

Oscar Leeser
Mayor

Tommy Gonzalez
City Manager



CITY COUNCIL
Peter Svarzbein, District 1
Alexandra Anello, District 2
Cassandra Hernandez, District 3
Joe Molinar, District 4
Isabel Salcido, District 5
Claudia L. Rodriguez, District 6
Henry Rivera, District 7
Cissy Lizarraga, District 8

AGENDA FOR THE REGULAR COUNCIL MEETING

January 19, 2022
COUNCIL CHAMBERS, CITY HALL, 300 N. CAMPBELL AND VIRTUALLY
9:00 AM

Teleconference phone number: 1-915-213-4096
Toll free number: 1-833-664-9267
Conference ID: 900-496-018#

THE LOCAL HEALTH AUTHORITY STRONGLY RECOMMENDS THE USE OF MASKS IN ALL CITY FACILITIES AND INDOOR SPACES

AND

AGENDA REVIEW MEETING
COUNCIL CHAMBERS, CITY HALL
300 N. CAMPBELL AND VIRTUALLY
January 18, 2022
9:00 AM

Teleconference phone number: 1-915-213-4096
Toll free number: 1-833-664-9267
Conference ID: 828-656-044

Notice is hereby given that an Agenda Review Meeting will be conducted on January 18, 2022 at 9:00 A.M. and a Regular Meeting of the City Council of the City of El Paso will be conducted on January 19, 2022 at 9:00 A.M. Members of the public may view the meeting via the following means:

Via the City's website. <http://www.elpasotexas.gov/videos>
Via television on City15,
YouTube: <https://www.youtube.com/user/cityofelpasotx/videos>

In compliance with the requirement that the City provide two-way communication for members of the public, members of the public may communicate with Council during public comment, and regarding agenda items by calling the following number:

1-915-213-4096 or Toll free number: 1-833-664-9267

At the prompt please enter the corresponding Conference ID:

Agenda Review, January 18, 2022 Conference ID: 828-656-044#

Regular Council Meeting, January 19, 2022 Conference ID: 900-496-018#

The public is strongly encouraged to sign up to speak on items on this agenda before the start of this meeting on the following links:

**<https://www.elpasotexas.gov/city-clerk/meetings/city-council-meetings>
and
http://legacy.elpasotexas.gov/muni_clerk/Sign-Up-Form-Call-To-The-Public.php**

The following members of City Council will be present via video conference:

Representatives Aleksandra Annelo and Cassandra Hernandez

A quorum of City Council must participate in the meeting.

ROLL CALL

INVOCATION BY POLICE CHAPLAIN ROBERT HEMPHILL, JR. PH.D.

PLEDGE OF ALLEGIANCE

MAYOR'S PROCLAMATIONS

Veterans of Foreign Wars Post 812 Auxiliary Recognition Day

Desert Lynx Women's Basketball Champions Day

NOTICE TO THE PUBLIC

All matters listed under the CONSENT AGENDA, including those on the Addition to the Agenda, will be considered by City Council to be routine and will be enacted by one motion unless separate discussion is requested by Council Members. Prior to the vote, members of the audience may ask questions regarding items on the consent agenda. When the vote has been taken, if an item has not been called out for separate discussion, the item has been approved. Council may, however, reconsider any item at any time during the meeting.

CONSENT AGENDA - APPROVAL OF MINUTES:

Goal 6: Set the Standard for Sound Governance and Fiscal Management

1. Approval of Minutes of the Regular City Council Meeting of December 14, 2021 and the Regular City Council Meeting of January 4, 2022. [22-86](#)

All Districts

City Clerk's Office, Laura D. Prine, (915) 212-0049

CONSENT AGENDA - REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS:

2. **CONSENT AGENDA - REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS:**

CONSENT AGENDA - RESOLUTIONS:

Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development:

3. That the City Manager, or designee, is authorized to sign a First Amendment to Restated Butterfield Trail Industrial Park Lease and Lessor's Approval of Assignment by and between the City of El Paso, Stewart EFI Finishing Realty, and Hold'em Real Estate, LLC regarding the following described property: A portion of Lot 1 and a portion of Lot 4, Block 10, Butterfield Trail Industrial Park, Unit Two, an addition to the City of El Paso, El Paso County, Texas (approximately 122,006 SQ FT), commonly known as 44 Butterfield Circle, El Paso, Texas. [22-52](#)

Term began on October 1, 1993 ("Effective Date"), and terminates on September 30, 2033; monthly rental fee is \$1,308.51.

District 2

Airport, Sam Rodriguez, (915) 212-7301

4. A Resolution to authorize the City Manager to sign an Air Cargo Lease Agreement between the City of El Paso and American Airlines, Inc., a Texas corporation, for use of space located at 6413 Convair Road, Air Cargo Building #2, El Paso, Texas 79925. [22-59](#)

The term of this lease is one (1) year plus four (4) options of one (1) year each to automatically extend the term of the lease unless Lessee provides 90 days' notice to Lessor of its intent to terminate. The annual rental rate for the initial period is \$50,235.90.

District 2

Airport, Sam Rodriguez, (915) 212-7301

Goal 2: Set the Standard for a Safe and Secure City

5. A Resolution amending Schedule C, of the City of El Paso Fiscal Year 2022 Budget Resolution to establish the permit fee on the Convenience Store Crime [22-60](#)

Prevention Ordinance, Chapter 5.18.030(b) effective June 7, 2022.

All Districts

Police, Assistant Chief Victor Zarur, (915) 212-4307

Goal 3: Promote the Visual Image of El Paso

6. A Resolution that the City Manager be authorized to sign an agreement for professional services for the development of a Downtown Tree Plan and Design Standards by and between the City of El Paso and Surroundings Studios LLC in the amount of SIXTY FOUR THOUSAND SEVEN HUNDRED FIFTY AND 00/DOLLARS. (\$64,750.00) and that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of the amendments. [22-28](#)

All Districts

Capital Improvement Department, Sam Rodriguez, (915) 212-1845

Goal 7: Enhance and Sustain El Paso's Infrastructure Network

7. That the City Manager, or designee, is authorized to sign a Memorandum of Understanding with the El Paso Water Utilities - Public Service Board to provide for the construction of right of way and stormwater improvements at the intersection of Delta Drive and Manny Martinez Drive. Further, that the City Manager, or designee, is authorized to exercise all rights under the memorandum, perform all obligations under the memorandum, and sign any amendments to the memorandum. [22-51](#)

District 3

Capital Improvement Department, Yvette Hernandez, (915) 212-1860

Goal 8: Nurture and Promote a Healthy, Sustainable Community

8. That the Mayor be authorized to sign a Third Amendment to the Interlocal Agreement for Shared Laboratory Services by and between the City of El Paso ("City"), a home rule municipal corporation, and El Paso County Hospital District d/b/a University Medical Center of El Paso ("UMC"), to add a provision to the Interlocal whereby UMC shall provide chest x-ray services to patients referred by the City. [22-20](#)

All Districts

Public Health, Angela Mora, (915) 212-6502

CONSENT AGENDA - BOARD RE-APPOINTMENTS:

Goal 6: Set the Standard for Sound Governance and Fiscal Management

9. Leticia Arreola to the Civil Service Commission by Representative Cassandra Hernandez, District 3. [22-57](#)

Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003

CONSENT AGENDA - BOARD APPOINTMENTS:

Goal 3: Promote the Visual Image of El Paso

10. Adrian Morales as an Alternate Member to the Zoning Board of Adjustment by Representative Aleksandra Anello, District 2. [22-53](#)

Members of the City Council, Representative Aleksandra Anello, (915) 212-0002

11. Dion Castro to the City Plan Commission by Representative Isabel Salcido, District 5. [22-82](#)

Members of the City Council, Representative Isabel Salcido, (915) 212-0005

CONSENT AGENDA - APPLICATIONS FOR TAX REFUNDS:

Goal 6: Set the Standard for Sound Governance and Fiscal Management

12. That the tax refunds listed on the attachment posted with this agenda be approved. This action would allow us to comply with state law which requires approval by the legislative body of refunds of tax overpayments greater than \$2,500.00. (See Attachment A) [22-56](#)

All Districts

Tax Office, Maria O. Pasillas, (915) 212-1737

CONSENT AGENDA - NOTICE OF CAMPAIGN CONTRIBUTIONS:

Goal 6: Set the Standard for Sound Governance and Fiscal Management

13. For notation pursuant to Section 2.92.080 of the City Code, receipt of campaign contribution by Representative Cassandra Hernandez of \$1,000 from Eduardo and Margarita Escudero. [22-83](#)

Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003

REGULAR AGENDA - MEMBERS OF THE CITY COUNCIL

Goal 3: Promote the Visual Image of El Paso

14. Discussion and action to approve a Resolution authorizing the expenditure of District 3 discretionary funds in an amount of \$500, the expenditure of District 2 discretionary funds in the amount of \$500, and the expenditure of District 4 discretionary funds in the amount of \$500 to go towards the efforts to fund the [22-84](#)

design, construct, and installation highway markers naming a specific portion or segment the Korean War Veterans Memorial Highway and declaring that such expenditure meets a municipal purpose to promote the visual image of El Paso by improving the visual impression of the community gateways.

All Districts

Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003
Members of the City Council, Representative Aleksandra Anello, (915) 212-0002
Members of the City Council, Representative Joe Molinar, (915) 212-0004

15. Discussion and action for City Council to approve a Resolution recognizing the Korean War Veteran Association (KWVA), Col. Joseph C. Rodriguez, Medal of Honor, Chapter 249 for their efforts with Texas State Senator Cesar Blanco, through the passage of SB 1704, to erect state highway signage honoring Korean War Memorial Veterans and supports the highway signage project designating a segment of Patriot Freeway (U.S. 54) as the “Korean War Memorial Highway”.

[22-85](#)

All Districts

Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003
Members of the City Council, Representative Aleksandra Anello, (915) 212-0002
Members of the City Council, Representative Joe Molinar, (915) 212-0004

Goal 5: Promote Transparent and Consistent Communication Amongst All Members of the Community

16. Discussion and action to authorize District 3 City Representative Cassandra Hernandez to attend Council meetings by video conference more than one regular meeting week in a row, on the meeting weeks of January 31, 2022, February 14, 2022 and of February 28, 2022.

[22-33](#)

All Districts

Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003

Goal 6: Set the Standard for Sound Governance and Fiscal Management

17. Discussion and action on a Resolution to appoint a member to the El Paso Water Utilities Public Service Board of Trustees in the area of expertise of Consumer or Citizen Advocacy as recommended by the El Paso Water Utilities Public Service Board Selection Committee:

[22-58](#)

- Ranked 1st Marybeth Stevens
- Ranked 2nd Luis Rosas
- Ranked 3rd Stefani Block Uribarri

All Districts

Members of the City Council, Mayor Oscar Leeser, (915) 212-0021

REGULAR AGENDA - OPERATIONAL FOCUS UPDATES

Goal 2: Set the Standard for a Safe and Secure City

18. Council briefing on the status of the Public Safety Bond Capital Program. [22-54](#)

All Districts

Capital Improvement Department, Sam Rodriguez, (915) 212-1845

19. Public Safety (Police and Fire) Staffing and Recruitment Update. [22-80](#)

All Districts

Police, Assistant Chief Peter Pacillas, (915) 212-4302

Goal 5: Promote Transparent and Consistent Communication Amongst All Members of the Community

20. Strategic Communications Update and City TV. [22-62](#)

All Districts

Communications and Public Affairs, Laura Cruz-Acosta, (915) 212-1061

CALL TO THE PUBLIC – PUBLIC COMMENT:

Call to the Public will begin at 12:00 p.m. Requests to speak must be received by 9:00 a.m. on the date of the meeting. Sixty minutes in total will be devoted for Call to the Public. This time is reserved for members of the public who would like to address the City Council on items that are not on the City Council Agenda.

Members of the public may communicate with Council during public comment, and regarding agenda items by calling 1-915-213-4096 or toll free number 1-833-664-9267 at the prompt please enter the following Conference ID: 900-496-018#

A sign-up form is available on line for those who wish to sign up in advance of the meeting at: http://legacy.elpasotexas.gov/muni_clerk/signup_form.asp

REGULAR AGENDA - FIRST READING OF ORDINANCES:

INTRODUCTION OF ORDINANCES PURSUANT TO SECTION 3.9 OF THE EL PASO CITY CHARTER:

Public comment typically is not taken during the first reading of ordinances. Public comments are invited at the date of the scheduled public hearing.

Public Hearings will be held as part of the regular City Council meeting that begins at approximately 9:00 a.m. All interested persons present shall have an opportunity to be heard at that time. After the public hearings, Council may also delay taking action on Ordinances; no requirement is made by Section 3.9B of the El Paso City Charter to publish any further notice. Copies of all Ordinances are available for review in the City Clerk's office, 300 N. Campbell, Monday through Thursday, 7:00 a.m. to 6:00 p.m.

Goal 3: Promote the Visual Image of El Paso

21. An Ordinance granting a renewal of non-exclusive franchise to A-1 Disposal, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code. [22-35](#)
- All Districts**
Environmental Services, Ellen A. Smyth, (915) 212-6000
- PUBLIC HEARING WILL BE HELD ON FEBRUARY 1, 2022**
22. An Ordinance granting a renewal of non-exclusive franchise to Alareal Corporation, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code. [22-36](#)
- All Districts**
Environmental Services, Ellen A. Smyth, (915) 212-6000
- PUBLIC HEARING WILL BE HELD ON FEBRUARY 1, 2022**
23. An Ordinance granting a renewal of non-exclusive franchise to Anvaco Corporation, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code. [22-37](#)
- All Districts**
Environmental Services, Ellen A. Smyth, (915) 212-6000
- PUBLIC HEARING WILL BE HELD ON FEBRUARY 1, 2022**
24. An Ordinance granting a renewal of non-exclusive franchise to Demcon Disposal Management, LLC, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code. [22-38](#)
- All Districts**
Environmental Services, Ellen A. Smyth, (915) 212-6000
- PUBLIC HEARING WILL BE HELD ON FEBRUARY 1, 2022**
25. An Ordinance granting a renewal of non-exclusive franchise to El Paso Disposal, LP, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code. [22-39](#)
- All Districts**
Environmental Services, Ellen A. Smyth, (915) 212-6000
- PUBLIC HEARING WILL BE HELD ON FEBRUARY 1, 2022**
26. An Ordinance granting a renewal of non-exclusive franchise to El Paso [22-40](#)

Sanitation Systems, Inc, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

PUBLIC HEARING WILL BE HELD ON FEBRUARY 1, 2022

27. An Ordinance granting a renewal of non-exclusive franchise to GCC of America, Inc., to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

[22-41](#)

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

PUBLIC HEARING WILL BE HELD ON FEBRUARY 1, 2022

28. An Ordinance granting a renewal of non-exclusive franchise to Heist Disposal, Inc., to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

[22-42](#)

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

PUBLIC HEARING WILL BE HELD ON FEBRUARY 1, 2022

29. An Ordinance granting a renewal of non-exclusive franchise to JRG Disposal Service, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

[22-43](#)

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

PUBLIC HEARING WILL BE HELD ON FEBRUARY 1, 2022

30. An Ordinance granting a renewal of non-exclusive franchise to Loretto Investment Corporation, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

[22-44](#)

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

PUBLIC HEARING WILL BE HELD ON FEBRUARY 1, 2022

31. An Ordinance granting a renewal of non-exclusive franchise to Moore Service, Inc., to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

[22-45](#)

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

PUBLIC HEARING WILL BE HELD ON FEBRUARY 1, 2022

32. An Ordinance granting a renewal of non-exclusive franchise to Sandoval Capital Inc. DBA Bronco Disposal, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code. [22-46](#)

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

PUBLIC HEARING WILL BE HELD ON FEBRUARY 1, 2022

33. An Ordinance granting a renewal of non-exclusive franchise to Southwest Disposal Inc, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code. [22-47](#)

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

PUBLIC HEARING WILL BE HELD ON FEBRUARY 1, 2022

34. An Ordinance amending Title 20 (Zoning) Section 20.18.140 (Prohibited Signs) and adding Section 20.18.320 (Mobile Billboards) to allow Mobile Billboards. The penalty being as provided in Section 20.24 of the El Paso City Code. [22-64](#)

All Districts

Planning and Inspections, Philip F. Etiwe, (915) 212-1553

Planning and Inspections, Raul Garcia, (915) 212-1643

PUBLIC HEARING WILL BE HELD ON FEBRUARY 15, 2022

35. An Ordinance amending Title 15, (Public Services), Chapter 15.08 (Street Rentals), establishing Section 15.08.160 (Mobile Billboards) of the El Paso City Code to add regulations for Mobile Billboards. The penalty is as provided for in Section 15.08.160 of the El Paso City Code. [22-65](#)

All Districts

Planning and Inspections, Philip F. Etiwe, (915) 212-1553

Planning and Inspections, Raul Garcia, (915) 212-1643

PUBLIC HEARING WILL BE HELD ON FEBRUARY 15, 2022

REGULAR AGENDA – OTHER BIDS, CONTRACTS, PROCUREMENTS:

Goal 2: Set the Standard for a Safe and Secure City

36. The linkage to the Strategic Plan is subsection 2.3 - Increase Public Safety Operational Efficiency. [22-67](#)

Award Summary:

Discussion and action that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue a Purchase Order to Datamark, Inc., referencing Contract 2015-687R Customer Service Call Center - Staffing & Management Service Operations. This will be a change order to increase the contract by \$525,000.00 for a total amount not to exceed \$9,524,999.94. The change order will cover expenses for the remainder of the contract for Customer Service Call Center - Staffing & Management Service Operations for the 311-communication center.

Contract Variance:

There is not contract variance for the same services.

Department: Fire
Award to: Datamark, Inc.
El Paso, TX
Total Estimated Amount: \$525,000.00
Account No.: 322 - 520010 - 1000 - 22080 - P2218
Funding Source: General Funds
District(s): All

All Districts

Fire, Chief Mario D'Agostino, (915) 212-5605
Purchasing and Strategic Sourcing, Claudia Garcia, (915) 212-1181

37. The linkage to the Strategic Plan is subsection 2.3 - Increase Public Safety Operational Efficiency.

[22-68](#)

Award Summary:

Discussion and action that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue a Purchase Order to Datamark, Inc., for the 2022-0393 Customer Service Call Center - Staffing & Management Service Operations for the Fire Department. This contract will allow services essential to the public safety of our community through support of our 911 Communications Center. The purchase order is for an amount not to exceed \$1,899,874.40 for a one (1) year term.

Contract Variance:

The difference in cost, based on the comparison from previous contract is as follows: An annual increase of \$399,874.41, which represents a 26.66% increase due the changes in cost of living and wages increasing.

Department: Fire
Award to: Datamark, Inc.
El Paso, TX
Term: One (1) Year
Total Estimated Amount: \$1,899,874.40

Account No.: 322 - 520010 - 1000 - 22080 - P2218
Funding Source: General Funds
District(s): All

This is a purchase pursuant to the Public Health and Safety Exemption, 252.022 (a) (2) of the Texas Local Government Code, services contract.

Additionally, it is requested that the City Attorney's Office review and that the City Manager be authorized to execute any related contract documents and agreements necessary to effectuate this award.

All Districts

Fire, Chief Mario D'Agostino, (915) 212-5605
Purchasing and Strategic Sourcing, Claudia Garcia, (915) 212-1218

Goal 7: Enhance and Sustain El Paso's Infrastructure Network

- 38. The linkage to the Strategic Plan is subsection 7.4 - Continue the strategic investment in City facilities and technology

[22-63](#)

Award Summary:

Discussion and action on the award of Solicitation 2021-1471 Animal Services HVAC Improvements (Re-Bid) to AAA General Contractors, LLC for a total estimated award of \$1,971,179.79. This project consists of replacing the existing HVAC system at the Animal Services and Dog Kennels Buildings located at 5001 Fred Wilson Avenue.

Department: Capital Improvement
Award to: AAA General Contractors, LLC
El Paso, TX
Item(s): Base Bid I
Initial Term: 210 Consecutive Calendar Days
Base Bid I: \$1,971,179.79
Total Estimated Award: \$1,971,179.79
Funding Source: 2020 Capital Fund
Account: 190-4746-38290-580220- PCP20ANMLSHELTE
Account: 190-4746-38290-580220- PCP20ANMLHOUSIN
District(s): 2

This is a Low Bid procurement, lump sum contract.

The Purchasing & Strategic Sourcing and Capital Improvement Departments recommend award as indicated to AAA General Contractors, LLC, the lowest responsive and responsible bidder and that Desert Contracting, LLC and PERIKIN Enterprises, LLC be deemed non-responsive due to submitting their bids on the incorrect solicitation documents.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

As a part of this award, upon the review of the City Attorney, the City Engineer may without further authorization from City Council approve contract changes which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable law, do not make changes to the prices and are within the appropriate budget.

District 2

Capital Improvement Department, Sam Rodriguez, (915) 212-1845
Purchasing and Strategic Sourcing, Claudia Garcia, (915) 212-0043

REGULAR AGENDA – PUBLIC HEARINGS AND SECOND READING OF ORDINANCES:

Goal 3: Promote the Visual Image of El Paso

39. An Ordinance amending Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.150 (Shared Mobility Devices), to update permit term and renewal requirements. [22-24](#)

All Districts

Planning and Inspections, Philip F. Etiwe, (915) 212-1553
Planning and Inspections, Kevin Smith, (915) 212-1566

Goal 8: Nurture and Promote a Healthy, Sustainable Community

40. An Ordinance Amending Title 7 (Animals), Chapter 7.04 (Definitions And Administration), Section 7.04.010 (Definitions) to add Inclement Weather to the Definitions; Chapter 7.08 (Animals Generally), Section 7.08.050 (Standards For Animal Care) to add Inclement Weather Conditions to Unlawful Restraint Of A Dog; Chapter 7.12 (Dogs And Cats), Section 7.12.020 (Registration, Vaccination, and Microchips Required) to allow Veterinarians to exchange or return up to 100, unused, expired from the previous year Tags for current year tags; Chapter 7.15 (Grooming Services), Section 7.15.030 (Groomer License Application) to clarify the Contents of the Groomer's Application; Chapter 7.15, Section 7.15.070 (Denial) to Amend Conviction Timeframe Ineligibility; Chapter 7.15 (Grooming Services), Section 7.15.080 (Groomer License Suspension Or Revocation) to clarify the type of Investigation and Corrective Action Timeframe; Chapter 7.15, Section 7.15.090 (Shop Registration Required) to Clarify the type of Background Check required and allowing documents relevant to Application, Background Check, and Supporting Documents be available for Inspection; Chapter 7.15 (Grooming Services), Section 7.15.100 (Shop Registration Application) to Clarify the Issuance of Shop Registration Requirements; Chapter 7.15, Section 7.15.140 (Denial) to Clarify Denial Reasons for Permit Application; Chapter 7.28 (Animal Shelter Advisory Committee), Section 7.28.050 (Quorum And Procedures) to Amend Department; the Penalty as Provided in Section 7.04.080 of The El Paso City Code. [22-29](#)

All Districts

Animal Services Department, Ramon Herrera, (915) 212-8742

EXECUTIVE SESSION

The following members of City Council will be present via video conference:

Representatives Alexandra Anello and Cassandra Hernandez

The City Council of the City of El Paso may retire into EXECUTIVE SESSION pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Chapter 551, Subchapter D, to discuss any of the following: (The items listed below are matters of the sort routinely discussed in Executive Session, but the City Council of the City of El Paso may move to Executive Session any of the items on this agenda, consistent with the terms of the Open Meetings Act and the Rules of City Council.) The City Council will return to open session to take any final action and may also, at any time during the meeting, bring forward any of the following items for public discussion, as appropriate.

