to further the attainment of the above tenets. Upon approval by the City Council, and at the request of Contractor, a copy of these annual Goals and Strategies shall be made available to Contractor.

EXHIBIT ”C”
CONTRACTOR INVENTORY OF ROLLING STOCK AND CONTAINERS IN THE CITY

Equipment Type	Year Mfg.	Mfg. Chassis	Mfg. Body	Truck #	Capacity
FRONTLOAD	2009	Mack	McNeilus	1275	28 CYD
FRONTLOAD	2009	Mack	HEIL	1279	28 CYD
FRONTLOAD	2010	MACK	HEIL	1281	28 CYD
FRONTLOAD	2010	MACK	HEIL	1282	28 CYD
FRONTLOAD	2010	MACK	HEIL	1283	28 CYD
FRONTLOAD	2010	MACK	HEIL	1286	28 CYD
FRONTLOAD	2010	MACK	HEIL	1287	28 CYD
FRONTLOAD	2009	MACK	HEIL	1291	28 CYD
FRONTLOAD	2009	MACK	HEIL	1292	28 CYD
FRONTLOAD	2006	MACK	HEIL	7683	28 CYD
FRONTLOAD	2007	MACK	HEIL	7789	28 CYD
FRONTLOAD	2003	MACK	HEIL	730017	28 CYD
FRONTLOAD	2005	MACK	HEIL	758725	28 CYD
ROLLOFF	2008	MACK	DURALIFT	3839	50 K
ROLLOFF	2007	MACK	GALBREATH	6735	50 K
CONTAINER DELIVERY	2000	FREIGHTLINER	G & H	900430	
COMPANY TRUCK	2003		FORD F150	130013	
ROLL OFF	2007	MACK	GALBREATH	6736	50 K
ROLL OFF	2007	MACK	GALBREATH	6738	50 K
ROLL OFF	2000	INTERNATIONAL	G&H	601525	50 K
ROLL OFF	1995	FORD LNT	G&H	617156	50 K
ROLL OFF	1998	VOLVO	GALBREATH	687159	50 K
ROLL OFF	1999	VOLVO	GALBREATH	690160	50 K
ROLL OFF	1999	MACK	G&H	697312	50 K

	SERVICE MATRIX FOR COMMERCIAL FEL MSW							
	QUANTITY of Containers Under Each Service Level As of June 1, 2010							
CONTAINER	FREQUENCY							
SIZE	1	2	3	4	5	6	7	TOTALS
1	0	0	0	0	0	0	0	0
2	151	22	1	0	0	0	0	174
3	110	18	9	0	0	0	0	137
4	223	58	33	1	0	2	0	317
6	253	132	68	4	13	5	0	475
8	343	462	495	112	97	68	0	1577
10	0	0	0	0	0	0	0	0
NO. OF LIFTS	1086	1396	1836	480	550	450	0	5798

EXHIBIT "D"

RATE SCHEDULE FOR COMMERCIAL WASTE AND RECYCLING SERVICES

Rates for non-compacted front loader service

Service Frequency per week:	1x	2x	3x	4x	5x	6x	Extra Pickup
Container Size							
2yd	$54.66	$85.27	$127.88				$45.35
3yd	$71.48	$131.66	$184.34				$49.12
4yd	$86.84	$153.93	$221.03				$54.45
6yd	$118.99	$216.48	$315.54	$423.48	$537.05	$664.66	$62.30
8yd	$156.21	$275.76	$413.02	$557.13	$667.01	$792.57	$71.23

Disposal Costs – 85 #/yd. per month:	1x	2x	3x	4x	5x	6x
Container Size						
2yd	$15.95	$31.91	$47.86			
3yd	$23.93	$47.86	$71.79			
4yd	$31.91	$63.82	$95.72			
6yd	$48.26	$96.42	$143.78	$192.05	$239.66	$287.17
8yd	$64.12	$128.04	$192.42	$255.41	$319.44	$383.49

Hauling Costs per month:	1x	2x	3x	4x	5x	6x
Container Size						
2yd	$38.71	$53.36	$80.02			
3yd	$47.55	$83.81	$112.54			
4yd	$54.93	$90.11	$125.31			
6yd	$70.73	$120.06	$171.76	$231.43	$297.39	$377.49
8yd	$91.64	$147.22	$220.17	$301.72	$347.54	$409.08