Section 551.071	CONSULTATION WITH ATTORNEY
Section 551.072	DELIBERATION REGARDING REAL PROPERTY
Section 551.073	DELIBERATION REGARDING PROSPECTIVE GIFTS
Section 551.074	PERSONNEL MATTERS
Section 551.076	DELIBERATION REGARDING SECURITY DEVICES OR SECURITY AUDITS
Section 551.087	DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS
Section 551.089	DELIBERATION REGARDING SECURITY DEVICES OR SECURITY AUDITS; CLOSED MEETING

ADJOURN

NOTICE TO THE PUBLIC:

Sign Language interpreters are provided for regular City Council meetings. If you need Spanish Interpreter Services, you must email CityClerk@elpasotexas.gov at least 48 hours in advance of the meeting.

ALL REGULAR CITY COUNCIL AGENDAS ARE PLACED ON THE INTERNET ON THURSDAY PRIOR TO THE MEETING AT THE ADDRESS BELOW:

<http://www.elpasotexas.gov/>



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-86, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

City Clerk's Office, Laura D. Prine, (915) 212-0049

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Approval of Minutes of the Regular City Council Meeting of December 14, 2021 and the Regular City Council Meeting of January 4, 2022.

OSCAR LEESER
MAYOR

TOMMY GONZALEZ
CITY MANAGER



CITY COUNCIL
PETER SVARZBEIN, DISTRICT 1
ALEXSANDRA ANNELLO, DISTRICT 2
CASSANDRA HERNANDEZ, DISTRICT 3
JOE MOLINAR, DISTRICT 4
ISABEL SALCIDO, DISTRICT 5
CLAUDIA L. RODRIGUEZ, DISTRICT 6
HENRY RIVERA, DISTRICT 7
CISSY LIZARRAGA, DISTRICT 8

MINUTES FOR REGULAR COUNCIL MEETING

December 14, 2021
COUNCIL CHAMBERS, CITY HALL AND VIRTUALLY
9:00 AM

ROLL CALL

The City Council of the City of El Paso met on the above time and date. Meeting was called to order at 9:04 a.m. Mayor Oscar Leeser present and presiding and the following Council Members answered roll call: Peter Svarzbein, Alexandra Annello, Cassandra Hernandez, Joe Molinar, Isabel Salcido, Claudia Rodriguez, Henry Rivera, and Cissy Lizarraga. Early Departure: Claudia Rodriguez at 1:15 p.m.

INVOCATION

PLEDGE OF ALLEGIANCE

MAYOR'S PROCLAMATIONS

Tony the Tiger Sun Bowl Week

Project Always Beside You Day

NOTICE TO THE PUBLIC

Motion made by Representative Rivera, seconded by Representative Svarzbein, and unanimously carried to **APPROVE, AS REVISED**, all matters listed under the Consent Agenda unless otherwise noted. (Items approved, postponed, or deleted pursuant to the vote on the Consent Agenda will be shown with an asterisk {*}).

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera and Lizarraga

NAYS: None

CONSENT AGENDA - APPROVAL OF MINUTES:

Goal 6: Set the Standard for Sound Governance and Fiscal Management

1. *Motion made, seconded, and unanimously carried to **APPROVE** the Minutes of the Regular City Council Meeting of December 7, 2021, the Work Session of December 6, 2021 and the Agenda Review Meeting of December 6, 2021.

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CONSENT AGENDA - REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS:
.....

2. **REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS:**

NO ACTION was taken on this item

.....
CONSENT AGENDA - RESOLUTIONS:
.....

Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development

3. ***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement (“Agreement”) by and between CITY OF EL PASO (“City”) and 309 MILLS LLC (“Applicant”) in support of an infill renovation project located at 309 Mills Avenue, El Paso, Texas 79901. The Agreement requires the Applicant to make a minimum investment of \$1,200,000.00. Over the term of the Agreement, the City shall provide economic incentives not to exceed \$58,636.00 in the form of a Property Tax Rebate, a Construction Materials Sales Tax Rebate, and a Building Construction Fee Rebate.

4. ***RESOLUTION**

WHEREAS, on March 11, 2021, President Joseph R. Biden signed the American Rescue Plan Act of 2021 into law providing additional relief to address the continued impact of COVID-19 on the economy, public health, state and local governments, individuals, and businesses; and

WHEREAS, under the American Rescue Plan Act, the U.S. Economic Development Administration (the “EDA”), a bureau within the U.S. Department of Commerce, was allocated \$3 billion in supplemental funding to assist communities nationwide in their efforts to build back better by accelerating the economic recovery from the coronavirus pandemic and building local economies that will be resilient to future economic shocks; and

WHEREAS, the American Rescue Plan Act funding enables the EDA to provide larger, more transformational investments across the nation through the provision of flexible funding and support for community-led economic development; and

WHEREAS, the EDA has made this funding available through six innovative challenges, including the Economic Adjustment Assistance program which will provide \$500 million in grant funding to hundreds of communities across the nation to assist them in planning, building, innovating, and putting people back to work through construction or non-construction projects designed to meet local needs; and

WHEREAS, the City of El Paso (the “City), located along the United States-Mexico border, has been uniquely impacted by COVID-19 due to federally mandated temporary travel restrictions limiting non-essential travel of non-citizens into the United States through land ports of entry; and

WHEREAS, cross-border pedestrian and personally owned vehicle northbound travel declined significantly in El Paso between 2019 and 2020 (58.1% and 32.5%, respectively) following implementation of the temporary travel restrictions applicable to land ports of entry, negatively impacting the local economy, and particularly, service and retail industries; and

WHEREAS, the City recognizes its regional land ports of entry are key economic drivers critical to the region’s economic growth and resilience; and

WHEREAS, with the lifting of temporary travel restrictions to allow non-essential travel by non-citizens with proof of vaccination, cross-border traffic has begun to return to pre-pandemic levels; and

WHEREAS, continued investment in and modernization of the City’s proximately located land ports of entry will facilitate the current and future flow of multi-modal cross-border traffic, thereby benefitting local businesses and the economy through an expanded customer base; and

WHEREAS, as part of the City’s commitment to the success of its land ports of entry, the City wishes to apply to the Economic Adjustment Assistance program to secure funding for a feasibility study to assess and consider the modernization of the Stanton Street Bridge and Stanton Street Corridor; and

WHEREAS, matching funds are required for successful grant applicants and will require at least a 20 percent local match which may include cash and in-kind contributions to the project; and

WHEREAS, the City is requesting \$1,000,000 through the Economic Adjustment Assistance grant and will provide a 30% match of \$300,000 from the International Bridges Restricted Fund (P3 program) – Dept. 564 - Fund 3360 - Division 64870.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City of El Paso is authorized to apply to U.S. Economic Development Administration’s Economic Adjustment Assistance program for the purpose of securing a grant to conduct a feasibility study that will assess and consider the modernization of the Stanton Street Bridge and Stanton Street Corridor; the Mayor be authorized to assign a letter of support (Exhibit “A”) for the submission of the application; and the City Manager be authorized to take all necessary actions to pursue this grant opportunity.

Mr. Israel Irrobali, Legislative Liaison, Economic Development Department, read an amendment to the Resolution into the record.

.....
Goal 3: Promote the Visual Image of El Paso

5.

***RESOLUTION**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, ODOM INVESTMENTS INC, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

1820 Alabama St, more particularly described as Lots 8 & 9 & 11 TO 16 & 27 TO 32 & W 5' OF (10 & 26) & CLSD ALLEY BTWN (46300.00 SQ FT), Block 76, HIGHLAND PARK Subdivision, City of El Paso, El Paso County, Texas, PID #H453-999-0760-8900

to be \$359.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 4th day of February, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED FIFTY NINE AND 00/100 DOLLARS (\$359.00) to be a lien on the above described property, said amount being due and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***RESOLUTION**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, ODOM INVESTMENTS INC, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the

Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

1820 Alabama St., more particularly described as Lots 8 & 9 & 11 To 16 & 27 To 32 & W 5' of (10 & 26) & Clsd Alley Btwn (46300.00 Sq Ft), Block 76, Highland Park Subdivision, City of El Paso, El Paso County, Texas, PJD #H453-999-0760-8900

to be \$355.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 13th day of April, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED FIFTY FIVE AND 00/100 DOLLARS (\$355.00) to be a lien on the above described property, said amount being due and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***R E S O L U T I O N**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, ALDACO ALICIA C R, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

3618 Morenci Rd, more particularly described as Lot 23 & E 1/2 of 24, Block 137, EAST EL PASO Subdivision, City of El Paso, El Paso County, Texas, PID #EO14-999-1370-6700

to be \$384.50, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 16th day of February, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED EIGHTY FOUR AND 50/100 DOLLARS (\$384.50) to be a lien on the above described property, said amount being due and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***RESOLUTION**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, BROYLES JP, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

4401 Cambridge Ave, more particularly described as Lot t & W 1/2 Of 2 (5250 Sq Ft), Block 86, GOVERNMENT HILL Subdivision, City of El Paso, El Paso County, Texas, PID #O569-999-0860-0100

to be \$333.50, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 31st day of March, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED THIRTY THREE AND 50/100 DOLLARS (\$333.50) to be a lien on the above described property, said amount being due and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***R E S O L U T I O N**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, ESTRADA MARIA T, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

4637 Moonlight Ave, more particularly described as W 60 Ft of 1 to 3 (9000 Sq Ft), Block 12, DEL NORTE ACRES Subdivision, City of El Paso, El Paso County, Texas, PID #D361-999-0120-0100

to be \$326.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 23rd day of March, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED TWENTY SIX AND 00/100 DOLLARS (\$326.00) to be a lien on the above described property, said amount being due and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.
4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***RESOLUTION**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, CONDE EMMANUELLE, HERNANDEZ MELISSA, referred to as owners, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

191 Ben Swain Dr, more particularly described as Lot 20, Block 12, MILLERS LAKESIDE Subdivision, City of El Paso, El Paso County, Texas, PID #M452-999-0120-7700

to be \$395.50, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 14th day of April, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED NINETY FIVE AND 50/100 DOLLARS, being due and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***RESOLUTION**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, ALTAMIRANO PAULA, referred to as owner, regardless of number, of the hereinafter

described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

249 Ben Swain Dr, more particularly described as Lot 13, Block 11, MILLERS LAKESIDE Subdivision, City of El Paso, El Paso County, Texas, PID #M452-999-0110-1300

to be \$387.50, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 31st day of March, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED EIGHTY SEVEN AND 50/100 DOLLARS (\$387.50) to be a lien on the above described property, said amount being due and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***RESOLUTION**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, WILLIAMS ALLEN E & JANIE M, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9 .04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

10413 Aphrodite Dr. more particularly described as Lot 17 (63 75 Sq Ft), Block 9, APOLLO HEIGHTS Subdivision, City of El Paso, El Paso County, Texas, PID #A642-999-0090-3300

to be \$333.50, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 17th day of February, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED THIRTY THREE AND 50/100 DOLLARS (\$333.50) to be a lien on the above described property, said amount being due and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***RESOLUTION**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, ILAF LLC, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

12020 Montana Ave, more particularly described as Lot 46 (29160.00 Sq Ft), Block 4, PUEBLO MONTANA #3 Subdivision, City of El Paso, El Paso County, Texas, PID # P915-999-0040-4600

to be \$337.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 2nd day of March, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED THIRTY SEVEN AND 00/100 DOLLARS (\$337.00) to be a lien on the above described property, said amount being due and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***RESOLUTION**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, RODRIGUEZ ADOLFO G & GOMEZ ISOLDE R A, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

12900 Alfredo Apodaca Dr. more particularly described as Lot 1 6240.50 Sq Ft), Block 8, TRES SUENOS # 1 Subdivision, City of El Paso, El Paso County, Texas, PID #T820-999-0080-0100

to be \$329.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 11th day of February, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED TWENTY NINE AND 00/100 DOLLARS (\$329.00) to be a lien on the above described property, said amount being due and payable

within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***R E S O L U T I O N**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, INGRAM WILLIAM M, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

1038 Burgess Dr, more particularly described as Tr 584 (7000 Sq Ft), LOMA TERRACE #4-C Subdivision, City of El Paso, El Paso County, Texas, PID #L536-999-001C-4900

to be \$329.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 8th day of February, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED TWENTY NINE AND 00/100 DOLLARS (\$329.00) to be a lien on the above described property, said amount being due and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***RESOLUTION**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, PUGH GORDON P, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

308 Bird Ave, more particularly described as Lot 2, MARWOOD REPLAT Subdivision, City of El Paso, El Paso County, Texas, PID #M141-999-0000-0200

to be \$566.50, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 1st day of March, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount FIVE HUNDRED SIXTY SIX AND 50/100 DOLLARS (\$566.50) to be a lien on the above described property, said amount being due and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***RESOLUTION**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, KRIEGER CHARLES R, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

330 Belva Way, more particularly described as Lots I & W 1/2 of 2 (25726 Sq Ft), Block 3, LA SIERRA VISTA Subdivision, City of El Paso, El Paso County, Texas, PID #L07 I-999-0030-0100

to be \$1101.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 11th day of March, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount ONE THOUSAND ONE HUNDRED ONE AND 00/100 DOLLARS (\$1101.00) to be a lien on the above described property, said amount being due and payable within ten (1 0) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***R E S O L U T I O N**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, 517 W MISSOURI LLC, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and

WHEREAS, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs

and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

517 W Missouri Ave, more particularly described as Lot 23 & E ½ Of 24 (4500 Sq Ft), Block A, STEVENS Subdivision, City of El Paso, El Paso County, Texas, PID #S636-999-000A-6100

to be \$329.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 16th day of March, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED TWENTY NINE AND 00/100 DOLLARS (\$329.00) to be a lien on the above described property, said amount being due and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

***R E S O L U T I O N**

WHEREAS, in accordance with Chapter 9.04 of the El Paso City Code, GONZALEZ KARLA, referred to as owner, regardless of number, of the hereinafter described property, was given notice that said property constituted a public nuisance due to the accumulation of trash, vegetation and weeds or other objectionable, unsightly or unsanitary matter in violation of Chapter 9.04 of the El Paso City Code; and the owner failed to comply with due notices. In accordance with El Paso City Code Chapter 9.04, the Environmental Services Department proceeded to clean and dispose of the trash, vegetation, weeds or other rubbish; and **WHEREAS**, the Director of the Environmental Services Department has reported the cost of doing such work in the amount hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. The City Council determines its reasonable expenses including administrative costs and the cost of removing the accumulated trash, vegetation and weeds or other rubbish located on the property known as:

1325 E Missouri Ave, more particularly described as Lots 26 & 27 & E 1/2 Of 25 & W 1/2 Of 28 (9000.00 Sq Ft), Block 26, FRANKLIN HEIGHTS Subdivision, City of El Paso, El Paso County, Texas, PID #F607-999-0260-8600

to be \$368.00, in accordance with the El Paso City Code Section 9.04.880 and the Texas Health & Safety Code Section 342.007. The City Council finds that the work was completed on the 16th day of February, 2021, and approves the costs described herein.

2. The City Council, in accordance with Chapter 9.04 of the El Paso City Code, declares the above total amount THREE HUNDRED SIXTY EIGHT AND 00/100 DOLLARS (\$368.00) to be a lien on the above described property, said amount being due and payable within ten (10) days from the date of City Council approval, and thereafter bearing ten percent (10%) interest per annum.

3. The City Clerk is directed to give notice of the lien by filing a copy of this Resolution for record with the County Clerk.

4. All records of the City Clerk's office relating to the proceeding against the above described property are made a part of this Resolution by reference.

.....
Goal 4: Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments
.....

6. ***R E S O L U T I O N**

WHEREAS, The Texas Police Athletic Federation ("TPAF") hosts the Texas Police Games, an organized competitive event that gives commissioned Police Officers the opportunity to compete with fellow Police Officers from the State of Texas as well as on a nationwide level; and

WHEREAS, TPAF Games has 1000-1200 athletes competing in 26-32 events like bowling, softball, soccer, fire arms competitions, bass fishing, archery, flag football, volleyball and 5k/10k run, among others, open to not just Texas, but Arizona, New Mexico, Oklahoma and Colorado; and

WHEREAS, the El Paso Sports Commission wishes to coordinate with Destination El Paso, the City, through its Parks and Recreation Department, and the El Paso County Parks and Recreation department to submit a bid to host the Texas Police Games in El Paso, Texas, and requests a letter of support from the Mayor of El Paso.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT City Council authorizes the Mayor to execute a letter in substantial conformity with the attached supporting the El Paso Sports Commission's bid to host the 2023 Texas Police Athletic Federation Games in El Paso, Texas.

.....
Goal 5: Promote Transparent and Consistent Communication Amongst All Members of the Community
.....

7. **R E S O L U T I O N**

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF EL PASO:

That the Mayor be authorized to sign an Interlocal Governmental Agreement between the City of El Paso and the County of El Paso for Law Enforcement Information Sharing for the On- Call Records (WebRMS) Management System. The City will fund the Interlocal

Governmental Agreement Law Enforcement Information Sharing for the On-Call Records (WebRMS) Management System at 50% and the County of El Paso will fund in the amount of 50%. This agreement further serves to create and provide the framework for the operation of WebRMS, which serves as a regional law enforcement information sharing resource between the Sheriff's Office, the El Paso Police Department and other area law enforcement agencies that may choose to participate.

Representatives Svarzbein, Molinar, Rivera, and Lizarraga commented.

The following City staff members commented:

- Ms. Araceli Guerra, Managing Director of Internal Services and Information Technology
- Ms. Carolyn Patrick, Information Technology Assistant Director
- Ms. Dionne Mack, Deputy City Manager

1ST MOTION

*Motion made, seconded, and unanimously carried to **MOVE THE ITEM** to the Regular Agenda.

2ND AND FINAL MOTION

Motion made Representative Molinar, seconded Representative Lizarraga, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

.....
Goal 7: Enhance and Sustain El Paso's Infrastructure Network
.....

8.

***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager, or designee, is authorized to sign multiple Memorandum of Agreements between the City of El Paso and the United States Section, International Boundary and Water Commission, United States and Mexico, an independent agency of the United States federal government for the installation and operation of a floodgate systems for the Upper Rio Grande Flood Control Project west and east levees at Country Club Bridge crossing the Rio Grande at Country Club Road and the west and east levees at the Borderland Bridge crossing the Rio Grande at the Borderland Road. Further, the City Manager, or designee, is authorized to exercise all rights and perform all obligations under the agreement. Further, that the City Manager, or designee, is authorized to sign any amendments to the agreements.

9.

.....
***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign the First Amendment to Interlocal Agreement by and between the City of El Paso and the Camino Real Regional Mobility Authority (the "CRRMA") to provide for project expenses incurred by the CRRMA for the Zaragoza POE, Pan American Drive & Winn Road Build/Improvements Project in the amount of \$93,676.36.

.....
Goal 8: Nurture and Promote a Healthy, Sustainable Community
.....

10. *RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Council approves the appointment of Hector I. Ocaranza, M.D., as the local health authority for a two-year term, pursuant to Section 121.033 of the Texas Health and Safety Code, and delegates the authority to the Director of the Public Health Department to sign the Certificate of Authority for a Health Authority and to the City Manager or designee to execute all related agreements and forms required by the Department of State Health Services of the State of Texas. The health authority shall be compensated \$4,166.67 per month during the term, except that in the event the World Health Organization declares a pandemic, and the El Paso City/County Emergency Management Plan, Pandemic Incident Annex ("EP-PIA") and Basic Plan ("Plan") are activated, compensation shall be set at a rate of \$10,000.00 every two weeks until such time as the EP-PIA and Plan are deactivated.

.....
11. *RESOLUTION

WHEREAS, on August 31, 2021 the City of El Paso ("City") awarded Contract No. 2021-1231 Household Hazardous Waste Disposal to Green Planet, Inc. ("Vendor");

WHEREAS, pursuant to provisions and requirements established in the Purchase Order Terms and Conditions (Termination for Convenience) of Part 4, Section 8 of the Contract, the City is authorized to terminate the Contract for convenience; and

WHEREAS, the City desires to terminate the Contract for convenience.

NOW, THEREFORE, BE IT RESOLVED BY CITY COUNCIL OF THE CITY OF EL PASO:

That the Purchasing & Strategic Sourcing Director is authorized to notify Vendor that the City is terminating Contract 2021-1231 Household Hazardous Waste Disposal for convenience, pursuant to the provisions and requirements of the Purchase Order Terms and Conditions, and that the termination shall be effective as of December 14, 2021.

.....
CONSENT AGENDA – BOARD APPOINTMENTS:
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Goal 4: Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments
.....

- 12.** *Motion made, seconded, and unanimously carried to **APPOINT** Fernando Delgado to the Parks and Recreation Advisory Board by Representative Claudia Rodriguez, District 6.

.....
Goal 6: Set the Standard for Sound Governance and Fiscal Management
.....

13. *Motion made, seconded, and unanimously carried to **APPOINT** Juan Uribe to the Public Service Board Selection Committee by Representative Isabel Salcido, District 5.

.....
Goal 8: Nurture and Promote a Healthy, Sustainable Community
.....

14. *Motion made, seconded, and unanimously carried to **APPOINT** Joel Robert Calderon Jr. to the Regional Renewable Energy Advisory Council by Representative Alexandra Anello, District 2.

.....
CONSENT AGENDA – NOTICE FOR NOTATION
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Goal 5: Promote Transparent and Consistent Communication Amongst All Members of the Community
.....

15. *Motion made, seconded, and unanimously carried to **ACCEPT** the donation of \$2,500 from Marathon Petroleum to go towards the purchase of hams to help veteran, senior citizen and low-income families in the District this holiday season. (District 7)
16. *Motion made, seconded, and unanimously carried to **ACCEPT, AS REVISED**, the donations of toys and 5 bikes from El Paso Disposal and toys and a \$250 gift card from the El Paso Veterans & Riders Association all to be given to participants randomly selected at a holiday and community engagement event in District 3.
17. *Motion made, seconded, and unanimously carried to **ACCEPT** the donation of \$500 from El Paso Electric to go towards the purchase of hams to help veteran, senior citizen and low-income families in the District this holiday season. (District 7)

.....
REGULAR AGENDA – MEMBERS OF THE CITY COUNCIL
.....

.....
Goal 4: Enhance El Paso’s Quality of Life through Recreational, Cultural and Educational Environments
.....

18. **R E S O L U T I O N**

WHEREAS, on Friday, November 19, 2021, the Eastwood, Riverside and Canutillo High School football teams each won their playoff games, earning them trips to the regional semifinals; and

WHEREAS, for the first time since 2014, three El Paso high school football teams were still playing in round three of the UIL Texas state playoffs; and

WHEREAS, the Eastwood Troopers remained in the regional semifinals for the first time in school history and were the only area Class 6A squad left in the playoffs after their wins against Abilene and Saginaw Boswell; and

WHEREAS, the Riverside Rangers won a District 1-4A Division I title after defeating Big Spring and Lake Worth in the playoffs, marking the first time since 2004 that the Rangers play in the third round; and

WHEREAS, the Canutillo Eagles defeated Canyon Randall, 27-24, to win its second playoff game this year and set up a matchup with Wichita Falls Rider in the regional semifinals; and

WHEREAS, on November 27, 2021, in a Class 6A Division II regional semifinal against Prosper High School, the Eastwood Troopers fought to the wire and ended their victorious season with an 8-5 record under long-time coach Julio Lopez; and

WHEREAS, Riverside's successful football season came to end on November 27, 2021 against Springtown in the Class 4A Division I regional semifinals, with an 11-2 record under third-year coach Gary Recoder; and

WHEREAS, on November 26, 2021, after falling to Wichita Falls Rider in the Regional Semifinals of the Class 5A Texas high school football state playoffs, the triumphant Canutillo Eagles football season ended with an 11-2 record under head coach Scott Brooks; and

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EL PASO:

1. Commends and congratulates the Eastwood, Riverside and Canutillo High School football teams being the only three El Paso area high school football teams to advance to the 'Sweet 16' of the Texas High School state playoffs;
2. Recognizes the many achievements of the coaches and players of the Eastwood Troopers, Riverside Rangers and Canutillo Eagles;
3. Recognizes the fans of the Eastwood Troopers, Riverside Rangers and Canutillo Eagles and the people of El Paso for their dedication and support; and
4. Respectfully requests that the City Clerk submit an executed copy of this resolution to:
 - a) the head coach of the Eastwood High School football team, Julio Lopez;
 - b) the head coach of the Riverside High School football team, Gary Recoder; and
 - c) the head coach of the Canutillo High School football team, Scott Brooks.

Representatives Svarzbein, Hernandez, and Rivera commented.

Motion made by Mayor Pro Tempore Representative Svarzbein, seconded by Representative Hernandez, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

.....
Goal 5: Promote Transparent and Consistent Communication Amongst All Members of the Community
.....

19.

R E S O L U T I O N

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Council declares that the expenditure of District 6 discretionary funds in an amount not to exceed \$2,301.84 to purchase a laptop to be used by city representative District 6 staff serves a municipal purpose of providing better and more mobile communication with the District 6 office and District 6 constituents; promoting transparent and consistent communication amongst all members of the community.

That the City Manager be authorized to effectuate any budget transfer necessary to ensure that the funds are properly expended for such purpose and to execute any related agreements and amendments to such agreements.

Representatives Annello, Hernandez, and Rodriguez commented.

Motion made by Representative Rodriguez, seconded by Representative Salcido, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

.....
Goal 7: Enhance and Sustain El Paso's Infrastructure Network
.....

20. **ITEM:** Discussion and action to direct the City Manager and staff to develop a plan with El Paso County and affected property owners and return to the City Council with recommendations in order to facilitate the development and extension of Montwood Dr. between Shreya St. and Rich Beem Blvd. as depicted on the City's Major Thoroughfare Plan (MTP).

Representatives Svarzbein, Hernandez, Molinar, Salcido, Rodriguez, and Rivera commented.

Mr. Tommy Gonzalez, City Manager, commented.

Motion made by Representative Salcido, seconded Representative Rivera, and unanimously carried to **DIRECT** the City Manager and staff to develop a plan with El Paso County and affected property owners and return to the City Council with recommendations in order to facilitate the development and extension of Montwood Dr. between Shreya St. and Rich Beem Blvd. as depicted on the City's Major Thoroughfare Plan (MTP).

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

.....
The Regular City Council meeting was **RECESSED** at 10:20 a.m. in order to convene the Mass Transit Board Meeting.

The Regular City Council meeting was **RECONVENED** at 10:50 a.m.

.....
Motion made by Representative Annello, seconded by Representative Rodriguez, and unanimously carried to **TABLE** items 21 through 24 until end of the agenda.

Motion made by Representative Rivera, seconded by Representative Lizarraga, and unanimously carried to **TAKE FROM THE TABLE** items 21 through 24.

.....
REGULAR AGENDA – OPERATIONAL FOCUS UPDATE
.....

Goal 4: Enhance El Paso’s Quality of Life through Recreational, Cultural and Educational Environments
.....

21. Management Update: City of El Paso Waterparks.

Mr. Bryan Crowe, Destination El Paso Managing Director, presented a PowerPoint presentation (copy on file in the City Clerk’s Office).

Mayor Leeser and Representatives Svarzbein, Molinar, and Salcido commented.

Mr. Tommy Gonzalez, City Manager, commented.

NO ACTION was taken on this item.

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Goal 5: Promote Transparent and Consistent Communication Amongst All Members of the Community
.....

22. Presentation and Update on Accomplishments and Community Impacts of Capital Projects.

Mr. Sam Rodriguez, City Engineer, presented a PowerPoint presentation (copy on file in the City Clerk’s Office).

Representative Svarzbein commented.

Mr. Tommy Gonzalez, City Manager, commented.

NO ACTION was taken on this item.

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Goal 6: Set the Standard for Sound Governance and Fiscal Management
.....

23. Budget Update.

Motion made Representative Annello, seconded by Representative Molinar, and unanimously carried to **POSTPONE THE ITEM INDEFINITELY**.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rivera, and Lizarraga
NAYS: None
NOT PRESENT FOR THE VOTE: Representative Rodriguez

.....
Goal 7: Enhance and Sustain El Paso’s Infrastructure Network
.....

24. Presentation and discussion on a Street Infrastructure Comprehensive Update.

Motion made Representative Annello, seconded by Representative Molinar, and unanimously carried to **POSTPONE THE ITEM INDEFINITELY.**

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rivera, and Lizarraga
NAYS: None
NOT PRESENT FOR THE VOTE: Representative Rodriguez

.....
CALL TO THE PUBLIC – PUBLIC COMMENT:
.....

Ms. Wally Cech, citizen, commented.

.....
REGULAR AGENDA – FIRST READING OF ORDINANCES:
.....

Motion made by Representative Rivera, seconded by Representative Lizarraga, and unanimously carried that the following Ordinances, having been introduced pursuant to Section 3.9 of the El Paso City Charter, be **ADVERTISED** for public hearing.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga
NAYS: None

.....
Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development
.....

25. An Ordinance approving amendment number twenty-one to the project plan and reinvestment zone financing plan for tax increment reinvestment zone (TIRZ) number five, City of El Paso, Texas, to provide funding to the 309 MILLS, LLC improvement project of the property located at 309 Mills Avenue, 79901; subject to the execution of a separate agreement by and between the City of El Paso and the project developer(s); adopting said amendments as required by section 311.011(E) Texas Tax Code.

PUBLIC HEARING WILL BE HELD ON JANUARY 4, 2022

.....
Goal 3: Promote the Visual Image of El Paso
.....

26. An Ordinance changing the zoning of the following real property known as: Parcel 1: a portion of Tracts 4B, 4B1, 5A, 5A1, and 6, Laura E. Mundy Survey 237; Tracts 9B and 9B1, Laura E. Mundy Survey No. 238; and portion of Enchanted Hills Unit Five, City of El Paso, El Paso County, Texas, from R-MU (Residential Mixed Use) to R-5 (Residential) and, Parcel 2: a portion of Tracts 9B, 9B1, and 9B2, Laura E. Mundy Survey No. 238; and

portion of Lots 2 thru 5, 9 thru 12, and 21 thru 24, Block 23, Enchanted Hills 5, City of El Paso, El Paso County, Texas, from R-3 (Residential), R-5/sp (Residential/special permit), and R-MU (Residential Mixed Use) to C-2 (Commercial); and, Parcel 3: a portion of Tract 9B2, Laura E. Mundy Survey No. 238, City of El Paso, El Paso County, Texas, from R-3 (Residential) to C-3 (Commercial), and imposing conditions. The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: Generally located north of Transmountain Road and east of Interstate 10

Applicant: Conde, Inc., PZRZ21-00024

PUBLIC HEARING WILL BE HELD ON JANUARY 4, 2022

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Goal 8: Nurture and Promote a Healthy, Sustainable Community
.....

27. *Motion made, seconded, and unanimously carried to **DELETE** an Ordinance amending Title 7 (Animals), Chapter 7.04 (Definitions and Administration), Section 7.04.010 (Definitions); Title 7 (Animals), Chapter 7.08 (Animals Generally), Section 7.08.050 (Standards for Animal Care); Title 7 (Animals), Chapter 7.12 (Dogs and Cats), Section 7.12.020 (Registration, Vaccination, and Microchips Required); Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.030 (Groomer License Application); Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.070 (Denial); Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.080 (Groomer License Suspension or Revocation); Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.090 (Shop Registration Required); Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.100 (Shop Registration Application); Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.140 (Denial); Title 7 (Animals), Chapter 7.28 (Animal Shelter Advisory Committee), Section 7.28.050 (Quorum and Procedures). The Penalty as Provided in Section 7.04.080 of the El Paso City Code.

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REGULAR AGENDA – PUBLIC HEARINGS AND SECOND READING OF ORDINANCES:
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Goal 3: Promote the Visual Image of El Paso
.....

28. **ORDINANCE 019274**

The City Clerk read an Ordinance entitled: **AN ORDINANCE CHANGING THE ZONING OF THE FOLLOWING REAL PROPERTY KNOWN AS:**

PARCEL 1: TRACT 1, SECTION 4, BLOCK 80, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS, FROM R-F (RANCH AND FARM) TO M-2 (HEAVY MANUFACTURING); AND,

PARCEL 2: TRACT 3, SECTION 3, BLOCK 80, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS, FROM R-F (RANCH AND FARM) TO M-2 (HEAVY MANUFACTURING); AND,

IMPOSING CONDITION. THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.

Ms. Anne Guayante, Zoning Administrator, read revised ordinance conditions into the record.

Mayor Leeser and Representatives Svarzbein and Molinar commented.

Mr. Richard Dayoub, citizen, commented.

Motion duly made by Representative Annelo, seconded by Representative Molinar, and carried that the Ordinance be **ADOPTED AS AMENDED**.

Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Svarzbein, Annelo, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga.

NAYS: None

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same is hereby **ADOPTED AS AMENDED**

.....
29.

ORDINANCE 019275

The City Clerk read an Ordinance entitled: **AN ORDINANCE CHANGING THE ZONING OF THE FOLLOWING REAL PROPERTY KNOWN AS:**

PARCEL 1: A PORTION OF TRACTS 5 AND 6, N/K/A TRACTS 5-A-5 AND 6, SECTION 15, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILROAD COMPANY SURVEYS, 12100 DYER STREET, CITY OF EL PASO, EL PASO COUNTY, TEXAS, FROM R-F (RANCH AND FARM) TO R-5 (RESIDENTIAL) ; AND,

PARCEL 2: A PORTION OF SECTION 15, N/K/A TRACT 6, SECTION 15, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILROAD COMPANY SURVEYS, 12100 DYER STREET, CITY OF EL PASO, EL PASO COUNTY, TEXAS, FROM M-1 (MANUFACTURING) TO C-4 (COMMERCIAL);

THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.

Ms. Anne Guayante, Zoning Administrator, read ordinance condition into the record.

Motion duly made by Representative Molinar, seconded by Representative Rodriguez, and carried that the Ordinance be **ADOPTED AS AMENDED**.

Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Svarzbein, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: Representative Annello

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same is hereby **ADOPTED AS AMENDED**.

.....
REGULAR AGENDA – PUBLIC HEARING AND OTHER BUSINESS:
.....

Goal 6: Set the Standard for Sound Governance and Fiscal Management
.....

30. ORDINANCE 019276

The City Clerk read an Ordinance entitled: **AN ORDINANCE AMENDING TITLE 15 (PUBLIC SERVICES) OF THE EL PASO CITY CODE TO ADD A NEW CHAPTER 15.24 (ACQUISITION, USE, AND DISPOSITION OF CITY PROPERTY) TO AUTHORIZE THE ESTABLISHMENT OF POLICIES AND FEES FOR THE USE, PURCHASE, AND DISPOSITION OF CITY PROPERTY.**

Motion duly made by Representative Rivera, seconded by Representative Hernandez, and carried that the Ordinance be **ADOPTED**.

Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga.

NAYS: None

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same is hereby **ADOPTED**.

.....
**31. RESOLUTION AMENDING SCHEDULE C FOR THE CITY OF EL PASO
FY 2022 BUDGET RESOLUTION**

WHEREAS, on August 24, 2021 the City Council approved the FY2022 City budget by resolution (“Budget Resolution”); and

WHEREAS, paragraph 50 of the Budget Resolution provides that revisions or additions to the fees set forth in Schedule C, attached to the Budget Resolution, may be approved by simple resolution of the City Council; and

WHEREAS, the City Council desires to establish the fees and other charges under Schedule C related real estate transactions under Chapter 15.24 of the El Paso City Code.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF EL PASO:

That Schedule C, attached to the FY 2022 Budget Resolution and effective September 1, 2021, shall be amended, effective upon signature of this resolution by the

Mayor, as set forth in **Attachment “A” attached to this resolution, to establish the amounts of fees related to real estate transactions under Chapter 15.24 of the El Paso City Code. Except as herein amended, the FY2022 Budget Resolution and Schedule C remain in full force and effect. The changes provided for in this Resolution take effect starting on January 1, 2022.

Line No.	Department	Account	Fee Description	Detail FY22 Preliminary	FY 2021 Proposed Fees
	Capital Improvement		Application Fee-Purchase/Sale		\$1,000
	Capital Improvement		Consideration - Purchase/Sale		Market Value as determined by Real Estate Policies.
	Capital Improvement		Due Diligence		Actual cost charged by contractors
	Capital Improvement		Application Fee- Rights of Entry		\$500
	Capital Improvement		Consideration - Rights of Entry		\$0
	Capital Improvement		Application Fee - Easements		\$1,000
	Capital Improvement		Consideration - Easement		Market Value as determined by Real Estate Policies.
	Capital Improvement		Application Fee - Leases		\$1,000
	Capital Improvement		Consideration - Lease		Market Value as determined by Real Estate Policies.
	Capital Improvement		Agreement Amendments		\$200
	Capital Improvement		Consent to Assignments		\$200
	Capital Improvement		Release		\$200
	Capital Improvement		Termination of Agreements		\$200
	Capital Improvement		Application Fee - Special Event		\$500
	Capital Improvement		Consideration - Special Event		Market Value as determined by Real Estate Policies.

Motion made by Representative Salcido, seconded by Representative Lizarraga, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga.

NAYS: None

.....
REGULAR AGENDA – OTHER BUSINESS:

Goal 2: Set the Standard for a Safe and Secure City

32. RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager is authorized to sign the Guaranteed Maximum Price Amendment to the Standard Form of Agreement by and between the City of El Paso and SUNDT CONSTRUCTION, Inc. (“Construction Manager”) for the project known as “the Eastside Regional Police Command Center”, to accept and incorporate the Construction Manager’s Guaranteed Maximum Price Proposal and establishing the Guaranteed Maximum Price (“GMP”) for the project in the amount of \$33,452,506.00; and

That the City Manager or Designee be authorized to approve contract changes or amendments which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable laws and are within the appropriate budget; and

That the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this agreement.

Motion made Representative Salcido, seconded by Representative Rivera, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Svarzbein, Annelo, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga.

NAYS: None

Goal 7: Enhance and Sustain El Paso's Infrastructure

33.

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager, or designee, be authorized to sign a three year On-Call Agreement for Professional Services to perform traffic signal synchronization services on a task order basis between the by City of El Paso and each of the following three (3) consultants:

- 1) AECOM Technical Services, Inc.
- 2) Kimley-Horn and Associates, Inc.
- 3) Walter P. Moore & Associates, Inc.

Each On-Call Agreement will be for an amount not to exceed One Million One Hundred Fifty Thousand and No/00 Dollars (\$1,150,000.00). In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement. In addition, the City Manager, or designee, is authorized to \$50,000.00 each and sign any amendments to the agreements.

Motion made Representative Molinar, seconded by Representative Salcido, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Svarzbein, Annelo, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga.

NAYS: None

EXECUTIVE SESSION

Motion made by Mayor Pro Tempore Svarzbein, seconded by Representative Annelo, and unanimously carried that the City Council retire into **EXECUTIVE SESSION** at 12:07 p.m. pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Sections 551.071 - 551.089 to discuss the following:

Section 551.071 CONSULTATION WITH ATTORNEY

Section 551.072 DELIBERATION REGARDING REAL PROPERTY

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, Rivera, and Lizarraga

NAYS: None

Motion made by Representative Annello, seconded by Representative Molinar, and unanimously carried to **ADJOURN** the Executive Session at 3:52 p.m. and **RECONVENE** the meeting of the City Council at which time motions were made.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rivera, and Lizarraga

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Rodriguez

.....
Goal 6: Set the Standard for Sound Governance and Fiscal Management
.....

EX1. Quarterly Litigation Report. Matter No. 19-1021-1210 (551.071)

NO ACTION was taken on this item.

.....
EX2 National Opioid Lawsuit. Matter No. 19-1043-554 (551.071)

Motion made by Mayor Pro Tempore Svarzbein, seconded by Representative Rivera, and unanimously carried that the City Attorney’s Office, in consultation with the City Manager, be authorized to **ACCEPT** the manufacturer and distributor settlements with Johnson and Johnson, AmerisourceBergen, Cardinal Health, and McKesson, in the National Opioid Litigation; and that the City hereby adopts the Texas Term Sheet and Intrastate Allocation Schedule accordingly. In addition, the City Manager is authorized to sign all necessary documents to effectuate this authority including but not limited to the Subdivision Settlement Participation Forms

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rivera, and Lizarraga

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Rodriguez

.....
EX3. Application of El Paso Electric Company to Change Rates, Public Utility Commission of Texas Docket No. 52195. Matter No. 21-1008-174 (551.071)

NO ACTION was taken on this item.

.....
EX4. Application of El Paso Electric Company for Approval of Advanced Metering System (AMS); Public Utility Commission of Texas Docket No. 52040. Matter No. 21-1008-168 (551.071)

Representative Svarzbein commented.

Motion made by Mayor Pro Tempore Svarzbein, seconded by Representative Molinar, and unanimously carried that the City Attorney be **AUTHORIZED** settlement authority, to sign all settlement documents to resolve all issues in Texas Public Utility Commission Docket

No. 52040, Application of El Paso Electric for Approval of Advanced Metering System (AMS) Deployment Plan, AMS Surcharge, and Non-Standard Metering Service Fees.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rivera, and Lizarraga

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Rodriguez

.....
EX5. Economic Incentives for an Infill Development located in the City of El Paso. Matter No. 21-1007-2832 (551.072) (551.087)

NO ACTION was taken on this item.

.....
Motion made by Representative Molinar, seconded by Representative Annello, and unanimously carried to **ADJOURN** this meeting at 3:59 p.m.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rivera, and Lizarraga

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Rodriguez

.....
APPROVED AS TO CONTENT:

Laura D. Prine, City Clerk

OSCAR LEESER
MAYOR

TOMMY GONZALEZ
CITY MANAGER



CITY COUNCIL
PETER SVARZBEIN, DISTRICT 1
ALEXSANDRA ANNELLO, DISTRICT 2
CASSANDRA HERNANDEZ, DISTRICT 3
JOE MOLINAR, DISTRICT 4
ISABEL SALCIDO, DISTRICT 5
CLAUDIA L. RODRIGUEZ, DISTRICT 6
HENRY RIVERA, DISTRICT 7
CISSY LIZARRAGA, DISTRICT 8

MINUTES FOR REGULAR COUNCIL MEETING

January 4, 2022
COUNCIL CHAMBERS, CITY HALL AND VIRTUALLY
9:00 AM

ROLL CALL

The City Council of the City of El Paso met on the above time and date. Meeting was called to order at 9:01 a.m. Mayor Oscar Leeser present and presiding and the following Council Members answered roll call: Alexsandra Annello, Joe Molinar, Isabel Salcido, Claudia Rodriguez, and Henry Rivera. Peter Svarzbein participated via videoconference. Late arrival: Cassandra Hernandez at 9:03 a.m. Early departure: Claudia Rodriguez at 12:42 p.m. Cissy Lizarraga requested to be excused.

INVOCATION

PLEDGE OF ALLEGIANCE

MAYOR'S PROCLAMATIONS

Dr. Martin Luther King, Jr. Day

Elvira Nevarez Remembrance Day

The Regular City Council meeting was **RECESSED** at 9:19 a.m.

The Regular City Council meeting was **RECONVENED** at 9:33 a.m.

REGULAR AGENDA - OTHER BUSINESS:

Election of Alternate Mayor Pro Tempore for the January 4, 2022 meeting during the absence of Alternate Mayor Pro Tempore Cissy Lizarraga and virtual participation of Mayor Pro Tempore Peter Svarzbein.

Mayor Leeser commented

Motion made by Representative Rivera, seconded by Representative Molinar, and unanimously carried to **ELECT** Representative Cassandra Hernandez as the Alternate Mayor Pro Tempore.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, and Rivera
NAYS:
ABSENT: Representative Lizarraga

.....
NOTICE TO THE PUBLIC

Motion made by Mayor Pro Tempore Hernandez, seconded by Representative Rivera, and unanimously carried to **APPROVE, AS REVISED**, all matters listed under the Consent Agenda unless otherwise noted. (Items approved, postponed, or deleted pursuant to the vote on the Consent Agenda will be shown with an asterisk {*}).

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, Rodriguez, and Rivera
NAYS: None
ABSENT: Representative Lizarraga

.....
CONSENT AGENDA - APPROVAL OF MINUTES:

.....
Goal 6: Set the Standard for Sound Governance and Fiscal Management

-
1. *Motion made, seconded, and unanimously carried to **APPROVE** the Minutes of the Agenda Review Meeting of December 13, 2021.

.....
CONSENT AGENDA - REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS:

-
2. **REQUEST TO EXCUSE ABSENT CITY COUNCIL MEMBERS:**

*Motion made, seconded, and unanimously carried to **EXCUSE** Representative Cissy Lizarraga from the Regular City Council Meeting of Tuesday, January 04, 2022.

.....
CONSENT AGENDA - RESOLUTIONS:

.....
Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development

-
3. ***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager, or designee, be authorized to sign an Agreement for Professional Services by and between the City of El Paso, and Professional Service Industries, Inc., a Delaware, USA Foreign for Profit Corporation, for a project known as "GEOTECHNICAL AND MATERIALS TESTING FOR TAXIWAY J & K2 RECONSTRUCTION", for an amount not to exceed \$224,664.96.

In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of the Agreement for Professional Services. In addition, the City

Manager, or designee, is authorized to increase the contract amount up to \$50,000.00 and sign any amendments to the agreement.

.....
Goal 2: Set the Standard for a Safe and Secure City
.....

4. *RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign an Interlocal Governmental Agreement between the City of El Paso and the County of El Paso/District Attorney, 34th Judicial District of the State of Texas, for services to the City and its Police Department relating to arrests and prosecution of criminal cases in connection with the District Attorney’s Information Management System (DIMS) program from January 1, 2022 through August 31, 2022. The City of El Paso will make monthly payments of \$19,888.77 to the County for the months that real-time, 24-hour screening under the DIMS program is being provided to the City.

Mayor Leeser and Representatives Svarzbein, Annelo, Hernandez, Molinar, and Rivera commented.