Rates for compacted front loader service

Service Frequency per week:	1x	2x	3x	4x	5x	6x	
Container Size							
6yd	$327.05	$654.06	$981.11	$1308.13	$1635.15	$1962.17	$86.51
8yd	$436.01	$872.00	$1308.01	$1743.99	$2180.00	$2616.01	$115.33

Disposal Costs – 85 #/yd./ 5-1 per month:	1x	2x	3x	4x	5x	6x
Container Size						
6yd	$202.65	$405.30	$607.95	$810.59	$1013.24	$1215.90
8yd	$270.20	$540.39	$810.59	$1080.80	$1350.99	$1621.19

Hauling Costs per week:	1x	2x	3x	4x	5x	6x
Container Size						
6yd	$124.40	$248.76	$373.16	$497.54	$621.91	$746.28
8yd	$165.81	$331.61	$497.42	$663.20	$829.01	$994.82

Maximum Rates to be charged for co-mingled Recycling Containers

Service Frequency per week:	1x	2x	3x	EOW*	Extra P/U
Container Size					
2yd	$50.64	$88.62	$126.60	$37.98	$30.00
3yd	$50.89	$89.06	$127.23	$38.17	$30.00
4yd	$51.14	$89.50	$127.86	$38.36	$30.00
6yd	$51.63	$90.35	$129.07	$38.72	$30.00
8yd	$52.13	$91.23	$130.33	$39.10	$30.00

Maximum Rates to be charged for 95 gallon cart Recycling Containers –
1x Week - $20.00
EO Week - $15.00

Commercial Front Loader Options – Additional cost per lift

Casters	$3.93
Locks	$1.31
Gates (with or without locks)	$1.31

Overload Fee

2yd	$40.00
3yd	$45.00
4yd	$50.00
6yd	$55.00
8yd	$60.00

Commercial Roll Off Rates

Zone 1	$154.85
Zone 2	$193.32
Zone 3	$232.06
Zone 4	$271.31

All Hauls to transfer stations $154.85 –

All Open-top Roll Off Containers consisting of Construction and Demolition materials will be hauled to the RDF 121 Landfill for disposal. OR,

All Construction and Demolition materials will be recycled through source separation or disposed of at the RDF 121 Landfill

All disposal will be billed at the rate established for disposal at the NTMWD Transfer Facility.

Construction Containers – Misc. Fees

Delivery	Rental Per Day	Late Payment Fee: 1.5% per month for balance due over 30 days.	Return Check Charge: $35.00
$78.62	$5.22		

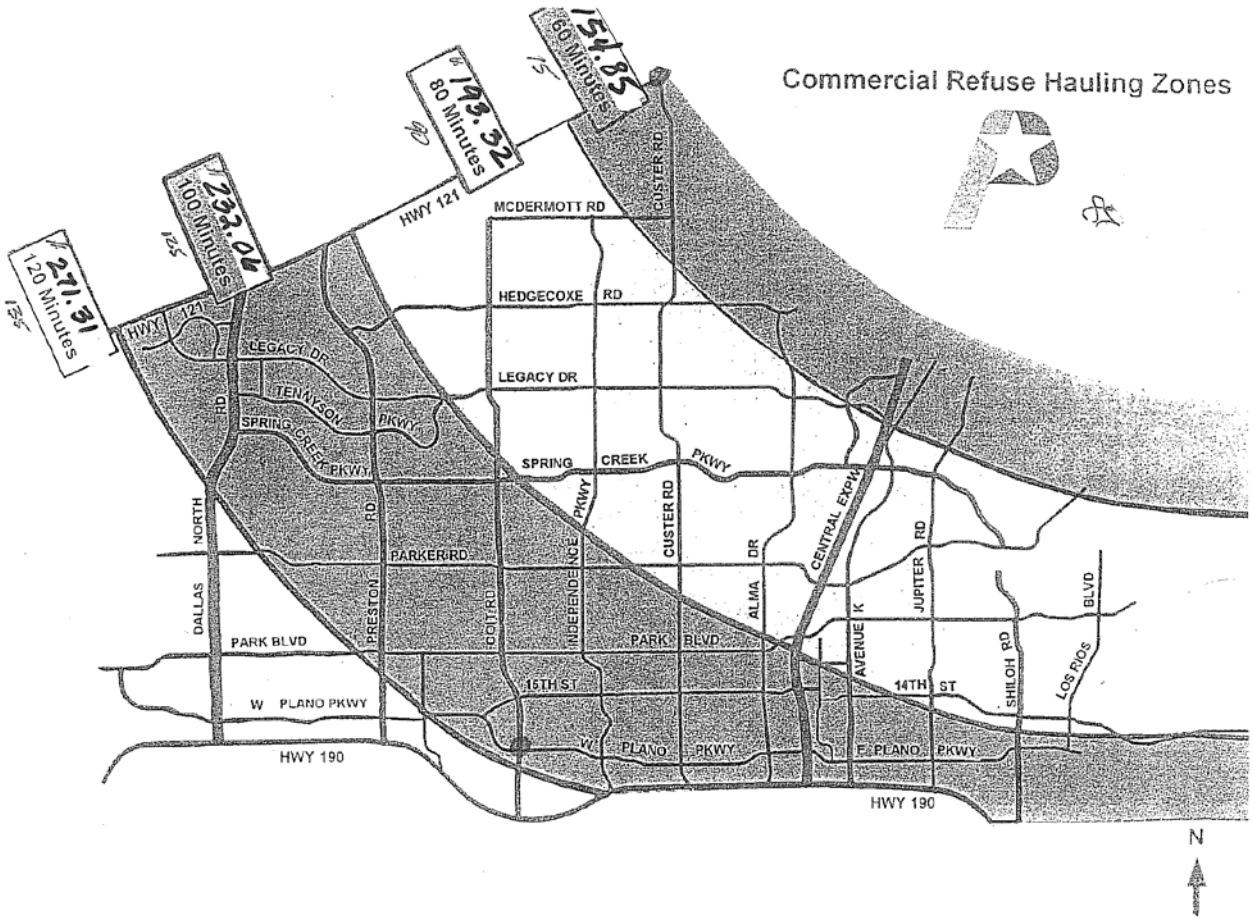
Commercial Refuse Hauling Zones
154.85
60 Minutes
193.32
80 Minutes
232.06
100 Minutes
271.31
120 Minutes
HWY 121
MCDERMOTT RD
CUSTER RD
HEDGECOXE RD
LEGACY DR
TENNYSON PKWY
SPRING CREEK PKWY
NORTH DALLAS RD
PARKER RD
PRESTON RD
COLLIN RD
INDEPENDENCE PKWY
ALMA DR
CENTRAL EXPY
AVENUE K
JUPITER RD
SHILOH RD
LOS RIOS BLVD
PARK BLVD
15TH ST
14TH ST
W PLANO PKWY
E PLANO PKWY
HWY 190
N

EXHIBIT "E"

INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in Contractor's bid.

A. Minimum Scope of Insurance
   1. Coverage shall be at least as broad as ISO Commercial General Liability (CGL) occurrence from CG 00 01 or a substitute form providing equivalent coverage. "Claims made" form is unacceptable except for professional liability.
   2. Automobile liability shall include all owned, hired and non-owned vehicles.
   3. Workers' Compensation insurance (or equivalent) including Employers' Liability Insurance.

B. Minimum Limits of Insurance
   Contractor shall maintain limits not less than:
   1. Commercial General Liability: $5,000,000 per occurrence and $10,000,000 aggregate covering liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in business contract.
   2. Automobile liability: $5,000,000each accident limit. A waiver of subrogation in favor of the City with respect to physical damaged shall be binding on Contractor.
   3. Employer's Liability: Employer's Liability Limits of $1,000,000 each accident, $1,000,000 each employee by disease, and $1,000,000 by disease policy limit.

C. Other Insurance Provisions

   The policies are to contain, or be endorsed to contain the following provisions:

   1. General Liability and Automobile Liability Coverages

      a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of the negligent activities performed by or on behalf of Contractor, products and completed operations of Contractor, premises owned, occupied or used by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers with respect to the negligence of Contractor. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it to the extent of Contractor's negligence.

b. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.

c. Contractor's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from the negligence of Contractor.