The following City staff members responded to questions from Members of City Council:

1. Mr. Tommy Gonzalez, City Manger
2. Ms. Dionne Mack, Deputy City Manager of Public Safety
3. Police Chief Gregory Allen
4. Assistant Police Chief Humberto Talamantes
5. Mr. Eric Gutierrez, Assistant City Attorney

.....
Goal 6: Set the Standard for Sound Governance and Fiscal Management
.....

5. *RESOLUTION

WHEREAS, the City of El Paso, as trustee, acquired title to the properties described below by Sheriffs Tax Deed because no bids were received when the properties were offered for sale and the officer making the sale bid the properties off to the City of El Paso, all in accordance with Section 34.01 of the Texas Property Tax Code; and

WHEREAS, the City of El Paso desires the sheriff of El Paso County to sell said properties in accordance with Section 34.05, subsections (c) and (d) of the Texas Property Tax Code;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO.

THAT the City of El Paso hereby requests the sheriff of El Paso County to sell in accordance with Section 34.05 subsections (c) and (d) of the Texas Property Tax Code the following parcels of property described:

Lot 2, Block 84, Cielo Vista Park, Unit “A”, an addition to the City of El Paso, El Paso County, Texas, according to the map

or plat thereof, recorded in Volume 21, Page 5, Map Records of El Paso County, Texas.

Representative Rivera commented.

Ms. Karla Nieman, City Attorney, commented.

.....
Goal 7: Enhance and Sustain El Paso’s Infrastructure Network
.....

6. *RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager, or designee, be authorized to sign an Underground Electrical Easement, granting an easement to the El Paso Electric Company to provide electrical power to property located between Global Reach Dr. and George Perry Boulevard, legally described as 0.196-acre parcel of land more or less being a portion of Lot 1, Block 1, Butterfield Trail Aviation Park Unit One, (File Clerk’s No. 98063155, Plats Records, El Paso County, Texas) City of El Paso, El Paso County, Texas.

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7. *RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Council approves a Change Order to the Montana Corridor RTS project, Contract No. 2018-836 with Venegas Engineering Management and Construction, Inc., in the amount of ONE HUNDRED THIRTY-THREE THOUSAND ONE HUNDRED FIFTY-FIVE AND 22/100 DOLLARS (\$133,155.22) for the additional cost related to the additional wiring with an increased gauge and additional conduit required to account for relocated electrical services. This notice provides for the additional scope of work, which allows for additional capacity to the awarded contract. The new contract sum, including this change order notice is Twenty Million Forty-Six Thousand One Hundred Seven and 45/100 Dollars (\$20,046,107.45). The City Manager is authorized to establish the funding sources and make any necessary budget transfers.

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CONSENT AGENDA – BOARD RE-APPOINTMENTS:
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Goal 6: Set the Standard for Sound Governance and Fiscal Management
.....

8. *Motion made, seconded, and unanimously carried to **RE-APPOINT** Isabel Salcido to the City of El Paso Employees Retirement Trust Board of Trustees by Mayor Oscar Leeser.

.....
CONSENT AGENDA – BOARD APPOINTMENTS:
.....

Goal 4: Enhance El Paso’s Quality of Life through Recreational, Cultural and Educational Environments
.....

9. *Motion made, seconded, and unanimously carried to **APPOINT** Pamela Prieto Montoya to the Museums and Cultural Affairs Advisory Board by Representative Joe Molinar, District 4.

10. *Motion made, seconded, and unanimously carried to **APPOINT** Benjamin Avalos to the Parks and Recreation Advisory Board by Representative Joe Molinar, District 4.

11. *Motion made, seconded, and unanimously carried to **APPOINT** Christopher Hartnett Olivares to the Museums and Cultural Affairs Advisory Board by Mayor Oscar Leeser.

Goal 6: Set the Standard for Sound Governance and Fiscal Management

12. *Motion made, seconded, and unanimously carried to **APPOINT** Joe Molinar to the City of El Paso Employees Retirement Trust Board of Trustees by Mayor Oscar Leeser.

CONSENT AGENDA – APPLICATION FOR TAX REFUNDS:

13. *Motion made, seconded, and unanimously carried to **APPROVE** a tax refund to TK Elevator Corporation, in the amount of \$3,996.77 for an overpayment made on November 16, 2021 of 2021 taxes. (Geo. #0242-999-3003-0000)

REGULAR AGENDA – MEMBERS OF THE CITY COUNCIL

Goal 4: Enhance El Paso’s Quality of Life through Recreational, Cultural and Educational Environments

14. RESOLUTION

WHEREAS, on Tuesday, November 2, 2021, the Ysleta High School volleyball team won the Bi-District Round against El Paso High School; and

WHEREAS, the Ysleta Indians win against the El Paso Tigers advanced them to the 5A Region 1 Area Championship Round in Pecos, TX against Lubbock Cooper; and

WHEREAS, for the first time in over 20 years, the Ysleta High School Volleyball team advanced past the Bi-District Round; and

WHEREAS, Ysleta High School sophomore, Mia Espinoza, received the District 2-5A 1st Team All District Setter Award for the 2021 season; and

WHEREAS, Ysleta High School senior, Charlize Lopez, received the District 2-5A 1st Team All District Libero Award for the 2021 season; and

WHEREAS, Ysleta High School senior, Laci Del Pino, received the District 2-5A 1st Team All District Middle Hitter Award for the 2021 season; and

WHEREAS, Ysleta High School senior, Victoria Ramos, received the District 2-5A 2nd Team All District Outside Hitter Award for the 2021 season; and

WHEREAS, Ysleta High School senior, Cassie Espinoza, received the District 2-5A 1st Team All District Most Outstanding Hitter Award for the 2021 season; and

WHEREAS, Ysleta High School junior, Abby Garcia and senior, Karoleena Rivera, received District 2-5A Honorable Mention Awards for the 2021 season.

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EL PASO:

1. commends the Ysleta High School volleyball team for advancing to the 5A Region 1 Area Championship Round;
2. recognizes the many achievements of the coaches and players of the Ysleta Indians;
3. recognizes the fans of the Ysleta Indians and the people of El Paso for their dedication and support; and
4. respectfully requests that the City Clerk submit an executed copy of this resolution to:
 - a. the head coach of the Ysleta High School volleyball team, Charlie Sanchez;
 - b. the athletic coordinator of Ysleta High School, Joe Martinez; and
 - c. the principal of Ysleta High School, Laura Calderon.

Representatives Rodriguez and Rivera commented and read the Resolution into the record.

Mr. Charlie Sanchez, Ysleta High School volleyball team head coach, commented.

1ST MOTION

*Motion made, seconded, and unanimously carried to **MOVE THE ITEM** to the **FOREFRONT** of the Regular agenda.

2ND AND FINAL MOTION

Motion made Representative Rivera, seconded Representative Rodriguez, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Svarzbein, Annelo, Hernandez, Molinar, Salcido, Rodriguez and Rivera

NAYS: None

ABSENT: Representative Lizarraga

.....
Goal 2: Set the Standard for a Safe and Secure City
.....

- 15. ITEM:** Discussion and action on a plan to secure Union Plaza area during winter months from winter weather and potential fire damage.

Representatives Svarzbein, Annelo, Hernandez, Molinar, Salcido, Rodriguez, and Rivera commented.

The following City staff members commented:

- Ms. Karla Nieman, City Attorney

- Mr. Tommy Gonzalez, City Manager
- Mr. Cary Westin, Senior Deputy City Manager

The following members of the public commented:

1. Mr. Kenneth Bell
2. Ms. Yolanda Chavez Leyva
3. Ms. Adriana Montoya
4. Ms. Silvia Searfoss
5. Mr. Aby Perea
6. Ms. Angel Ulloa
7. Ms. Veronica Carbajal
8. Mr. Josh Simmons

Motion made by Representative Annelo, seconded by Representative Rodriguez, and unanimously carried to **DIRECT** staff to return at the January 18, 2022 Work Session with a plan to secure Union Plaza area during winter months from winter weather and potential fire damage.

AYES: Representatives Svarzbein, Annelo, Hernandez, Molinar, Salcido, Rodriguez, and Rivera

NAYS: None

ABSENT: Representative Lizarraga

REGULAR AGENDA – OPERATIONAL FOCUS UPDATES:

Goal 3: Promote the Visual Image of El Paso

- 16.** Discussion on the development and timeline of a bond program in alignment with the implementation of the City’s Strategic Plan.

Mr. Alex Hoffman, Capital Improvement Assistant Director, presented a PowerPoint presentation (copy on file in the City Clerk’s Office).

Representatives Svarzbein, Hernandez, Salcido, and Rivera commented.

The following City staff members commented:

- Mr. Tommy Gonzalez, City Manager
- Ms. Laura Cruz-Acosta, Strategic Communications Director

NO ACTION was taken on this item.

Goal 5: Promote Transparent and Consistent Communication Amongst All Members of the Community

- 17.** Strategic Communications Update and City TV.

Ms. Laura Cruz-Acosta, Strategic Communications Director, presented a PowerPoint presentation (copy on file in the City Clerk's Office).

Representative Svarzbein commented.

NO ACTION was taken on this item.

-
18. Presentation and discussion by the COVID-19 Response and Recovery Cross-Functional Team providing information on key activities, efforts, and processes.

1. Overview (Tommy Gonzalez)

Mr. Tommy Gonzalez, City Manager, began the presentation by highlighting the surge in new COVID-19 cases. He explained that hospitals are experiencing staffing shortages due to exposure to COVID-19; the current number of COVID-19 related hospitalizations is 375 which accounts for 18% of total hospital capacity. Mr. Gonzalez spoke about the increased demand for testing which has resulted in the need for more staff and expanded hours of operation to address testing requests. Mr. Gonzalez stated that the City continued to lead the State in vaccination rates adding that among children age 5 to 15, a total of 91% were partially vaccinated while 74% were fully vaccinated; he also added that the City will continue to work with the school districts to provide vaccinations for students.

2. City Attorney Overview (Karla Nieman)

- a) State Disaster Declarations
- b) Emergency Ordinances
- c) Greg Abbott, in his official capacity as Governor of Texas, v. City of El Paso and Statewide Mask Mandate Litigation
- d) Additional Updates

Ms. Karla Nieman, City Attorney, continued the presentation by briefing Council members on the extension of the Emergency Ordinances; Ms. Nieman explained she did not have an update related to the mask mandate against Governor Abbott and believed that the 8th Court of Appeals was waiting to see the outcome of similar litigation across the State. She mentioned that the mask mandates in Dallas and San Antonio remained in place while others were on hold.

Ms. Nieman stated that her office was also monitoring the case regarding the federal contractor vaccine mandate to be heard by the United States Supreme Court in the coming days and would report back on the outcome.

Before closing her presentation, Ms. Nieman added that most Courts in El Paso were meeting via Zoom which was causing a delay in some of the work handled by the City and she provided an update on the prosecution of COVID-19 violations filed with Municipal Courts.

3. City Manager Wrap-up (Tommy Gonzalez)

Mr. Gonzalez ended the presentation by stating that the pandemic would probably extend beyond three years, adding that the State and Nation were also dealing with hiring issues along with the City of El Paso. He closed by saying the City would remain proactive in

addressing the needs of the community as well as remain methodical in determining the use of ARPA federal funds and urged everyone to continue practicing safety protocols.

Mayor Leeser and Representatives Svarzbein, Annello, Hernandez and Molinar commented.

The following City staff members commented:

- Fire Chief Mario D'Agostino
- Mr. Cary Westin, Senior Deputy City Manager
- Ms. Laura Cruz-Acosta, Strategic Communications Director

NO ACTION was taken on this item.

Goal 6: Set the Standard for Sound Governance and Fiscal Management

19. Budget Update.

Ms. Nicole Cote, Office of Management and Budget Director, presented a PowerPoint presentation (copy on file in the City Clerk's Office).

Representative Svarzbein commented.

Mr. Tommy Gonzalez, City Manager commented.

NO ACTION was taken on this item.

Goal 7: Enhance and Sustain El Paso's Infrastructure Network

20. Quarterly presentation to the City Council on El Paso Water utility matters.

Mr. John Balliew, President and Chief Financial Officer for El Paso Water, presented a PowerPoint presentation (copy on file in the City Clerk's Office).

Representatives Svarzbein and Hernandez commented.

Mr. Joe Garibay, citizen, commented.

NO ACTION was taken on this item.

REGULAR AGENDA – EMERGENCY ORDINANCES:

Goal 6: Set the standard for Sound Government and Fiscal Management

ITEMS 21 THROUGH 23 WERE TAKEN TOGETHER

- 21.** **ORDINANCE 019277**
AN EMERGENCY ORDINANCE
RE-ENACTING EMERGENCY ORDINANCE NO. 019035

**EXTENDING A DISASTER DECLARATION DUE TO A
PUBLIC HEALTH EMERGENCY**

WHEREAS, on March 13, 2020, the Governor of the State of Texas declared a state of disaster and the President of the United States of America declared a national emergency in relation to COVID-19; and

WHEREAS, on March 13, 2020, the Mayor signed a Local Emergency Declaration and requested the aid of the State Government pursuant to Texas Government Code Section 418.108; and

WHEREAS, pursuant to El Paso City Code Section 2.48.020(C), a local state of disaster declaration may not be continued or renewed for a period in excess of seven days except by or with the consent of City Council; and

WHEREAS, City Charter Section 3.10 allows for the City Council to adopt an emergency ordinance to meet a public emergency affecting life, health, property or the public peace; and

WHEREAS, on March 17, 2020, the City Council adopted Emergency Ordinance No. 019035, Extending a Disaster Declaration Due to a Public Health Emergency; and

WHEREAS, since March 2020, El Paso City Council has re-enacted Emergency Ordinance No. 019035 monthly, with the most recent re-enactment taking place on December 6, 2021; and

WHEREAS, as of December 14, 2021, the number of COVID-19 active cases in El Paso is over 8,161; and

WHEREAS, pursuant to City Charter Section 3.10, every emergency ordinance shall stand repealed automatically as of the 31st day following the date on which it was adopted, but may be re-enacted to continue a Disaster Declaration; and

WHEREAS, Emergency Ordinance No. 019263 which re-enacts Emergency Ordinance No. 019035 is set to expire on January 4, 2022; and

WHEREAS, the condition necessitating a declaration of a state of disaster continues to exist.

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

1. That the state of disaster proclaimed for the City of El Paso by the Mayor on March 13, 2020, and extended by Emergency Ordinance No. 019035, is hereby re-enacted and shall continue for thirty (30) days unless re-enacted in accordance with City Charter Section 3.10 or until terminated by City Council, whichever is sooner.
2. This ordinance is adopted as an emergency measure with the unanimous vote of the City Council Representatives present and the consent of the Mayor and pursuant to City Charter Section 3.10.

22.

**ORDINANCE 019278
AN EMERGENCY ORDINANCE
RE-ENACTING EMERGENCY ORDINANCE NO. 019036 INSTITUTING EMERGENCY
MEASURES, AS RE-ENACTED, RESTATED AND AMENDED BY EMERGENCY
ORDINANCE NO. 019151; AND FURTHER RE-ENACTED AND AMENDED BY
EMERGENCY ORDINANCE NOS. 019156, 019169, 019191; PENALTY AS PROVIDED
IN SECTION 8**

WHEREAS, on March 13, 2020, the Governor of the State of Texas declared a state of disaster and the President of the United States of America declared a national emergency in relation to COVID-19; and

WHEREAS, by proclamation issued on March 13, 2020, the Mayor declared a local state of disaster for the City of El Paso resulting from a public health emergency; and

WHEREAS, on March 17, 2020, the City Council, pursuant to City Charter Section 3.10, adopted Emergency Ordinance No. 019036 to meet a public emergency affecting life, health, property or the public peace; and

WHEREAS, since March 2020, City Council has re-enacted Emergency Ordinance No. 019036 monthly, with the most recent re-enactment, re-statement and amendment taking place on March 16, 2021 and with the most recent re-enactment taking place on December 6, 2021; and

WHEREAS, pursuant to City Charter Section 3.10, every emergency ordinance shall stand repealed automatically as of the 31st day following the date on which it was adopted, but may be re-enacted if the emergency still exists; and

WHEREAS, a disaster continues to exist and requires that certain emergency measures be taken to meet a public emergency affecting life, health, property or the public peace; and

WHEREAS, the City Council desires to re-enact Emergency Ordinance No. 019036, as re-enacted, restated and amended on March 16, 2021 through Emergency Ordinance No. 019151, as further re-enacted and amended on March 29, 2021 through Emergency Ordinance No. 019156, as further re-enacted and amended on April 26, 2021 through Emergency Ordinance No. 019169, as further re-enacted and amended on May 24, 2021 through Emergency Ordinance No. 019191, which shall remain in effect for thirty days or until otherwise terminated, re-enacted, or superseded by a conflicting El Paso Local Health Authority order, or state or federal law or order.

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

1. Emergency Ordinance No. 019036, as re-enacted, restated and amended by Emergency Ordinance No. 019151, and as further re-enacted and amended by Emergency Ordinance Nos. 019156, 019169, and 019191, penalty as provided in Section 8, is hereby re-enacted.

2. Emergency Ordinance No. 019036, as re-enacted, restated and amended by Emergency Ordinance No. 019151, and further re-enacted and amended by Emergency Ordinance Nos. 019156, 019169, 019191, penalty as provided in Section 8, shall remain in full force and effect and continue for thirty (30) days unless re-enacted in accordance with City Charter Section 3.10 or until terminated by the City Council, whichever is sooner.

This ordinance is adopted as an emergency measure with the unanimous vote of the City Council Representatives present and the consent of the Mayor, pursuant to City Charter Section 3.10.

23.

**ORDINANCE 019279
AN EMERGENCY ORDINANCE
RE-ENACTING EMERGENCY ORDINANCE NO. 019241;
ALLOWING TEMPORARY USES ON THE PUBLIC RIGHT OF WAY AND PRIVATE
PROPERTY BY SUSPENDING VARIOUS CITY ORDINANCES; PENALTY AS
PROVIDED IN SECTION 6.**

WHEREAS, on March 13, 2020, the Governor of the State of Texas declared a state of disaster and the President of the United States of America declared a national emergency in relation to COVID-19; and

WHEREAS, by proclamation issued on March 13, 2020, the Mayor declared a local state of disaster for the City of El Paso resulting from a public health emergency; and

WHEREAS, on March 17, 2020, El Paso City Council adopted Emergency Ordinance No. 019035 extending the City's Disaster Declaration due to a Public Health Emergency; and

WHEREAS, since March 2020, El Paso City Council has re-enacted Emergency Ordinance No. 019035 monthly basis, with the most recent re-enactment taking place on January 5, 2021; and

WHEREAS, Governor Abbott has similarly renewed the State's COVID- 19 Disaster Declaration, with the most recent extension taking place on January 5, 2021; and

WHEREAS, El Paso City Charter Section 3.10 allows City Council to adopt an emergency ordinance to meet a public emergency affecting life, health, property, or the public peace; and

WHEREAS, the El Paso City Council desires to support restaurants and similar establishments in their efforts to safely operate during the COVID-19 pandemic by further facilitating outdoor service and dining opportunities; and

WHEREAS, on October 11, 2021, City Council enacted an Emergency Ordinance Instituting Emergency Measures to Allow Temporary Uses on the Public Right of Way and Private Property by Suspending Various City Ordinances ("**Emergency Ordinance No. 019241**"); and

WHEREAS, pursuant to City Charter Section 3.10, every emergency ordinance shall stand repealed automatically as of the 31st day following the date on which it was adopted, but may be re-enacted if the emergency still exists; and

WHEREAS, City Council re-enacted Emergency Ordinance No. 019241, with the most recent re-enaction taking place on December 6, 2021 (Ord. No. 019265) (“Re-enacting Ordinance”); and

WHEREAS, a disaster continues to exist and requires that certain emergency measures be taken to meet a public emergency affecting life, health, property or the public peace; and

WHEREAS, City Council desires to re-enact its October 11, 2021, Emergency Ordinance No. 019241, which shall take effect immediately, and remain in effect until February 3, 2022 or until otherwise terminated, re-enacted, or superseded by a conflicting El Paso Local Health Authority order, or state or federal law or order.

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

1. That Emergency Ordinance No. 019241, is re-enacted and shall remain in full force and continue for thirty (30) days unless re-enacted in accordance with City Charter Section 3.10 or until terminated by the City Council, whichever is sooner;
2. This ordinance is adopted as an emergency measure with the unanimous vote of the City Council Representatives present and the consent of the Mayor and pursuant to City Charter Section 3.10.

Motion duly made by Representative Annello, seconded by Representative Molinar, and carried that the Emergency Ordinances be **ADOPTED**.

Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinances which when so done resulted as follows:

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, and Rivera.

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Rodriguez

ABSENT: Representative Lizarraga

Mayor Leeser consented to the adoption of the Emergency Ordinances.

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinances, the same be and the same are hereby **ADOPTED**.

.....
The Regular City Council meeting was **RECESSED** at 11:18 a.m. in order to convene the Mass Transit Board Meeting.

The Regular City Council meeting was **RECONVENED** at 11:22 a.m.

.....
The Regular City Council meeting was **RECESSED** at 11:22 a.m. for a lunch break.

The Regular City Council meeting was **RECONVENED** at 12:01 p.m.

CALL TO THE PUBLIC – PUBLIC COMMENT:

The following members of the public commented:

- 1. Ms. Wally Cech
- 2. Mr. Ron Comeau
- 3. Ms. Barbara Valencia
- 4. Ms. Steven Strumer
- 5. Mr. Donald Shelton
- 6. Ms. Sabrina Soto
- 7. Mr. Michael Castro

REGULAR AGENDA – FIRST READING OF ORDINANCES:

Motion made by Representative Annelo, seconded by Representative Salcido, and unanimously carried that the following Ordinances, having been introduced pursuant to Section 3.9 of the El Paso City Charter, be **ADVERTISED** for public hearing.

AYES: Representatives Svarzbein, Annelo, Hernandez, Molinar, Salcido, and Rivera.
 NAYS: None
 NOT PRESENT FOR THE VOTE: Representative Rodriguez
 ABSENT: Representative Lizarraga

Goal 3: Promote the Visual Image of El Paso

- 24. An Ordinance amending Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.150 (Shared Mobility Devices), to update permit term and renewal requirements.

PUBLIC HEARING WILL BE HELD ON JANUARY 19, 2022

Goal 8: Nurture and Promote a Healthy, Sustainable Community

- 25. An Ordinance Amending Title 7 (Animals), Chapter 7.04 (Definitions And Administration), Section 7.04.010 (Definitions) to add Inclement Weather to the Definitions; Chapter 7.08 (Animals Generally), Section 7.08.050 (Standards For Animal Care) to add Inclement Weather Conditions to Unlawful Restraint Of A Dog; Chapter 7.12 (Dogs And Cats), Section 7.12.020 (Registration, Vaccination, and Microchips Required) to allow Veterinarians to exchange or return up to 100, unused, expired from the previous year Tags for current year tags; Chapter 7.15 (Grooming Services), Section 7.15.030 (Groomer License Application) to clarify the Contents of the Groomer’s Application; Chapter 7.15, Section 7.15.070 (Denial) to Amend Conviction Timeframe Ineligibility; Chapter 7.15 (Grooming Services), Section 7.15.080 (Groomer License Suspension Or Revocation) to clarify the type of Investigation and Corrective Action Timeframe; Chapter 7.15, Section 7.15.090 (Shop Registration Required) to Clarify the type of Background Check required and allowing documents relevant to Application, Background Check, and Supporting Documents be available for Inspection; Chapter 7.15 (Grooming Services), Section 7.15.100 (Shop Registration Application) to Clarify the Issuance of Shop Registration Requirements; Chapter 7.15, Section 7.15.140 (Denial) to Clarify Denial Reasons for

Permit Application; Chapter 7.28 (Animal Shelter Advisory Committee), Section 7.28.050 (Quorum And Procedures) to Amend Department; the Penalty as Provided in Section 7.04.080 of The El Paso City Code.