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers

Insurance shall be placed with insurers with an A.M. Best's rating of no less than B+:VI, or A or better by Standard & Poors.

F. Verification of Coverage

Contractor shall furnish the City with certificates of insurance evidencing coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

EXHIBIT "F"

COMMERCIAL RECYCLING PROMOTION AND EDUCATION PLAN

I. City Responsibilities:

(a) Provide public education to the commercial and multi-family sectors to help in the implementation and maintenance of the waste reduction and Recycling program, such as:

1. Commercial Recycling tool kits providing information on the basics of Recycling, how to set up a Recycling program, Recycling service providers, etc.
2. Commercial Recycling Coordinators to provide audits, education and technical assistance
3. Media articles, guest editorials, advertising, and/or public service announcements
4. Newsletters
5. Website
6. Email listservs
7. Workshops

(b) Provide technical assistance to the commercial and multi-family sectors to help in the implementation and maintenance of waste reduction, such as:

(i) Reduction partners/mentor program
(ii) Business outreach and technical assistance program
(iii) Workshops, symposiums, etc.

(c) Support the Environmental Community Awards and Environmental Star of Excellence Awards program to recognize successful commercial recycling programs

EXHIBIT "G"

PERFORMANCE BOND SPECIMEN

STATE OF TEXAS **§**
§
COUNTY OF COLLIN §

KNOW ALL MEN BY THESE PRESENTS: That _____whose address is _____, hereinafter called Principal, and _____, a corporation organized and existing under the laws of the State of _____, and fully licensed to transact business in the State of Texas, hereinafter called "Surety", are held and firmly bound unto the **CITY OF PLANO**, **TEXAS** a home-rule municipal corporation, hereinafter called "Beneficiary", in the penal sum of _____ **DOLLARS** ($_____) plus fifteen percent (15%) of the stated penal sum as an additional sum of money representing additional court expenses, attorneys' fees, and liquidated damages arising out of or connected with the below identified Franchise Agreement in lawful money of the United States, to be paid in Collin County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. This Bond shall automatically be extended by a number of years equal to any renewals of the Franchise Agreement.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a Franchise Agreement with the City of Plano, the Beneficiary, dated on or about the _____ day of _____, _____, A.D. which is made a part hereof by reference, and is generally described as follows: _____
_____
_____.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all of its duties, obligations, undertakings, covenants, and agreements set forth in the Franchise Agreement referenced herein in accordance with all terms, conditions and requirements contained in said Franchise Agreement during the initial term thereof and any extension or renewal thereof, which may be granted by the Beneficiary, with or without notice to the Surety, and during the life of any guaranty or warranty required under this Agreement, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications or amendments to said Franchise Agreement that may hereafter be made, notice of which modifications and amendments to the Surety being hereby waived; and, if the Principal shall fully indemnify and save harmless the Beneficiary from all costs and damages which Beneficiary may suffer by reason of Principal's failure to so perform herein and shall fully reimburse and repay Beneficiary all outlay and expense which the Beneficiary may incur in

making good any default or deficiency, then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, exclusive Venue shall lie in Collin County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Franchise Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Franchise Agreement, or to the work or to the specifications.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Collin County or Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by V.A.T.S., Insurance Code Article 7.19-1.

IN WITNESS WHEREOF, this instrument is executed in ____ copies, each one of which shall be deemed an original, this, the _____ day of _____, _____.

PRINCIPAL:_____

BY: _____
Name

ATTEST:
_____

TITLE:_____

SURETY:_____

BY: _____
Name

ATTEST:
_____

TITLE:_____

The Resident Agent of the Surety in Collin County or Dallas County, Texas, for delivery of notice and service of process is:

NAME: _____

STREET ADDRESS: _____

CITY, STATE, ZIP: _____

NOTE: Date on ***Page 1*** of Performance Bond must be ***same date that City Council awarded Contract***. Date on ***Page 2*** of Performance Bond must be ***after the date that City Council awarded the Contract***. If Resident Agent is not a corporation, give a person's name.