PUBLIC HEARING WILL BE HELD ON JANUARY 19, 2022

.....
REGULAR AGENDA – OTHER BIDS, CONTRACTS, PROCUREMENTS:
.....

Goal 7: Enhance and Sustain El Paso’s Infrastructure Network
.....

26. Motion made by Representative Rivera, seconded by Representative Molinar, and unanimously carried to **AWARD** Solicitation 2022-0156 Motor Oil, Antifreeze, Lubricants, Transmission and Hydraulic Oils & Fluids to MJ Mader Enterprises, Inc. dba Bio Dyne Chemical Co. for a one (1) year initial term estimated amount of \$672,796.50. The award also includes a one (1) year option for an estimated amount of \$672,796.50. The total value of the contract is, including the initial term plus the option for a total of two (2) years, for an estimated amount of \$1,345,593.00. This contract will allow for the continual maintenance and upkeep of City owned vehicles for consistent, safe and efficient operation while maintaining maximum reliability.

Contract Variance:

The difference in price, based on comparison to the previous contract is as follows: An increase of \$329,703.70 for the initial term, which represents a 96.10% increase due to price increases and the additional items.

Department:	Streets and Maintenance
Vendor:	MJ Mader Enterprises, Inc. dba Bio Dyne Chemical Co. El Paso, TX
Item(s):	All Groups
Initial Term:	1 year
Option to Extend:	1 year
Initial Term Estimated Award:	\$ 672,796.50 (1 year)
Total Estimated Award:	\$1,345,593.00 (2 years)
Account No.:	532 - 3600 - 531240 - 37020 - P3701
Funding Source:	Internal Service Fund
District(s):	All

This is a Low Bid, unit price contract.

The Purchasing & Strategic Sourcing and Streets and Maintenance Departments recommend award as indicated to MJ Mader Enterprises, Inc. dba Bio Dyne Chemical Co., the lowest responsive, responsible bidder and that C&R Distributing LLC be deemed non-responsive for not providing the manufacturer information within the bid; and L.A. Professional Services, Inc. dba TEXSTAR be deemed non-responsive for not bidding on all the items for Group A and Senergy Petroleum, LLC be deemed non-responsive for not bidding on all the items for Group B.

Representative Hernandez commented.

Mr. Adrian Amaya, representative for C&R Distributing LLC, commented.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, and Rivera

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Rodriguez

ABSENT: Representative Lizarraga

.....
REGULAR AGENDA – PUBLIC HEARINGS AND SECOND READING OF ORDINANCES:
.....

Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development:
.....

27. ORDINANCE 019280

The City Clerk read an Ordinance entitled: **AN ORDINANCE APPROVING AMENDMENT NUMBER TWENTY-ONE TO THE PROJECT PLAN AND REINVESTMENT ZONE FINANCING PLAN FOR TAX INCREMENT REINVESTMENT ZONE (TIRZ) NUMBER FIVE, CITY OF EL PASO, TEXAS, TO PROVIDE FUNDING TO THE 309 MILLS, LLC IMPROVEMENT PROJECT OF THE PROPERTY LOCATED AT 309 MILLS AVENUE, 79901; SUBJECT TO THE EXECUTION OF A SEPARATE AGREEMENT BY AND BETWEEN THE CITY OF EL PASO AND THE PROJECT DEVELOPER(S); ADOPTING SAID AMENDMENTS AS REQUIRED BY SECTION 311.011(E) TEXAS TAX CODE.**

Ms. Melissa Chaidez, Economic Development Specialist, presented a PowerPoint presentation (copy on file in the City Clerk’s Office).

Representative Svarzbein commented.

Motion duly made by Representative Salcido, seconded by Representative Rivera, and carried that the Ordinance be **ADOPTED**.

Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, and Rivera

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Rodriguez

ABSENT: Representative Lizarraga

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same is hereby **ADOPTED**

.....
Goal 3: Promote the Visual Image of El Paso
.....

28. *Motion made, seconded, and unanimously carried to POSTPONE FOUR WEEKS an Ordinance changing the zoning of the following real property known as:

Parcel 1: a portion of Tracts 4B, 4B1, 5A, 5A1, and 6, Laura E. Mundy Survey 237; Tracts 9B and 9B1, Laura E. Mundy Survey No. 238; and portion of Enchanted Hills Unit Five,

City of El Paso, El Paso County, Texas, from R-MU(Residential Mixed Use) to R-5 (Residential) and, Parcel 2: a portion of Tracts 9B, 9B1, and 9B2, Laura E. Mundy Survey No. 238; and portion of Lots 2 thru 5, 9 thru 12, and 21 thru 24, Block 23, Enchanted Hills 5, City of El Paso, El Paso County, Texas, from R-3 (Residential), R-5/sp (Residential/special permit), and R-MU (Residential Mixed Use) to C-2 (Commercial); and, Parcel 3: a portion of Tract 9B2, Laura E. Mundy Survey No. 238, City of El Paso, El Paso County, Texas, from R-3 (Residential) to C-3 (Commercial), and imposing conditions. The penalty is as provided for in Chapter 20.24 of the El Paso City Code.

The proposed rezoning meets the intent of the Future Land Use designation for the property and is in accordance with Plan El Paso, the City's Comprehensive Plan.

Subject Property: Generally located north of Transmountain Road and east of Interstate 10

Applicant: Conde, Inc., PZRZ21-00024

REGULAR AGENDA – OTHER BUSINESS:

Goal 1: Create an Environment Conducive to Strong, Sustainable Economic Development:

29. RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager, or designee, be authorized to sign an Agreement for Professional Services to perform Construction Management Services for the Reconstruction of Taxiways J and K2 at the El Paso International Airport between the City of El Paso and Parkhill, Smith, and Cooper, Inc.

The Agreement will be for an amount not to exceed Seven Hundred and Twenty Thousand Nine Hundred Sixty-Two and No/00 Dollars (\$720,962.00). In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for the execution of this Agreement. In addition, the City Manager, or designee, is authorized to increase contract amounts up to \$50,000.00 each and sign any amendments to the agreements.

Motion made by Representative Annelo, seconded by Representative Molinar, and unanimously carried to **APPROVE** the Resolution.

AYES: Representatives Svarzbein, Annelo, Hernandez, Molinar, Salcido, and Rivera

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Rodriguez

ABSENT: Representative Lizarraga

Goal 6: Set the Standard for Sound Governance and Fiscal Management

- 30.** Discussion and action on the timeline for the preservation of approximately 1,200 acres of City-owned land located in Northeast El Paso adjacent to the future Police Department and

Fire Training facility, including identified funding sources and a timeline for the establishment of a conservation easement on the property.

Ms. Karina Brasgalla, Economic Development Assistant Director, presented a PowerPoint presentation (copy on file in the City Clerk's Office).

Mayor Leeser and Representatives Svarzbein, Annelo, Hernandez, and Molinar commented.

The following City staff members commented:

- Ms. Elizabeth Triggs, Economic Development Interim Director
- Ms. Karla Nieman, City Attorney

Mr. John Ballew, El Paso Water President and Chief Financial Officer, commented.

The following members of the public commented:

1. Mr. Rick Bonart
2. Ms. Sharon Miles Bonart
3. Mr. Joe Garibay

1ST MOTION

*Motion made, seconded, and unanimously carried to **MOVE THE ITEM** before item 20 of the Regular agenda.

2ND AND FINAL MOTION

Motion made Representative Hernandez, seconded by Representative Annelo, and unanimously carried to **APPROVE** the timeline for the preservation of approximately 1,200 acres of City-owned land located in Northeast El Paso adjacent to the future Police Department and Fire Training facility, including identified funding sources and a timeline for the establishment of a conservation easement on the property.

AYES: Representatives Svarzbein, Annelo, Hernandez, Molinar, Salcido, and Rivera.

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Rodriguez

ABSENT: Representative Lizarraga

EXECUTIVE SESSION

Motion made by Representative Rivera, seconded by Representative Salcido, and unanimously carried that the City Council retire into **EXECUTIVE SESSION** at 3:58 p.m. pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Sections 551.071 - 551.089 to discuss the following:

Section 551.071 CONSULTATION WITH ATTORNEY

AYES: Representatives Svarzbein, Annelo, Hernandez, Molinar, Salcido, and Rivera.

NAYS: None

NOT PRESENT FOR THE VOTE: Representative Rodriguez

ABSENT: Representative Lizarraga

Motion made by Representative Rivera, seconded by Representative Molinar, and unanimously carried to **ADJOURN** the Executive Session at 4:57 p.m. and **RECONVENE** the meeting of the City Council.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, and Rivera.
NAYS: None
NOT PRESENT FOR THE VOTE: Representative Rodriguez
ABSENT: Representative Lizarraga

.....
Goal 6: Set the Standard for Sound Governance and Fiscal Management
.....

EX1. Application of El Paso Electric Company to revise its Energy Efficiency Cost Recovery Factor (EECRF) and to request to establish revised cost caps, Public Utility Commission of Texas Docket No. 52081; Matter No. 21-1008-172 (551.071)

NO ACTION was taken on this item.

.....
EX2 Application of El Paso Electric Company to Change Rates, Public Utility Commission of Texas Docket No. 52195; Matter No. 21-1008-174 (551.071)

NO ACTION was taken on this item.

.....
Motion made by Molinar, seconded by Representative Rivera, and unanimously carried to **ADJOURN** this meeting at 4:57 p.m.

AYES: Representatives Svarzbein, Annello, Hernandez, Molinar, Salcido, and Rivera,
NAYS: None
NOT PRESENT FOR THE VOTE: Representative Rodriguez
ABSENT: Representative Lizarraga

.....
APPROVED AS TO CONTENT:

Laura D. Prine, City Clerk



Legislation Text

File #: 22-52, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

District 2

Airport, Sam Rodriguez, (915) 212-7301

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

That the City Manager, or designee, is authorized to sign a First Amendment to Restated Butterfield Trail Industrial Park Lease and Lessor's Approval of Assignment by and between the City of El Paso, Stewart EFI Finishing Realty, and Hold'em Real Estate, LLC regarding the following described property: A portion of Lot 1 and a portion of Lot 4, Block 10, Butterfield Trail Industrial Park, Unit Two, an addition to the City of El Paso, El Paso County, Texas (approximately 122,006 SQ FT), commonly known as 44 Butterfield Circle, El Paso, Texas.

Term began on October 1, 1993 ("Effective Date"), and terminates on September 30, 2033; monthly rental fee is \$1,308.51.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022

PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Samuel Rodriguez, P.E. Aviation Director
(915) 212-7301

DISTRICT(S) AFFECTED: 2

STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development

SUBGOAL: N/A

SUBJECT:

That the City Manager, or designee, is authorized to sign a First Amendment to Restated Butterfield Trail Industrial Park Lease and Lessor's Approval of Assignment by and between the City of El Paso, Stewart EFI Finishing Realty, and Hold'em Real Estate, LLC regarding the following described property: A portion of Lot 1 and a portion of Lot 4, Block 10, Butterfield Trail Industrial Park, Unit Two, an addition to the City of El Paso, El Paso County, Texas (approximately 122,006 SQ FT), commonly known as 44 Butterfield Circle, El Paso, Texas.

Term began on October 1, 1993 ("Effective Date"), and terminates on September 30, 2033; monthly rental fee is \$1,308.51.

BACKGROUND / DISCUSSION:

The current lease agreement expires September 30, 2033. If options are exercised the expiration date is September 30, 2043.

PRIOR COUNCIL ACTION:

- September 14, 1973 – Butterfield Trail Industrial Park Lease between City of El Paso and Louis Kennedy.
- September 14, 1993 - Lessor's Approval of Assignment to The Lincoln National Life Insurance Company.
- June 24, 2014 - Lessor's Approval of Assignment to Stewart EFI Finishing Realty

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue-generating item.

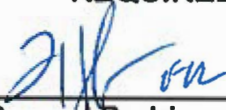
HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Aviation

SECONDARY DEPARTMENT: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



Samuel Rodriguez, P.E., Director of Aviation

Revised 04/09/2021

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager, or designee, is authorized to sign a First Amendment to Restated Butterfield Trail Industrial Park Lease and Lessor's Approval of Assignment by and between the City of El Paso, Stewart EFI Finishing Realty, and Hold'em Real Estate, LLC for the following described property:

A portion of Lot 1 and a portion of Lot 4, Block 10, Butterfield Trial Industrial Park, Unit Two, an addition to the City of El Paso, El Paso County, Texas, commonly known as 44 Butterfield Circle, El Paso, Texas.

Dated this ____ day of _____ 20__.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

STATE OF TEXAS)
)
 COUNTY OF EL PASO)

**FIRST AMENDMENT TO RESTATED
 BUTTERFIELD TRIAL INDUSTRIAL
 PARK LEASE**

This First Amendment to the Restated Butterfield Trail Industrial Park Lease (the "First Amendment") is made and entered into this _____ day _____, 20__, by and between the **CITY OF EL PASO, TEXAS**, a municipal corporation existing under the laws of the State of Texas (the "Lessor"), and **HOLD'EM REAL ESTATE, LLC**, a Delaware limited liability company ("Lessee").

WHEREAS, on September 14, 1993, Lessor and The Lincoln National Life Insurance Company entered into the Restated Butterfield Trial Industrial Park Lease (the "Lease").

WHEREAS, on June 24, 2014, Lessor and The Lincoln National Life Insurance Company ("Assignor") and Stewart EFI Finishing Realty, LLC ("Assignee") entered into Lessor's Approval of Assignment.

WHEREAS, on January ____, 2022, Lessor and Stewart EFI Finishing Realty, LLC ("Assignor") and Hold'em Real Estate, LLC ("Assignee") entered into Lessor's Approval of Assignment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to amend the Lease as follows:

1. **Section 4.02, Option to Extend, of the Lease is amended as follows:**

Section 4.02, Option to Extend.

Lessee shall have the option to extend this Lease for ~~three~~one additional terms of ten years each.

2. **Ratification.** Except as herein amended, all other terms and conditions of the Lease, not specifically modified by this First Amendment shall remain unchanged and in full force and effect. As used in the Lease, the term "Lease" shall hereafter mean the original Lease as amended by this First Amendment.
3. **Effective Date.** This First Amendment shall be effective upon the date it is fully executed by both parties and approved by the El Paso City Council.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

EXECUTED this ____ day of _____, 20__.

LESSOR: CITY OF EL PASO

Tomas Gonzalez
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Leslie B. Jean-Pierre
Assistant City Attorney


Samuel Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20__,
by Tomás González as City Manager of the City of El Paso, Texas (Lessor).


Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

ATTEST:

LESSEE: HOLD'EM REAL ESTATE,
LLC

Name: _____


Name: Dan Zigdon
Title: Manager

Name: _____

Name: _____
Title: _____

[LESSEE TO APPEND NOTARY PAGES BEHIND THIS SIGNATURE PAGE.]

See attached Acknowledgement
dated 12/17/21

ACKNOWLEDGEMENT

State of OHIO
County of ASHTABULA

Before me, a Notary Public in and for said state, personally appeared

DON ZIGDON

who proved to me on the basis of satisfactory evidence that he/she/they did sign the aforementioned document as their free act and deed on this 17th day of December, 2021

Karen L Bertholf
Notary Public's Signature

Karen L. Bertholf
Notary Public's Name

My Commission Expires 03/09/2025

Type of Identification Produced Ohio Drivers License



Karen L Bertholf
Notary Public
In and for the State of Ohio
My Commission Expires
3/9/2025

Description of Document

Type/Title of Document FIRST AMENDMENT TO RESTATED BUTTERFIELD TRIAL INDUSTRIAL PARK LEASE

Document Date 12/17/21 Number of Pages 3

Additional Signers _____

STATE OF TEXAS §
 § LESSOR’S APPROVAL OF ASSIGNMENT
 COUNTY OF EL PASO §

WHEREAS, the City of El Paso (“Lessor”) entered into a Restated Butterfield Industrial Park Lease, dated September 14, 1993 (the “Lease”) between the Lessor and The Lincoln National Life Insurance Company, subsequently assigned to Stewart EFI Finishing, LLC, dated June 24, 2014 (“Assignor”):

WHEREAS, the Lease pertains to the following described property:

A portion of Lot 1 and a portion of Lot 4, Block 10, Butterfield Trial Industrial Park Unit Two, an addition to the City of El Paso, El Paso County, Texas, commonly known as 44 Butterfiled Circle, El Paso, Texas, (“Property”);

WHEREAS, Assignor has requested the Lessor’s approval and consent to an assignment of the Lease to Hold’Em Real Estate, LLC, a Delaware limited liability company.

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

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to Hold’Em Real Estate, LLC (“Assignee”), on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under the terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.

Assignee does hereby assume and agrees to be liable to pay any and all sums owing or becoming due Lessor under the terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.

2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.

3. **RELEASE.** Assignor is hereby released and discharged by Lessor from all rights, privileges, responsibilities and obligations under the Lease first arising and accruing from and after the effective date of the assignment of the Lease and Lessor and Assignee each hereby acknowledges that, as of the effective date of the assignment, Assignee enjoys all such rights and privileges and is responsible for satisfying all such obligations the same as if the Lease had originally been executed between Lessor and Assignee.

4. **SECURITY DEPOSIT.** No Security Deposit is required as a condition to this Approval.
5. **RATIFICATION OF LEASE.** Except as expressly set forth herein, no provision of this Approval alters or modifies any of the terms and conditions of the Lease, and all other terms and conditions of the Lease shall remain in full force and effect.
6. **ADDRESS FOR NOTICE.** Notices to Assignee and Assignor shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNOR: Stewart EFI Finishing Realty, LLC
45 Waterbury Road
Thomaston, CT 06787
Attn: Manager

ASSIGNEE: Hold'em Real Estate, LLC
44 Butterfield Trail Blvd.
El Paso, TX 79906
Attn: Manager
7. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of the Assignee and Assignor represent and warrant that they have the legal authority to bind the Assignee and Assignor, respectively, to the provisions of this Lessor's Approval of Assignment.
8. **NON-WAIVER.** The Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.
9. **EFFECTIVE DATE.** The Effective Date of this Lessor's Approval of Assignment will be the date this document is approved by the El Paso City Council.
10. **COUNTERPARTS.** This Lessor's Approval of Assignment may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, and all of which shall constitute one and the same instrument as if all parties had signed the same signature page.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

APPROVED THIS _____ day of _____, 20 .

LESSOR: CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:

Samuel Rodríguez, P.E.
Director of Aviation

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20 _____ , by Samuel Rodriguez as Director of Aviation of the **City of El Paso, Texas** (Lessor).

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

ASSIGNOR: STEWART EFI FINISHING REALTY

By: [Signature]
Print Name: DANIEL D. STOKES
Title: MANAGER

ASSIGNOR'S ACKNOWLEDGEMENT

THE STATE OF Florida)
COUNTY OF Lee)

This instrument was acknowledged before me on this 20th day of December 2021, by Daniel D. Stokes, manager of Stewart EFI Finishing Realty, on behalf of said corporation (Assignor).

My Commission Expires:
5/5/25

[Signature]
Notary Public, State of Florida



Jennifer S. Moreland
Notary Public
State of Florida
Comm# HH126973
Expires 5/5/2025

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

ASSIGNEE: HOLD'EM REAL ESTATE, LLC

By: *Don Zigdon*
Print Name: Don Zigdon
Title: Manager

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF Ohio)
COUNTY OF Ashtabula)

This instrument was acknowledged before me on this 17 day of DECEMBER, 2021, by Zigdon, Don of Hold'em Real Estate, LLC, on behalf of said corporation (Assigee).

My Commission Expires:
03/09/2025

Karen L Berthoff
Notary Public, State of Ohio



Karen L Berthoff
Notary Public
in and for the State of Ohio
My Commission Expires
3/9/2025



File #: 22-59, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

District 2

Airport, Sam Rodriguez, (915) 212-7301

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

A Resolution to authorize the City Manager to sign an Air Cargo Lease Agreement between the City of El Paso and American Airlines, Inc., a Texas corporation, for use of space located at 6413 Convair Road, Air Cargo Building #2, El Paso, Texas 79925.

The term of this lease is one (1) year plus four (4) options of one (1) year each to automatically extend the term of the lease unless Lessee provides 90 days' notice to Lessor of its intent to terminate. The annual rental rate for the initial period is \$50,235.90.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Aviation

AGENDA DATE: January 19, 2022

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, (915) 212-7301

DISTRICT(S) AFFECTED: District 2

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

This is a Resolution to authorize the City Manager to sign an Air Cargo Lease Agreement between the City of El Paso and American Airlines, Inc., a Texas corporation, for use of space located at 6413 Convair Road, Air Cargo Building #2, El Paso, Texas 79925.

The term of this lease is one (1) year plus four (4) options of one (1) year each to automatically extend the term of the lease unless Lessee provides 90 days' notice to Lessor of its intent to terminate. The annual rental rate for the initial period is \$50,235.90

BACKGROUND / DISCUSSION:

The Department of Aviation requests approval of this item to allow American Airlines to continue to occupy space in Cargo Building # 2 for its ground service equipment maintenance operations. This space allows for maintenance of equipment that American uses to operate its commercial passenger services in an out of El Paso International Airport. American Airlines has occupied this space since June 2016. The previous lease expired on June 30, 2021, and the lease has been in holdover since then.

Term: One (1) year plus four (4) options of one (1) year each

Rental Fees:

	Sq. Ft.	Annual Rate	Annual Rent	Monthly Rent
Office/Whse	6,614	\$ 6.850	\$ 45,305.90	\$ 3,775.49
Veh Parking	3,400	\$ 0.725	\$ 2,465.00	\$ 205.42
GSE Parking	3,400	\$ 0.725	\$ 2,465.00	\$ 205.42
Total	13,414		\$ 50,235.90	\$ 4,186.33

PRIOR COUNCIL ACTION:

6/14/2016 – Cargo Building Lease Agreement with a term of 5 years, expired 6/30/2021.

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue-generating item.

BOARD / COMMISSION ACTION:

N/A

DEPARTMENT HEAD:



 Sam Rodriguez, P.E.
 Chief Operations & Transportation Officer/Director of Aviation

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign an Air Cargo Lease Agreement between the City of El Paso and American Airlines, Inc., a Texas corporation, for use of space located at 6413 Convair Road, Air Cargo Building #2, El Paso, Texas 79925.

APPROVED this ____ day of _____, 2022.


THE CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

AIR CARGO BUILDING LEASE AGREEMENT
6413 Convair Road

El Paso International Airport
El Paso, Texas

American Airlines, Inc.

January 19, 2022
Effective Date

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**EL PASO INTERNATIONAL AIRPORT
AIR CARGO BUILDING LEASE AGREEMENT**

THIS AIR CARGO BUILDING LEASE AGREEMENT (“Agreement” or “Lease”) is entered into this 19th day of January, 2022, between the **CITY OF EL PASO, TEXAS** (“Landlord”) and **AMERICAN AIRLINES, INC.** (“Tenant”).

WITNESSETH:

WHEREAS, the Municipal Airports Act of the State of Texas authorizes municipal airports, as governmental entities, to assess charges, rentals or fees for the privilege of supplying goods, commodities, things, services or facilities at municipal airports, with due regard to the property and improvements used and the expenses of operation to the municipality; and

WHEREAS, Landlord owns and operates the El Paso International Airport (“Airport”) located in the County of El Paso, Texas which is managed by the Director of Aviation for the City of El Paso (“Director”); and

WHEREAS, Landlord has constructed an Air Cargo Building facility located on Airport property (“Air Cargo Building #2”) and has space therein and appurtenances thereto available for lease, and Tenant desires to lease space in said Air Cargo Building #2; and

WHEREAS, Tenant has indicated a willingness and ability to properly operate, keep and maintain such space in the Air Cargo Building #2 leased hereunder in accordance with the standards established by Landlord; and

WHEREAS, in furtherance of its authority, Landlord desires to lease to Tenant certain facilities located at said Airport in accordance with the terms, covenants, and conditions hereinafter set forth in this Agreement;

NOW THEREFORE, for and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

ARTICLE I
PREMISES AND PRIVILEGES

Section 1.01 Description of Premises Demised. Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Landlord does hereby demise and lease to Tenant and Tenant does hereby lease from Landlord the following described premises located in El Paso County, Texas all of which will hereinafter be referred to as the “Premises”:

- A. That certain office and warehouse space containing 6,614 square feet, more or less, as shown on **EXHIBIT “A”** attached hereto, and also known as 6413 Convair Road, Air Cargo Building #2, for Tenant’s exclusive use; and

- B. The exclusive right to use the loading dock and to use 3,400 square feet, more or less, of vehicle parking space directly in front of said Air Cargo Building #2 as more fully described on **EXHIBIT "B"** attached hereto; and
- C. The non-exclusive right to use 3,400 square feet, more or less, of the ground service equipment parking apron directly behind said Air Cargo Building #2 as more fully described on **EXHIBIT "B"** attached hereto; and
- D. The non-exclusive right to use a portion of the vehicle parking area, and the roadway, located in front of and adjacent to said Air Cargo Building #2, such portion to be commensurate with Tenant's share of warehouse and office space leased to all tenants that share common use of this vehicle parking area;

All of which will hereinafter be referred to as the "Premises".

Section 1.02 Right of Ingress and Egress. Landlord hereby grants to Tenant the rights of ingress to and egress from the Premises over and across the public roadways serving the Airport for Tenant, its agents and servants, patrons and invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application at the Airport.

Section 1.03 Restrictions of Privileges, Uses and Rights. Tenant covenants and agrees that it shall use the Premises for Aviation Related Operations only. "Aviation Related Operations" is hereby defined as any activity related to aviation, including, but not limited to, cargo and ground support equipment (GSE) maintenance operations.

Tenant shall not offer, or permit to be offered, retail services, sales or repairs of any type from the Premises, other than may be incidental to the conduct of Tenant's Aviation Related Operations. Fuel sales are specifically prohibited.

In connection with the exercise of its rights under this Agreement, Tenant:

- A. Shall not do or permit to be done anything at or about the Airport that may interfere with the effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, security system, fire hydrants and hoses, electrical system, natural gas, or other Airport systems installed or located on or within the Premises or the Airport.
- B. Shall not do or permit to be done any act or thing upon the Airport that will invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.
- C. Shall not dispose of and shall prohibit any employee, agent, contractor, or other person from disposing of any waste material taken from, or products used with respect to, its aircraft, equipment or otherwise related to Tenant's operations into the sanitary or storm sewers at the Airport or any other approved location on the

Airport (whether liquid or solid), including but not limited to Hazardous Materials as defined herein, unless such waste material or products first be properly treated by equipment installed with the approval of Landlord and all other administrative bodies having appropriate jurisdiction or may remain untreated if wastewater limitation guidelines of the El Paso Water Utilities Public Service Board are not exceeded.

- D. Shall not keep or store Hazardous Materials or articles including, without limitation, flammable liquids and solids, corrosive liquids, compressed gasses, and magnetized or radioactive materials on the Airport in excess of Tenant's working requirements during any twenty-four (24) hour period, except when the following conditions are met: (1) in accordance with standards established by the National Board of Fire Underwriters, any such liquids having a flash point of less than one hundred degrees Fahrenheit (100 °F) shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said material shall be under the control and care of designated Tenant personnel; (3) said material shall be packaged and handled in compliance with applicable U. S. Department of Transportation, Environmental Protection Agency, or other such applicable regulations for transport and pretransport of hazardous articles and materials; and (4) said materials shall be stored in special storage areas designated by the Director or other authorized representative of Landlord while on the Airport.
- E. Shall not install fuel storage tanks or pumping facilities for use in fueling any aircraft, vehicles or other equipment on the Premises.
- F. Shall not maintain or operate on the Premises or elsewhere at the Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or beverages to the public or to its employees; nor shall Tenant provide for the sale or dispensing of food and beverages at the Airport except that Tenant may provide vending machines solely for the sale of hot and cold beverages, food, and confections to Tenant's employees in areas not accessible to the general public.
- G. The rights and privileges granted Tenant under this Agreement with respect to the performance of ground support services and activities in connection with its Aviation Related Operations at the Airport may be exercised by Tenant only for and on behalf of Tenant for regularly scheduled or unscheduled service. Tenant may, subject to the prior written approval of Landlord, and, where applicable, perform ground support services for other air cargo operators conducting Aviation Related Operations at the Air Cargo Building #2 provided said air cargo operators are signatories to an Air Cargo Use Agreement or Airline Operating Agreement with Landlord. It is understood and agreed that Landlord reserves the right to charge a fee or commission associated with controlling access to restricted areas, and to collect reasonable fees or commissions for ground transportation, ground support services for other Air Cargo operator(s), and other services or facilities

provided by or for Tenant in competition with concessionaires and operators operating under an agreement with Landlord.

Section 1.04 Conditions of Granting Agreement. The granting of this Agreement and its acceptance by Tenant is conditioned upon the following covenants:

- A. That no functional alteration of the Premises shown on **EXHIBIT "A"** or functional change in the uses of such Premises shall be made without the specific written consent of Landlord herein; said consent to be at Landlord's sole discretion.
- B. That the right to use said public Airport facilities in common with others authorized to do so shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated under their authority with reference to aviation and air navigation; and all applicable rules, regulations and ordinances of Landlord now in force or hereafter prescribed or promulgated by charter authority or by law.
- C. That Tenant will utilize only the roadways or other direction, path, route, or form of travel Landlord may designate, from time to time, for Tenant's operation and movement on or about the Airport.

Section 1.05 Exterior Fencing and Storage. Tenant may store stock, materials, and supplies on the Premises, however, all stock, materials, and supplies located outside must be completely enclosed by fence. The placement and design of any exterior fencing and storage on the Premises shall be in accordance with plans and specifications prescribed by Landlord and shall be uniform throughout the entire Air Cargo Building #2, ramp, and associated areas.

ARTICLE II **OBLIGATIONS OF LANDLORD**

Section 2.01 Quiet Enjoyment. Landlord agrees that upon Tenant's paying rent and performing all of the covenants, conditions, and agreements herein set forth, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises hereby demised for the term hereby provided.

Section 2.02 Landlord's Right of Entry. Landlord reserves the right, upon prior verbal and/or written notice to Tenant, to enter into and upon the Premises at all times during business hours for the purpose of inspecting the condition thereof, or to perform maintenance or repairs as may be necessary in accordance with the provisions of this Agreement, or for the purpose of exhibiting the same to prospective tenants, purchasers or others. The exercise of this right to enter the Premises shall not be deemed an eviction or disturbance of Tenant's use or possession, provided that Landlord shall exercise its best efforts not to interfere with Tenant's normal operations on the Premises.

Section 2.03 Condition and Maintenance of Premises. Landlord shall bear responsibility for only repairs and maintenance to the Structural Elements of the Air Cargo Building #2. "Structural Elements" shall mean only the roof, foundation, load bearing columns and walls, exterior walls (but not the doors), exterior paint, and the ramp.

ARTICLE III
OBLIGATIONS OF TENANT

Section 3.01 Net Agreement. This Agreement in every sense shall be without cost to Landlord for the development, maintenance and improvement of the Premises except as explicitly set forth in this Lease. It shall be the sole responsibility of Tenant to keep, maintain, repair and operate the entirety of the Premises and all improvements and facilities placed thereon at Tenant's sole cost and expense.

Section 3.02 Condition and Maintenance of Premises. TENANT ACCEPTS THE PREMISES IN "AS IS" CONDITION. Landlord has no responsibility as to the condition of the Premises and shall not be responsible for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition. Tenant shall be solely responsible for repairs and maintenance of the Premises except those required for the Structural Elements referenced in Section 2.03, and shall not cause any damage or impairment to any part of the Structural Elements.

Section 3.03 Internal Improvements. Tenant may make internal improvements, additions and alterations to the Premises hereunder with the prior written approval of Landlord. Tenant shall ensure that all construction work performed by contractors hired by Tenant shall be done in accordance with applicable building codes, laws and regulations and in a good, workmanlike manner, and all materials used by Tenant's contractors shall be of an appropriate grade and quality for the use for which they are employed.

Tenant shall submit to Landlord the internal construction plans and specifications for the written approval by Landlord. It is agreed that Landlord reserves the right to reject any plans and specifications in its sole but reasonable discretion. In the event such additions, alterations, or improvements shall be deemed to have been undertaken without the prior written approval of Landlord required herein, Tenant may be considered in default and Landlord may cancel this Agreement in accordance with the provisions of Article IX hereinafter set forth.

Subject to written approval of Landlord, all permanent improvements, if any, made by Tenant to the Air Cargo Building #2, of which the Premises are a part, shall become the property of Landlord upon the expiration, cancellation or early termination of this Agreement. All other improvements and fixtures of a non-permanent nature and all trade fixtures, machinery and equipment made or installed by Tenant may be removed from the Premises at any time by Tenant, subject to Landlord's lawful exercise of its landlord's lien, and to the extent that it does not cause structural or cosmetic damage to the Premises or any other portion of Landlord's Air Cargo Building #2 and facilities.

Section 3.04 Performance and Payment Bonds. Prior to Tenant's commencement of any construction, Tenant at its own cost and expense, shall cause to be made, executed and delivered to Landlord two (2) separate bonds, as follows:

- A. A contract surety bond in a sum equal to the full amount of the contract awarded.
- B. A payment bond with Tenant's contractor(s) as principal, in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

Section 3.05 Compliance with Laws. Tenant, at Tenant's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

Tenant shall, at Tenant's expense, comply with all present and hereinafter enacted Environmental Laws and any amendments thereto, affecting Tenant's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.

- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Tenant shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Tenant, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. **Tenant shall indemnify, defend and hold harmless Landlord, its successors and assigns, its officers, directors, employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Tenant's obligations and liabilities under this paragraph shall continue so long as Landlord bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Landlord's right to enforce Tenant's promise to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Section. Landlord shall also have all other rights and remedies provided by law or otherwise provided in this Agreement.**
- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Tenant results in any contamination of the Premises or any improvements thereon, Tenant shall promptly take all actions at its sole

cost and expense as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.

- (3) Tenant shall, at Tenant's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Tenant shall, at Tenant's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.
- (4) Tenant shall immediately notify Landlord of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Tenant's operation on the Premises, and (b) any change in Tenant's operation on the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under the Environmental Laws.
- (5) Tenant shall insert the provisions of this Section 3.05 in any agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Agreement.

Notwithstanding any other provision in this Agreement to the contrary, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of any law on, under or about the Premises, the cost of which shall be borne by Tenant.

The failure of Tenant, its agents, employees, contractors, or any others over whom Tenant has control to comply with any of the requirements and obligations of this Section shall constitute a material default of this Agreement and shall permit Landlord to pursue the remedies as set forth in Article IX herein, in addition to all other rights and remedies provided by law or otherwise provided in the Agreement, to which Landlord may resort cumulatively, or in the alternative.

C. Reporting.

- (1) At any time that Tenant submits any filing pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the FAA, the Environmental Protection Agency or the Texas Commission on Environmental Quality, Tenant shall, upon request of Landlord, provide duplicate copies of the filing(s) made, along with any related documents, to Landlord.
- (2) Upon expiration, termination or cessation of this Agreement for any reason, Tenant shall provide current environmental inspection and inventory reports on the Premises acceptable to Landlord; and if, in the opinion of Landlord, the Premises shall require environmental remediation, Tenant shall perform same to return the Premises into a (like new) condition equal of better to that as of the date Tenant took possession of the Premises.

Section 3.06 Maintenance. Subject to Section 2.03, Tenant shall, at its sole cost and expense, maintain the Premises and the buildings, improvements and appurtenances thereto, in a presentable condition consistent with good business practice and equal in appearance and character to other similar improvements on said Airport. Tenant shall repair all damage to said Premises caused by its employees, patrons or its operation thereon. Tenant shall be responsible for the upkeep and cleanliness of the Premises. Tenant shall, subject to Section 2.03, maintain and repair all equipment thereon, including, but not limited to any heating and cooling equipment or any buildings and improvements; and shall repaint the interior of the Premises as necessary. Tenant agrees not to paint the exterior of the Premises without the written consent of Landlord; said consent to be at Landlord's sole discretion. Landlord shall also be the sole judge of the quality and content of any painting submitted by Tenant for consideration.

Landlord shall be the sole judge of the quality of maintenance and, upon written notice by Landlord to Tenant, Tenant, subject to Section 2.03, shall be required to perform whatever maintenance Landlord deems necessary. If said maintenance is not undertaken by Tenant within thirty (30) days after receipt of written notice, Landlord shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which shall be borne by Tenant.

Section 3.07 Utilities. Tenant shall pay for all costs or charges for utility services furnished to Tenant during the term hereof. Tenant shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; subject to approval by all appropriate departments of the City of El Paso, and Tenant shall pay for any and all service charges incurred thereof. If Landlord pays any utilities on Tenant's behalf, Tenant, upon receipt of a statement therefore, shall reimburse Landlord for Tenant's pro rata share thereof plus ten percent (10%) for administrative overhead. Said share shall be calculated on a pro rata basis utilizing the square footage of each tenant's occupancy divided by the total square footage of the Air Cargo Building #2.

Section 3.08 Trash, Garbage, and Other Refuse. Tenant shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of the operation of its business. Tenant shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner, on or about the Premises shall not be permitted.

Section 3.09 Permitted Uses. Tenant covenants and agrees that in no event will it enter into any business activity on the Premises other than those specified in Article I.

Section 3.10 Signage. The following regulations shall apply to all signs displayed for observation from outside a building whether displayed on, near or within a building:

- A. **Permitted Signs.** Signs on the Premises shall be limited to those identifying the uses conducted on the site and to those necessary for directional purposes. The size, design and location of all signs shall require the written approval of Landlord prior to installation. Said written approval shall be at Landlord's sole discretion. Outdoor advertising, billboards or flashing lighting shall not be permitted.
- B. **Lighting and Construction.** All signs shall comply with all current or future building codes of the City of El Paso and with all current or future rules and regulations of the Federal Aviation Administration (FAA) and its successor agencies. Tenant is solely responsible for obtaining all necessary permits and licenses.

Section 3.11 Approval of Plans. Approval of any and all improvements, plans, signs, or documents by the Director does not constitute approval of the City of El Paso or any other local, state, or federal agency. It is specifically understood that Airport is only one of numerous departments of the City of El Paso and that, in addition to obtaining approval of Director, Tenant shall be required to obtain the approval in accordance with the City of El Paso City Code.

Section 3.12 Authorization to Enter Restricted Area. Tenant understands that the Premises include access to a restricted area of the Airport and that Tenant and its agents, employees, servants or independent contractors must be authorized by Landlord to enter restricted areas of the Airport prior to their entry thereon. The authorization to enter restricted areas of the Airport is not granted by this Agreement, but shall be granted to Tenant upon Tenant's completion of security clearance and identification badging requirements necessary of all persons entering restricted areas of the Airport. As Tenant is required to comply with all applicable rules and regulations, any violation of this provision or those security rules and regulations applicable to the restricted areas of the Airport, shall be considered to be a material violation of this Agreement and grounds for termination.

Section 3.13 Penalties Assessed by Federal Agencies. Tenant understands and agrees that in the event any federal agency assesses a civil penalty against Landlord or the Airport for any security violation as a result of or related to any act or failure to act on the part of Tenant, its agents,

employees or independent contractors, Tenant shall reimburse Landlord in the amount of the civil penalty assessed. Failure to reimburse Landlord within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

Tenant acknowledges that it is familiar with the restrictions imposed on Landlord by the Federal Aviation Regulations (FAR) Part 1542 and any amendments, and agrees to assume responsibility for compliance with said regulation as it relates to access and identification procedures on the Premises. To accomplish this compliance, Tenant agrees to develop a security plan and will submit same to the Transportation Security Administration (TSA) security office for required approval.

Tenant agrees to cause its employees, vendors, subcontractors, visitors, and all parties with whom it does business on the Premises to comply with the various airport security plans of the El Paso International Airport, as amended from time to time.

ARTICLE IV **TERM OF LEASEHOLD**

Section 4.01 Term. The term of this Agreement shall commence on January 19, 2022 (the "Effective Date"), and shall continue until January 18, 2023 (hereinafter referred to as "Initial Term").

Section 4.02 Automatic Renewal. This Agreement shall automatically renew for four (4) one-year renewal periods upon the expiration of the Initial Term (or any previous one-year renewal period), on the same terms and conditions; provided that Tenant is not in default and there is no condition or event which, with notice from Landlord would become an event of default under this Agreement.

Section 4.03 Termination by Tenant. This Agreement may be terminated by Tenant without cause by ninety (90) days prior written notice to Landlord.

Section 4.04 Holding Over. It is agreed and understood that any holding over by Tenant of the Premises at the expiration or cancellation of this Agreement shall operate and be construed as a tenancy from month to month at a rental of one and one-half (1½) times the current monthly rental, and Tenant shall be liable to Landlord for all loss or damage on account of any holding over after the expiration or cancellation of this Agreement, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

Section 4.05 National Emergency. In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this Agreement shall be extended by the amount of the period of such suspension.

ARTICLE V
RENTALS

Section 5.01 Rental. For the purpose of computing the rental payments, Landlord and Tenant agree that the Premises comprise the following:

6,614 Sq. ft. of Office and Warehouse Space:

Years 1-2: \$6.85/Sq. ft./annum = \$45,305.90/yr.

Years 3-5: \$7.00/Sq. ft./annum = \$46,298.00/yr.

3,400 Sq. ft. of Vehicle Parking Space at \$0.7250/Sq. ft./annum = \$2,465.00/yr.

3,400 Sq. ft. of Ground Service Equipment Parking Apron at \$0.7250/Sq. ft./annum = \$2,465.00/yr.

Initially, therefore, the Initial Annual Rental shall be \$50,235.90 per year.

Section 5.02 Commencement of Rental. Payment of rental by Tenant to Landlord as aforesaid shall commence on the Effective Date of this Agreement, which is first noted on the title page.

Section 5.03 Time of Payment. All rental due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term or any extension of this Agreement.

Section 5.04 Unpaid Rent, Fees and Charges. Any installment of rentals, fees, or other charges or monies accruing under any provisions of this Agreement that are not received by Landlord by the 20th day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law from the date when the same was due according to the terms of this Agreement until paid by Tenant.

Section 5.05 Place of Payment. All rental and other payments required herein shall be paid to Landlord at the following address:

Accounting Department
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79997-1278.

Payment by electronic transfer in lieu of mail is encouraged via any transfer system acceptable to the Director.

ARTICLE VI
INSURANCE AND INDEMNIFICATION

Section 6.01 Liability Insurance. Tenant, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of Tenant with the Landlord as

an additional insured, comprehensive general liability insurance in such amounts as specified by the Director but not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, Two Million Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

Section 6.02 Fire and Extended Coverage Insurance. Landlord agrees that, at all times throughout the term of this Agreement, it will keep the Air Cargo Building insured under a Standard Policy of Fire and Extended Coverage Insurance for an amount equivalent to ninety percent (90%) of the replacement cost, such replacement cost to be re-determined every three (3) years. Upon receipt of a statement therefore, Tenant shall reimburse Landlord for Tenant's pro rata share thereof plus ten percent (10%) for administrative overhead. Said share shall be calculated on a pro rata basis utilizing the square footage of each tenant's occupancy divided by the total square footage of the Air Cargo Building.

If the operations conducted by Tenant, or anyone holding under Tenant, on the Premises should require the payment of a greater premium for fire and extended coverage insurance than would customarily be payable for the conduct of the Air Cargo Operations permitted hereunder, then the amount of such additional premium cost shall also be reimbursed by Tenant to Landlord.

6.03 Authorized Insurance Companies. All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Landlord, such approval not to be unreasonably withheld.

Certificates of insurance shall be delivered to Landlord at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain:

- A. A statement of the coverage provided by the policy;
- B. A statement of the period during which the policy is in effect;
- C. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance;
- D. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days' prior written notice to Landlord; and
- E. A statement certifying the Landlord has been listed as an additional named insured on the policy.

Section 6.04 INDEMNIFICATION

- A. **INDEMNITY. TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF TENANT'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF TENANT OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF TENANT, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LANDLORD BY REASON OF ANY SUCH CLAIM, TENANT, UPON NOTICE FROM LANDLORD, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LANDLORD.**
- B. **THOSE PROVISIONS OF THIS SECTION THAT APPLY TO THE TENANT SHALL ALSO APPLY TO ANY PARTY HOLDING BY, THROUGH, OR UNDER TENANT.**
- C. **LANDLORD ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED IN OR ON THE PREMISES OR ANY PART THEREOF, AND LANDLORD IS HEREBY EXPRESSLY RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY FOR ANY LOSS, INJURY OR DAMAGE TO PERSONS OR PROPERTY THAT MAY BE SUSTAINED BY REASON OF THE OCCUPANCY OF THE PREMISES UNDER THIS AGREEMENT.**

ARTICLE VII CONDEMNATION

Section 7.01 Definitions. The following definitions apply in construing the provisions of this Agreement relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending.

- B. “Total taking” means the taking of the fee title to all of the Premises and improvements thereon.
- C. “Substantial taking” means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Tenant;
 2. The conduct of Tenant's business on the Premises would be substantially prevented or impaired;
 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Tenant under this Agreement.
- D. “Partial taking” means the taking of a fee title that is not either a total or substantial taking.
- E. “Improvements” includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. “Notice of intended taking” means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Agreement. The notice is considered to have been received when a party to this Agreement receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking.
- G. “Award” means compensation paid for the taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. “Date of Taking” means the date that Tenant is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

Section 7.02 Notice of Condemnation. The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

Section 7.03 Rights of Parties During Condemnation Proceeding. Landlord and Tenant shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Agreement relating to the condemnation.

Section 7.04 Taking of Leasehold. Upon a total taking, Tenant's obligation to pay rent and other charges hereunder together with Tenant's interest in the leasehold shall terminate on the Date of Taking. Upon a substantial taking, Tenant may, by notice to Landlord within ninety (90) days after Tenant receives notice of the intended taking, elect to treat the taking as a total taking. If Tenant does not so notify Landlord, the taking shall be deemed a partial taking. Upon a partial taking, this Agreement shall remain in full force and effect covering the balance of the Premises not so taken, except that the rent payable hereunder shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

Section 7.05 Total Taking. Upon a total taking, all of Tenant's obligations under the Agreement shall terminate as of the Date of Taking. Upon a Total taking, all sums awarded for any Tenant-owned improvements and the leasehold estate shall be disbursed to Tenant. All sums awarded for the Premises, as unencumbered by the Tenant-owned improvements, but subject to the Agreement, shall be disbursed to Landlord.

Section 7.06 Partial Taking. Upon a partial taking, all awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Landlord and Tenant as follows: Tenant shall receive all sums awarded for Tenant-owned improvements and the Leasehold estate. Landlord shall receive all sums awarded for the Premises as unencumbered by the improvements but subject to the Agreement.

Section 7.07 Obligations of Tenant Under Partial Taking. Promptly after any such partial taking, Tenant, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased; provided however, Landlord shall be solely responsible for any repairs, alterations, modifications, or reconstruction of the Structural Elements of the Air Cargo Building #2. Notwithstanding the foregoing to the contrary, should

there be a partial taking in the last year of the Initial Term or any renewal term, Tenant shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Landlord of its intention to that effect.

Section 7.08 Taking of Temporary Use of Premises and Improvements. Upon any taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Tenant shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such taking, Tenant shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Tenant shall be entitled to any surplus and shall be liable for any deficiency.

If any such taking is for a period extending beyond the expiration date of the term, the taking shall be treated under the foregoing provisions for total, substantial and partial takings.

ARTICLE VIII **ENCUMBRANCES**

Section 8.01 Encumbrance. As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiary under a deed of trust. Tenant may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage. The Mortgagee of any such Mortgage may deliver to Landlord a written notice specifying:

- A. The amount of the obligation secured by the Mortgage;
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Landlord shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Landlord upon Tenant under the terms and provisions of this Agreement so long as such Mortgage is in effect.

Section 8.02 Mortgagee's Rights. Upon receipt of a notice or demand in accordance with Section 8.01 above, Mortgagee shall have one hundred and twenty (120) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;

- C. If the default cannot be cured within one hundred twenty (120) days, to commence performance within such one hundred twenty (120) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

Section 8.03 Rights on Foreclosure. In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Tenant's interest in lieu of foreclosure shall succeed to all of Tenant's rights, interests, duties and obligations under this Agreement.

Section 8.04 Estoppel Certificates. Upon request, Landlord, acting through the Director, may provide to Tenant or Tenant's Mortgagee an estoppel certificate containing the following information and no more: confirmation that Landlord remains owner of the Premises and lessor under this Lease; that this Lease contains the full agreement between Landlord and Tenant with regard to the Premises; that Tenant is current in its obligations under this Lease as of a certain date; that, to the best knowledge of Landlord, Tenant is not in default under the terms of the Lease nor is Landlord aware of any condition which with notice or the passage of time would constitute default under this Lease if uncured; and the beginning date, expiration date, length of term and number and length of any option terms under this Lease.

ARTICLE IX **EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**

Section 9.01 Expiration. This Agreement shall expire at the end of the term or any extension thereof.

Section 9.02 Events of Default and Cancellation. Subject to the provisions of Article VIII above, the following shall be events of default and this Agreement shall be subject to cancellation by Landlord in the event Tenant shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Landlord has notified Tenant in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Tenant's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;
- E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Tenant, and such default continues for a period of thirty (30) days after receipt of written notice from

Landlord to cure such default, unless during such thirty-day period, Tenant shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;

- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Tenant where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, Landlord may take immediate possession of the Premises including any and all improvements thereon and remove Tenant's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Landlord to declare this Agreement canceled upon the default of Tenant for any of the reasons set out shall not operate to bar or destroy the right of Landlord to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement.

No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

Section 9.03 Repossessing and Reletting. In the event of default by Tenant hereunder which shall remain uncured after the required notices have been given pursuant to this Agreement, and for such time as provided herein, Landlord may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Tenant and all personal property of Tenant (which property may be removed and stored at the cost of and for the account of Tenant), using such force as may be necessary; and
- B. Either cancel this Agreement by notice or without canceling this Agreement, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Landlord. If Landlord shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Tenant during such month or part thereof under the terms of this Agreement, Tenant shall pay such deficiency to Landlord immediately upon calculation thereof, providing Landlord has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

Section 9.04 Assignment and Transfer. Tenant is not permitted to assign this Agreement; provided, that Tenant may assign this Agreement to its parent company upon Landlord's prior written consent. The foregoing notwithstanding, any person or entity to which this Agreement is assigned pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Agreement on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption.

Section 9.05 Subleasing. Tenant is not permitted to sublease all or any part of the Premises.

Section 9.06 Rights Upon Expiration. At the expiration of this Agreement, Landlord shall be entitled to have the Premises returned to Landlord clear of all improvements constructed by Tenant, or on Tenant's behalf. Tenant shall have sixty (60) days after expiration in which to remove such improvements; provided that any occupancy by Tenant for the purposes of removal shall be subject to the rental due hereunder. If Tenant fails to so remove said improvements, Landlord may remove same at Tenant's expense. Landlord may, at its option, take title to the improvements in lieu of removal by or for Tenant.

Section 9.07 Landlord's Lien. It is expressly agreed that in the event of default in the payment of rentals or any other sum due from Tenant to Landlord under the terms of this Agreement, Landlord shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Tenant which are placed in, or become a part of, the Premises, as security for Rent due and to become due for the remainder of the Agreement term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Tenant grants to Landlord a security interest in all of Tenant's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Landlord agrees that Landlord will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Tenant, any subtenant or any assignee of the Tenant. In the event Landlord exercises the option to terminate the leasehold as provided herein, the Landlord, after providing reasonable notice to Tenant of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Tenant's property on the Premises and sell it at a public or private sale after giving Tenant reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Landlord deems best. The proceeds of the sale shall be applied first the necessary proper expense of removing, storing and selling such property, then to the payment of any rentals or other sums due or to become due under this Agreement, with the balance, if any, to be paid to Tenant.

ARTICLE X
GENERAL PROVISIONS

Section 10.01 Right of Flight. Landlord reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the Airport.

Landlord reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at the Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

Landlord reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from the Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

Section 10.02 Time Is of the Essence. Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

Section 10.03 Notices. All notices provided to be given under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LANDLORD: City Clerk
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

COPY TO: Director of Aviation
El Paso International Airport
6701 Convair Road
El Paso, Texas 79925-1099

TENANT: American Airlines, Inc.
P.O. Box 619616
MD 5317
DFW Airport, Texas 75261-9616

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to

which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

Section 10.04 Attorney's Fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

Section 10.05 Agreement Made in Texas. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas.

Section 10.06 Compliance with Nondiscrimination Requirements.

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (for purposes of this Section 11.08 hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Lessor (for purposes of this Section 11.08 hereinafter referred to as the "sponsor") or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Section 10.07 Affirmative Action. Tenant assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to ensure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Tenant assures that it will require that its covered sub-organizations (subtenants) provide assurances to Landlord, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (subtenants) to the same effect.

Section 10.08 Cumulative Rights and Remedies. All rights and remedies of Landlord here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Landlord of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

Section 10.09 Interpretation. Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

Section 10.10 Agreement Made in Writing. This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

Section 10.11 Paragraph Headings. The Table of Contents and the captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do

not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

Section 10.12 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 10.13 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon Landlord and Tenant and their successors, assigns, legal representatives, heirs, executors and administrators.

Section 10.14 Taxes and Other Charges. Tenant shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Tenant or the Landlord, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Tenant's use and/or occupancy of the Premises, during the term of this Agreement including any extensions or option periods granted thereto.

By March 1 of each year during the term of this Agreement, including any extensions or option periods granted thereto and no cost to Landlord, Tenant shall provide written proof satisfactory to the Director that all taxes and governmental charges of any kind have been paid in full.

Tenant further indemnifies the Landlord from all tax liability, including, but not limited to, ad valorem real property taxes and personal property taxes that may arise in relation to Tenant's activities in furtherance of this Agreement.

Tenant in good faith may contest any tax or governmental charge; provided that Tenant may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom.

Section 10.15 Waiver of Warranty of Suitability. LANDLORD DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. TENANT LEASES THE PREMISES AS-IS AND LANDLORD DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO TENANT'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE.

Section 10.16 Survival of Certain Provisions. All provisions of this Agreement which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Agreement hereunder shall survive such cessation, expiration, cancellation, or termination, including without limitation, provisions regarding indemnification, environmental responsibility, and the like.

Section 10.17 Authorization to Enter Agreement. If Tenant signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of Tenant warrants to

Landlord that Tenant is a duly authorized and existing corporation, that Tenant is qualified to do business in the State of Texas, that Tenant has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Tenant is authorized to do so. Upon Landlord's request, Tenant will provide evidence satisfactory to Landlord confirming these representations.

Section 10.18 FAA Order 1400.11. Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

1. A. 1. The Tenant for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in Federal Aviation Administration Order 1400.11, Appendix 4, as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above nondiscrimination covenants, Landlord will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if the lease had never been made or issued. [See FAA Order 1400.11, Appendix C of Appendix 4].
- B. 1. The Tenant for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.
2. In the event of breach of any of the above nondiscrimination covenants, Landlord will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued. [See FAA Order 1400.11, Appendix D of Appendix 4]
- C. 1. During the term of this Agreement, Tenant for itself, its successors in interest, and assigns, as a part of the consideration hereof, agrees to comply with the following

non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
 - 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973);
 - Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
 - The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (which discourages programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
 - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP).;
 - Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq).
2. In the event of breach of any of the covenants in this section C, Landlord shall have the rights and remedies set forth in sections A and B above, in addition to all other

rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E of Appendix 4].

Section 10.19 General Civil Rights Provision. Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Tenant transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

Section 10.20 Compliance with Nondiscrimination Requirements. During the performance of this contract, the Tenant, for itself, its assignees, and successors in interest (for purposes of this Section 10.20 hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Landlord (for purposes of this Section 10.20 hereinafter referred to as the “sponsor”) or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States

Section 10.21 Complete Agreement. This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement among the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.


[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this _____ day of _____, 2022.

LANDLORD: CITY OF EL PASO:


Tomás González
City Manager

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

LANDLORD'S ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____ 202_,
by Tomás González as City Manager of the City of El Paso, Texas (Landlord).

My Commission Expires:

Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

TENANT: AMERICAN AIRLINES, INC.

[Handwritten Signature]

Name: Kirk Hotelling
Title: Vice President, Airport Affairs & Facilities

TENANT'S ACKNOWLEDGMENT

STATE OF Texas)

COUNTY OF Tarrant)

This instrument was acknowledged before me on this 5th day of January, 2022
by Kirk Hotelling, as Vice President, Airport Affairs and Facilities of American Airlines,
Inc. (Tenant).

[Handwritten Signature]

Notary Public

My Commission Expires: 05-21-2022





File #: 22-60, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Police, Assistant Chief Victor Zarur, (915) 212-4307

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

A Resolution amending Schedule C, of the City of El Paso Fiscal Year 2022 Budget Resolution to establish the permit fee on the Convenience Store Crime Prevention Ordinance, Chapter 5.18.030(b) effective June 7, 2022.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: 01/19/22
PUBLIC HEARING DATE:

CONTACT PERSON(S) NAME AND PHONE NUMBER: Assistant Chief Victor Zarur 915-212-4307

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: #2: Set The Standard For A Safe And Secure City

SUBGOAL: #2.1 Maintain standing as one of the nation's top safest cities

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

A resolution amending Schedule C, of the City of El Paso Fiscal Year 2022 Budget Resolution to establish the permit fee on the Convenience Store Crime Prevention Ordinance, Chapter 5.18.030(b) effective June 7, 2022

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

On December 7, 2021 City Council approved the Convenience Store Crime Prevention Ordinance

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

December 7, 2021, Ordinance approved

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: El Paso Police Department

SECONDARY DEPARTMENT: Planning and Inspections

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD: Chief G. K. Allen

Victor Zarur
AKC V. Zarur for Chief Allen

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Revised 04/09/2021

**RESOLUTION AMENDING SCHEDULE C FOR
THE CITY OF EL PASO FY2022 FEE SCHEDULE**

WHEREAS, the City Council adopted the Budget Resolution for FY 2022 on August 24, 2021; and

WHEREAS, paragraph 50 of the Budget Resolution provides that any revisions or additions to the fees listed in Schedule C, or the process or formula used for setting fees, shall be approved by simple resolution of the City Council; and

WHEREAS, the City Council desires that the City of El Paso charge an administrative registration fee as allowed under City Code Section 5.18.030(b); and

WHEREAS, this Amendment to Schedule C ensures cost recovery and sound fiscal management.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF EL PASO:

That Schedule C, attached to the FY 2022 Budget Resolution and effective August 24, 2021, shall be amended as set forth in Attachment A, to establish the administrative registration fee for convenience stores as allowed by City Code Section 5.18.030(b) effective June 7, 2022.

APPROVED this ____ day of _____ 2022.

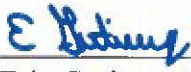
CITY OF EL PASO, TEXAS:

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Eric Gutierrez
Assistant City Attorney

APPROVED AS TO CONTENT:



Gregory Allen, Chief of Police
El Paso Police Department

Attachment "A"

Line No.	Department	Fee Description	Detail	FY 2022 Adopted
	Code Enforcement	Convenience Store Registration	Initial Registration, Inspection, Certificate and Decal	\$146.92
	Code Enforcement	Convenience Store Re-inspection	Re-inspection only - if initial inspection fails	\$27.41
	Code Enforcement	Convenience Store Inspection	Annual Renewel Inspection, Certificate and Decal	\$144.34



File #: 22-28, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Capital Improvement Department, Sam Rodriguez, (915) 212-1845

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

A Resolution that the City Manager be authorized to sign an agreement for professional services for the development of a Downtown Tree Plan and Design Standards by and between the City of El Paso and Surroundings Studios LLC in the amount of SIXTY FOUR THOUSAND SEVEN HUNDRED FIFTY AND 00/DOLLARS. (\$64,750.00) and that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of the amendments.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Capital Improvement

AGENDA DATE: January 19, 2022

CONTACT PERSON/PHONE: Sam Rodriguez, P.E., City Engineer, (915) 212-1845

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: 3. Promote the visual image of El Paso

SUBGOAL: 3.1 Improve the visual impression of the community (gateways, corridors, intersections, and parkland).

SUBJECT:

A resolution that the City Manager be authorized to sign an agreement for professional services for the development of a Downtown Tree Plan and Design Standards by and between the City of El Paso and Surroundings Studios LLC in the amount of SIXTY FOUR THOUSAND SEVEN HUNDRED FIFTY AND 00/DOLLARS. (\$64,750.00) and that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of the amendments.

BACKGROUND / DISCUSSION:

Professional services are required for development of a downtown tree plan and design standards for street trees throughout the City.

PRIOR COUNCIL ACTION: N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Capital Improvement Department

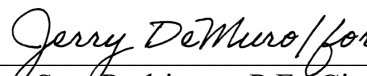
SECONDARY DEPARTMENT:

AMOUNT AND SOURCE OF FUNDING: TIRZ 05

BOARD / COMMISSION ACTION: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



Sam Rodriguez, P.E., City Engineer

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager, or designee, be authorized to sign an Agreement for Professional Services by and between the City of El Paso, and Surroundings Studio, a New Mexico professional limited liability company, for a project known as "Downtown Tree Plan and Design Standards" for an amount not to exceed \$64,750.00.

In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of the Agreement for Professional Services. In addition, the City Manager, or designee, is authorized to increase the contract amount up to \$50,000.00 and sign any amendments to the agreement.

APPROVED this _____ day of _____, 2022.

CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

Laura Prine
City Clerk

APPROVED AS TO FORM:

Leslie B. Jean-Pierre
Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:

Jerry DeMuro/for
Sam Rodriguez, City Engineer
Capital Improvement Department

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR
PROFESSIONAL SERVICES

This Agreement is made this ____ day of _____, 202_ by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the “**Owner**”, and **SURROUNDINGS STUDIO**, a New Mexico professional limited liability company, hereinafter referred to as the “**Consultant**”.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for the project known as “**DOWNTOWN TREE PLAN AND DESIGN STANDARDS**”, hereinafter referred to as the “**Project**”, as further described in **Attachment “A”** and

WHEREAS, Consultant has been selected to perform such services as required by the Owner, and the Consultant was selected through the Owner’s selection procedure, in accordance with all applicable state and local laws and ordinances;

NOW, THEREFORE, for the consideration set forth in this Agreement and its attachments, the Owner and Consultant agree as follows:

**ARTICLE I.
ATTACHMENTS**

1.1 The attachments listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

Attachment “A”	Scope of Services and Budget
Attachment “B”	Consultant’s Fee Proposal and Hourly Rates
Attachment “C”	Intentionally Deleted
Attachment “D”	Payment and Deliverable Schedules
Attachment “E”	Insurance Certificate

**ARTICLE II.
PROJECT**

2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform the services identified in this Agreement for the Project. The Project shall consist of the Consultant’s completion of the Scope of Services as further described in **Attachment “A”**. Such Scope of Services shall be completed in accordance with the identified phases described in **Attachment “D”**.

2.2 The Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.

2.3 The Consultant shall serve as the Owner’s professional representative for the construction of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.

2.4 The Owner shall provide all available information to the Consultant, as to the Owner’s requirements for each Project’s under the construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as “as-built” drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.

2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner’s representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner’s policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working day time period.

ARTICLE III. CONSULTANT FEES AND PROJECT BUDGET

3.1 PAYMENT TO CONSULTANT. The Owner shall pay to the Consultant an amount not to exceed **\$64,750** for all basic services and reimbursables performed pursuant to this Agreement.

The parties agree and understand that all fees and compensation to the Consultant shall only become due and payable in accordance with the terms of this Agreement and the fees to be charged for the Project shall be pursuant to the Consultant’s fee proposal for such Basic and Additional Services at the rates which is attached hereto as **Attachment “B”**. Payments to the Consultant shall be made pursuant to **Attachment “D”**.

3.2 CONSULTANT’S SERVICES. The Services to be provided by the Consultant for this Agreement are attached hereto as **Attachment “A”**.

3.3 CONSULTANT’S INVOICES. The Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to **Attachment “D”**. Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety days (90) of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.

3.3.1 Each invoice shall contain a brief summary indicating, at a minimum, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of the Project. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.

3.3.2 The Owner agrees to pay invoices for all services performed as soon as reasonably possible but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.

3.4 INTENTIONALLY DELETED.

3.5 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

**ARTICLE IV.
PERIOD OF SERVICE AND TERMINATION**

4.1 PERIOD OF SERVICE. The services called for by each phase shall begin upon the issuance of a Notice to Proceed from the City Engineer. The Consultant shall complete the requested services in accordance with the timelines and schedules outlined in **Attachments "A"** and the Notice to Proceed.

4.2 SUSPENSION. Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve (12) months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.

4.3 TERMINATION. This Agreement may be terminated as provided herein.

4.3.1 TERMINATION BY OWNER. It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days'** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing

contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.

4.3.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.

4.3.3 TERMINATION FOR FAILURE TO COMPLY WITH SUBCHAPTER J, CHAPTER 552, GOVERNMENT CODE. The requirements of subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor or vendor agrees that the Contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

4.3.4 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE. Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

ARTICLE V. INSURANCE AND INDEMNIFICATION

5.1 INSURANCE. The Consultant shall procure and maintain insurance coverage as required herein and attached in **Attachment “E”**. Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

5.1.1 WORKERS’ COMPENSATION INSURANCE. The Consultant shall procure and shall maintain during the life of this Agreement, Workers’ Compensation Insurance as required by applicable Texas law for all of the Consultant’s employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

“The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the Owner, its partners, agents and employees by reason of any

payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured.”

5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE. The Consultant shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Consultant and the Consultant’s employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant. The minimum limits of liability and coverages shall be as follows:

- a) **Commercial General Liability**
\$1,000,000.00 Per Occurrence
\$1,000,000.00 Products/Completed Operations
\$1,000,000.00 Personal and Advertising Injury

- b) **AUTOMOBILE LIABILITY**
Combined Single Limit
\$1,000,000.00 per accident

5.1.3 PROFESSIONAL LIABILITY INSURANCE. The Consultant shall procure and shall maintain, at the Consultant’s sole expense, Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of \$1,000,000 on a claims made basis.

5.1.4 OWNER AS ADDITIONAL INSURED. The Owner shall be named as an Additional Insured on all of the Consultant’s Insurance Policies, with the exception of Workers’ Compensation and Professional Liability Insurance required by this Agreement.

5.1.5 PROOF OF INSURANCE. The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this Agreement.

5.1.6 GENERAL INSURANCE PROVISIONS. All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment “E”**. All certificates shall also include the name of the project on the corresponding insurance certificate.

5.2 INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY HOLD HARMLESS, AND DEFEND OWNER, AND OWNER’S OFFICERS, DIRECTORS, PARTNERS, AGENTS CONSULTANTS,

AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS, AND ALL COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE PROJECT, PROVIDED THAT ANY SUCH CLAIM, COST, LOSS, OR DAMAGE IS ATTRIBUTABLE TO ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR CONSULTANT'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, CONSULTANTS OR EMPLOYEES. THE CONSULTANT SHALL NOT BE RESPONSIBLE FOR ANY ACTS OF ANY OF THE CITY'S INDEPENDENT PROJECT MANAGERS.

To the extent allowed by state law, the Owner will be responsible for its own actions.

ARTICLE VI. FEDERAL AND STATE PROVISIONS

6.1 COMPLIANCE WITH APPLICABLE LAWS – FEDERAL AND STATE FUNDING REQUIREMENTS. Consultant, at Consultant's sole expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Consultant with respect to the use of federal and state funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal and state funds.

Specifically, and not in limitation of the foregoing, Consultant agrees that to the extent required by any agreement between the Owner and any Federal and State agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project, **including but not limited to:**

--The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.

--The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.

--The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment "F".

--The Texas Department of Transportation through an Agreement with the Owner.

Copies of grant assurances will be made available to Consultant. However, provided copies

shall in no way be a limitation on the Consultant's obligation to comply with any Federal and State agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project.

6.1.1 CONTRACT ASSURANCE. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

6.1.2 DBE GOOD FAITH EFFORTS. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal will be identified pursuant to the federal funding requirements for an individual task order established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this Agreement.

The Consultant will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

6.2 TERMINATION FOR CANCELLATION OF GRANT. Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Consultant of the cancellation by certified mail-return receipt requested, whereupon the Consultant shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Consultant will be paid for professional services performed to such date, upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

6.3 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 78 STAT.252, 42 U.S.C. 2000D TO 2000D-4 AND TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION.

During the performance of this contract, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the “Consultant”) agrees as follows:

- (1) **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. ADP shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports:** Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by Client to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information Consultant shall so certify to Client, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of Consultant’s noncompliance with the nondiscrimination provisions of this contract, the Client shall impose such contract sanctions as it may determine to be appropriate, including but not limited to:
 - a. Withholding of payments to the Consultant under the contract until the Consultant complies, and / or
 - b. Cancellation, termination or suspension of the contract in whole or in part.
- (6) **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Client may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Consultant may request Client to enter into such litigation to protect the interests of Client and in addition, Consultant may request the United States to enter

into such litigation to protect the interests of the United States.

ARTICLE VII. GENERAL PROVISIONS

7.1 CONTRACT TIME. Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment “D”**. It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant.

7.2 INTENTIONALLY DELETED.

7.3 CONSULTANT’S QUALITY OF WORK. The Owner’s review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant’s services shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the Project and in accordance with the time periods established in **Attachment “D”** and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner’s review, for the performance of the Owner’s consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner.

7.4 COPYRIGHT AND REPRODUCTION RIGHTS. Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the “Instruments of Service”) are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner has the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects, other than the construction of the Project, shall not grant the Owner any right to rely upon the Consultant’s seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings,

Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

7.5 AUDITING RECORDS FOR THE SPECIFIC PROJECT. Consultant's records subject to audit shall include but not be limited to records which, have a bearing on matters of interest to the Owner in connection with the Consultant's work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Consultant's records have been generated from computerized data, Consultant agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The Owner or its designee shall be entitled, at its expense, to audit all of the Consultant's records related to this Project, and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times (limited to Consultant's office hours) and places upon reasonable notice.

7.6 CONTRACTING INFORMATION

The Contractor must preserve all contracting information related to this Contract as provided by the records retention schedule requirements applicable to the City for the duration of this Contract. Contractor will promptly provide the City any contracting information related to this Contract that is in the custody or possession of the Contractor on request of the City. On completion of this Contract, Contractor will either provide at no cost to the City all contracting information related to this Contract that is in the custody or possession of the Contractor or preserve the contracting information related to this Contract as provided by the records retention requirements applicable to the City.

7.7 SUCCESSORS AND ASSIGNS. This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

7.8 VENUE. For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

7.9 GOVERNING LAW. The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

7.10 CAPTIONS. The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.

7.11 SEVERABILITY. Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

7.12 NOTICES. Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner: The City of El Paso
 Attn: City Manager
 P. O. Box 1890
 El Paso, Texas 79950-1890

With a Copy to: The City of El Paso
 Attn: City Engineer
 P. O. Box 1890
 El Paso, Texas 79950-1890

To the Consultant: SURROUNDINGS STUDIO, LLC
 Attn: Kenneth Francis
 1611 Paseo de Peralata
 Santa Fe, New Mexico 87501

Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

7.13 CONFLICTING PROVISIONS. Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.

7.14 ENTIRE AGREEMENT. This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

7.15 TEXAS GOVERNMENT CODE. In accordance to Chapter 2274 of the Texas Government Code, as amended from time to time, the Consultant represents and warrants to the Owner the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

Tomás González
City Manager

APPROVED AS TO FORM:

Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:

Jerry DeMuro/for
Samuel Rodriguez, P.E., City Engineer
Capital Improvement Department

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §


This instrument was acknowledged before me on this _____ day of _____, 202_,
by **Tomás González**, as **City Manager** of the **City of El Paso, Texas**.

Notary Public, State of Texas

My commission expires:

(Signatures begin on following page)

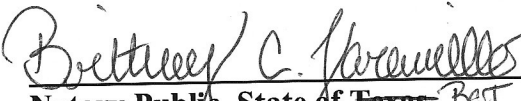
**CONSULTANT:
SURROUNDINGS STUDIO, LLC**

By: 
Name: Kenneth Francis
Title: Partner

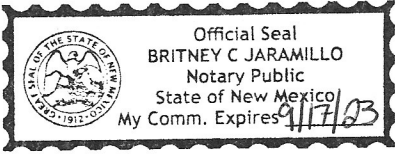
ACKNOWLEDGEMENT

THE STATE OF New Mexico §
 §
COUNTY OF Santa Fe §

This instrument was acknowledged before me on this 20th day of December, 2021, by Kenneth Francis, on behalf of Consultant.


Notary Public, State of ~~Texas~~ ^{BEST} New Mexico

My commission expires:
09/17/2023



**ATTACHMENT “A”
SCOPE OF SERVICES**

The consultant is to examine and analyze existing and proposed streetscape conditions focused around the trees of downtown El Paso and develop a tree masterplan for the blocks adjacent to San Jacinto Plaza. In addition, the consultant is to create a downtown tree design standards manual and develop a street tree implementation plan based on the masterplan and design standards.

Work is to be completed within eight (8) months of Notice-to-Proceed.

**ATTACHMENT “B”
CONSULTANT’S FEE PROPOSAL AND HOURLY RATES**

FEES *Basic services (labor only)*

Compensation to Surroundings Studio LLC for the services described herein and in accordance with the Conditions of this Agreement shall be a fixed fee of \$60,000 for Task 1 through 3, plus reimbursable expenses. Task 4 shall commence if written approval by Client is received.

TASK 1 DOCUMENTATION + RESEARCH + ANALYSIS	\$ 10,000
TASK 2 DOWNTOWN TREE MASTER PLAN	\$ 15,000
TASK 3 DOWNTOWN TREE DESIGN STANDARDS MANUAL	\$ 35,000
TASK 4 DOWNTOWN TREE PROJECT: PHASE 1 (OPTIONAL)	\$ (15,000)
<u>SUBTOTAL FEES (excluding reimbursable expenses and Task 4)</u>	<u>\$ 60,000</u>
<u>EXPENSE CAP for Tasks 1-3 (Task 4 not included at this time)</u>	<u>\$ 4,750</u>
TOTAL DESIGN FEES	\$ 64,750

ATTACHMENT "C"
INTENTIONALLY DELETED

**ATTACHMENT “D”
PAYMENT SCHEDULE**

For the project known as “**DOWNTOWN TREE PLAN AND DESIGN STANDARDS**”, hereinafter referred to as the Project, the Owner will compensate the Consultant an amount not to exceed **\$64,750.00** for all Services and reimbursables noted within the Agreement and its attachments.

PAYMENT SCHEDULE

Contract payments will be made as provided in the Agreement milestone basis at the rates included in Attachment “B”.

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant’s proposal found in **Attachment “B”**. The time shown in **Attachment “B”** is an estimate. Should the services rendered during the construction phase exceed the estimated amount, written authorization will be required prior to rendering service. Written authorization shall be only by contract amendment in accordance with the contract provisions and applicable law.

The Owner shall make payments upon presentation of the Consultant’s detailed Invoice and accompanying Summary and Progress Report and the Owner’s written approval.

The invoice must clearly identify each employee name, title, hours worked, date of performance, task or project description, rate per hours and/or cost, and office/company location.

Reimbursable Costs: Efforts must be made to secure a *reasonable* and/or lowest rate available in the marketplace.

Receipts: Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable.*

No single invoice may include items for both August and September of any given year. The Owner’s fiscal year begins on September 1st of each year and ends on August 31st of each year. The Consultant’s invoices must be separated into items that end August 31st and those that begin on Septembers 1st of any given year, to coincide with the Owner’s fiscal year.

Communications Costs: Long Distance telephone calls need to be identified and strictly related to work performed under this Agreement in order to be reimbursable by the Owner. A log is preferred showing the date, person’s name called, and explanation. Cell phone monthly charges are reimbursable if usage is strictly related to work performed under this Agreement. Legible itemized cell phone records are required.

Personal Automobile Mileage: Expense report must clearly identify the departure/arrival time, To/From destinations and purpose of trip.

Entertainment Costs: Entertainment costs are not reimbursable, including: 1. Movie costs for “Pay for View” or Cable service. 2. Alcohol costs. 3. Monetary Tips (tipping) for any and all services related to all forms of travel (and/or entertainment).

DELIVERABLE SCHEDULE

The Consultant shall complete the requested services in accordance with the timelines and schedules outlined in **Attachments “A”** and the Notice to Proceed.

ATTACHMENT "E" INSURANCE CERTIFICATE



SURRSTU-01

TRIGAUD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/15/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER HUB International Insurance Services (SOW) 2905 Rodeo Park Drive East Building 6, Suite 100 Santa Fe, NM 87505	CONTACT NAME: PHONE (A/C, No, Ext): (505) 982-4296 FAX (A/C, No): (866) 621-0427 E-MAIL ADDRESS: ADDRESS:														
INSURED Surroundings Studio LLC 1611 Paseo De Peralta Santa Fe, NM 87501	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A: American Hallmark Insurance Company</td> <td>43494</td> </tr> <tr> <td>INSURER B: Hartford Ins Co of the Midwest</td> <td>37478</td> </tr> <tr> <td>INSURER C: Travelers Casualty Insurance Company of Americ</td> <td>19046</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: American Hallmark Insurance Company	43494	INSURER B: Hartford Ins Co of the Midwest	37478	INSURER C: Travelers Casualty Insurance Company of Americ	19046	INSURER D:		INSURER E:		INSURER F:	
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INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL	SUBR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			44-CL-454498-13	5/23/2021	5/23/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP AGG \$ 1,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			44-CL-454498-13	5/23/2021	5/23/2022	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NM) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	34WECPU7551	3/9/2021	3/9/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C	Errors & Omissions/P			105270551	4/22/2021	4/22/2022	Pro Liability \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Project: TIRZOSALLEYWAY

CERTIFICATE HOLDER City of Santa Fe Po Box 909 Santa Fe, NM 87504	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR
PROFESSIONAL SERVICES

This Agreement is made this ____ day of _____, 202_ by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the “**Owner**”, and **SURROUNDINGS STUDIO**, a New Mexico professional limited liability company, hereinafter referred to as the “**Consultant**”.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for the project known as “**DOWNTOWN TREE PLAN AND DESIGN STANDARDS**”, hereinafter referred to as the “**Project**”, as further described in **Attachment “A”** and

WHEREAS, Consultant has been selected to perform such services as required by the Owner, and the Consultant was selected through the Owner’s selection procedure, in accordance with all applicable state and local laws and ordinances;

NOW, THEREFORE, for the consideration set forth in this Agreement and its attachments, the Owner and Consultant agree as follows:

**ARTICLE I.
ATTACHMENTS**

1.1 The attachments listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

Attachment “A”	Scope of Services and Budget
Attachment “B”	Consultant’s Fee Proposal and Hourly Rates
Attachment “C”	Intentionally Deleted
Attachment “D”	Payment and Deliverable Schedules
Attachment “E”	Insurance Certificate

**ARTICLE II.
PROJECT**

2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform the services identified in this Agreement for the Project. The Project shall consist of the Consultant’s completion of the Scope of Services as further described in **Attachment “A”**. Such Scope of Services shall be completed in accordance with the identified phases described in **Attachment “D”**.

2.2 The Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.

2.3 The Consultant shall serve as the Owner’s professional representative for the construction of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.

2.4 The Owner shall provide all available information to the Consultant, as to the Owner’s requirements for each Project’s under the construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as “as-built” drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.

2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner’s representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner’s policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working day time period.

ARTICLE III. CONSULTANT FEES AND PROJECT BUDGET

3.1 PAYMENT TO CONSULTANT. The Owner shall pay to the Consultant an amount not to exceed **\$64,750** for all basic services and reimbursables performed pursuant to this Agreement.

The parties agree and understand that all fees and compensation to the Consultant shall only become due and payable in accordance with the terms of this Agreement and the fees to be charged for the Project shall be pursuant to the Consultant’s fee proposal for such Basic and Additional Services at the rates which is attached hereto as **Attachment “B”**. Payments to the Consultant shall be made pursuant to **Attachment “D”**.

3.2 CONSULTANT’S SERVICES. The Services to be provided by the Consultant for this Agreement are attached hereto as **Attachment “A”**.

3.3 CONSULTANT’S INVOICES. The Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to **Attachment “D”**. Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety days (90) of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.

3.3.1 Each invoice shall contain a brief summary indicating, at a minimum, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of the Project. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.

3.3.2 The Owner agrees to pay invoices for all services performed as soon as reasonably possible but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.

3.4 INTENTIONALLY DELETED.

3.5 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

**ARTICLE IV.
PERIOD OF SERVICE AND TERMINATION**

4.1 PERIOD OF SERVICE. The services called for by each phase shall begin upon the issuance of a Notice to Proceed from the City Engineer. The Consultant shall complete the requested services in accordance with the timelines and schedules outlined in **Attachments "A"** and the Notice to Proceed.

4.2 SUSPENSION. Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve (12) months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.

4.3 TERMINATION. This Agreement may be terminated as provided herein.

4.3.1 TERMINATION BY OWNER. It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days'** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing

contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.

4.3.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.

4.3.3 TERMINATION FOR FAILURE TO COMPLY WITH SUBCHAPTER J, CHAPTER 552, GOVERNMENT CODE. The requirements of subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor or vendor agrees that the Contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

4.3.4 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE. Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

ARTICLE V. INSURANCE AND INDEMNIFICATION

5.1 INSURANCE. The Consultant shall procure and maintain insurance coverage as required herein and attached in **Attachment “E”**. Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

5.1.1 WORKERS’ COMPENSATION INSURANCE. The Consultant shall procure and shall maintain during the life of this Agreement, Workers’ Compensation Insurance as required by applicable Texas law for all of the Consultant’s employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

“The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the Owner, its partners, agents and employees by reason of any

payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured.”

5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE. The Consultant shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Consultant and the Consultant’s employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant. The minimum limits of liability and coverages shall be as follows:

- a) **Commercial General Liability**
\$1,000,000.00 Per Occurrence
\$1,000,000.00 Products/Completed Operations
\$1,000,000.00 Personal and Advertising Injury

- b) **AUTOMOBILE LIABILITY**
Combined Single Limit
\$1,000,000.00 per accident

5.1.3 PROFESSIONAL LIABILITY INSURANCE. The Consultant shall procure and shall maintain, at the Consultant’s sole expense, Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of \$1,000,000 on a claims made basis.

5.1.4 OWNER AS ADDITIONAL INSURED. The Owner shall be named as an Additional Insured on all of the Consultant’s Insurance Policies, with the exception of Workers’ Compensation and Professional Liability Insurance required by this Agreement.

5.1.5 PROOF OF INSURANCE. The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this Agreement.

5.1.6 GENERAL INSURANCE PROVISIONS. All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment “E”**. All certificates shall also include the name of the project on the corresponding insurance certificate.

5.2 INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY HOLD HARMLESS, AND DEFEND OWNER, AND OWNER’S OFFICERS, DIRECTORS, PARTNERS, AGENTS CONSULTANTS,

AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS, AND ALL COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE PROJECT, PROVIDED THAT ANY SUCH CLAIM, COST, LOSS, OR DAMAGE IS ATTRIBUTABLE TO ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR CONSULTANT'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, CONSULTANTS OR EMPLOYEES. THE CONSULTANT SHALL NOT BE RESPONSIBLE FOR ANY ACTS OF ANY OF THE CITY'S INDEPENDENT PROJECT MANAGERS.

To the extent allowed by state law, the Owner will be responsible for its own actions.

ARTICLE VI. FEDERAL AND STATE PROVISIONS

6.1 COMPLIANCE WITH APPLICABLE LAWS – FEDERAL AND STATE FUNDING REQUIREMENTS. Consultant, at Consultant's sole expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Consultant with respect to the use of federal and state funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal and state funds.

Specifically, and not in limitation of the foregoing, Consultant agrees that to the extent required by any agreement between the Owner and any Federal and State agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project, **including but not limited to:**

--The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.

--The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.

--The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment "F".

--The Texas Department of Transportation through an Agreement with the Owner.

Copies of grant assurances will be made available to Consultant. However, provided copies

shall in no way be a limitation on the Consultant's obligation to comply with any Federal and State agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project.

6.1.1 CONTRACT ASSURANCE. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

6.1.2 DBE GOOD FAITH EFFORTS. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal will be identified pursuant to the federal funding requirements for an individual task order established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this Agreement.

The Consultant will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

6.2 TERMINATION FOR CANCELLATION OF GRANT. Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Consultant of the cancellation by certified mail-return receipt requested, whereupon the Consultant shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Consultant will be paid for professional services performed to such date, upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

6.3 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 78 STAT.252, 42 U.S.C. 2000D TO 2000D-4 AND TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION.

During the performance of this contract, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the “Consultant”) agrees as follows:

- (1) **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. ADP shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports:** Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by Client to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information Consultant shall so certify to Client, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of Consultant’s noncompliance with the nondiscrimination provisions of this contract, the Client shall impose such contract sanctions as it may determine to be appropriate, including but not limited to:
 - a. Withholding of payments to the Consultant under the contract until the Consultant complies, and / or
 - b. Cancellation, termination or suspension of the contract in whole or in part.
- (6) **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Client may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Consultant may request Client to enter into such litigation to protect the interests of Client and in addition, Consultant may request the United States to enter

into such litigation to protect the interests of the United States.

ARTICLE VII. GENERAL PROVISIONS

7.1 CONTRACT TIME. Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment “D”**. It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant.

7.2 INTENTIONALLY DELETED.

7.3 CONSULTANT’S QUALITY OF WORK. The Owner’s review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant’s services shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the Project and in accordance with the time periods established in **Attachment “D”** and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner’s review, for the performance of the Owner’s consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner.

7.4 COPYRIGHT AND REPRODUCTION RIGHTS. Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the “Instruments of Service”) are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner has the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects, other than the construction of the Project, shall not grant the Owner any right to rely upon the Consultant’s seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings,

Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

7.5 AUDITING RECORDS FOR THE SPECIFIC PROJECT. Consultant's records subject to audit shall include but not be limited to records which, have a bearing on matters of interest to the Owner in connection with the Consultant's work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Consultant's records have been generated from computerized data, Consultant agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The Owner or its designee shall be entitled, at its expense, to audit all of the Consultant's records related to this Project, and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times (limited to Consultant's office hours) and places upon reasonable notice.

7.6 CONTRACTING INFORMATION

The Contractor must preserve all contracting information related to this Contract as provided by the records retention schedule requirements applicable to the City for the duration of this Contract. Contractor will promptly provide the City any contracting information related to this Contract that is in the custody or possession of the Contractor on request of the City. On completion of this Contract, Contractor will either provide at no cost to the City all contracting information related to this Contract that is in the custody or possession of the Contractor or preserve the contracting information related to this Contract as provided by the records retention requirements applicable to the City.

7.7 SUCCESSORS AND ASSIGNS. This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

7.8 VENUE. For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

7.9 GOVERNING LAW. The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

7.10 CAPTIONS. The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.

7.11 SEVERABILITY. Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

7.12 NOTICES. Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

- To the Owner: The City of El Paso
 Attn: City Manager
 P. O. Box 1890
 El Paso, Texas 79950-1890
- With a Copy to: The City of El Paso
 Attn: City Engineer
 P. O. Box 1890
 El Paso, Texas 79950-1890
- To the Consultant: SURROUNDINGS STUDIO, LLC
 Attn: Kenneth Francis
 1611 Paseo de Peralata
 Santa Fe, New Mexico 87501

Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

7.13 CONFLICTING PROVISIONS. Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.

7.14 ENTIRE AGREEMENT. This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

7.15 TEXAS GOVERNMENT CODE. In accordance to Chapter 2274 of the Texas Government Code, as amended from time to time, the Consultant represents and warrants to the Owner the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

Tomás González
City Manager

APPROVED AS TO FORM:

Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:

Jerry DeMuro/for
Samuel Rodriguez, P.E., City Engineer
Capital Improvement Department

ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____, 202_,
by **Tomás González**, as **City Manager** of the **City of El Paso, Texas**.

Notary Public, State of Texas

My commission expires:

(Signatures begin on following page)

**ATTACHMENT “A”
SCOPE OF SERVICES**

The consultant is to examine and analyze existing and proposed streetscape conditions focused around the trees of downtown El Paso and develop a tree masterplan for the blocks adjacent to San Jacinto Plaza. In addition, the consultant is to create a downtown tree design standards manual and develop a street tree implementation plan based on the masterplan and design standards.

Work is to be completed within eight (8) months of Notice-to-Proceed.

**ATTACHMENT “B”
CONSULTANT’S FEE PROPOSAL AND HOURLY RATES**

FEES *Basic services (labor only)*

Compensation to Surroundings Studio LLC for the services described herein and in accordance with the Conditions of this Agreement shall be a fixed fee of \$60,000 for Task 1 through 3, plus reimbursable expenses. Task 4 shall commence if written approval by Client is received.

TASK 1 DOCUMENTATION + RESEARCH + ANALYSIS	\$ 10,000
TASK 2 DOWNTOWN TREE MASTER PLAN	\$ 15,000
TASK 3 DOWNTOWN TREE DESIGN STANDARDS MANUAL	\$ 35,000
TASK 4 DOWNTOWN TREE PROJECT: PHASE 1 (OPTIONAL)	\$ (15,000)
<u>SUBTOTAL FEES (excluding reimbursable expenses and Task 4)</u>	<u>\$ 60,000</u>
<u>EXPENSE CAP for Tasks 1-3 (Task 4 not included at this time)</u>	<u>\$ 4,750</u>
TOTAL DESIGN FEES	\$ 64,750

**ATTACHMENT “C”
INTENTIONALLY DELETED**

**ATTACHMENT “D”
PAYMENT SCHEDULE**

For the project known as “**DOWNTOWN TREE PLAN AND DESIGN STANDARDS**”, hereinafter referred to as the Project, the Owner will compensate the Consultant an amount not to exceed **\$64,750.00** for all Services and reimbursables noted within the Agreement and its attachments.

PAYMENT SCHEDULE

Contract payments will be made as provided in the Agreement milestone basis at the rates included in Attachment “B”.

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant’s proposal found in **Attachment “B”**. The time shown in **Attachment “B”** is an estimate. Should the services rendered during the construction phase exceed the estimated amount, written authorization will be required prior to rendering service. Written authorization shall be only by contract amendment in accordance with the contract provisions and applicable law.

The Owner shall make payments upon presentation of the Consultant’s detailed Invoice and accompanying Summary and Progress Report and the Owner’s written approval.

The invoice must clearly identify each employee name, title, hours worked, date of performance, task or project description, rate per hours and/or cost, and office/company location.

Reimbursable Costs: Efforts must be made to secure a *reasonable* and/or lowest rate available in the marketplace.

Receipts: Legible itemized receipts are required for the following: 1. Meals 2. Hotel (lodging) costs. 3. Airfare travel costs. 4. Parking costs. 5. Automobile or Equipment Rental costs. 6. Taxi, Limousine, Bus, Subway, or other travel costs. 7. Reproduction. 8. Shipping and Handling. 9. Local Postage/Deliveries (courier services). 10. Communication Costs. *Tips and alcohol are not reimbursable.*

No single invoice may include items for both August and September of any given year. The Owner’s fiscal year begins on September 1st of each year and ends on August 31st of each year. The Consultant’s invoices must be separated into items that end August 31st and those that begin on Septembers 1st of any given year, to coincide with the Owner’s fiscal year.

Communications Costs: Long Distance telephone calls need to be identified and strictly related to work performed under this Agreement in order to be reimbursable by the Owner. A log is preferred showing the date, person’s name called, and explanation. Cell phone monthly charges are reimbursable if usage is strictly related to work performed under this Agreement. Legible itemized cell phone records are required.

Personal Automobile Mileage: Expense report must clearly identify the departure/arrival time, To/From destinations and purpose of trip.

Entertainment Costs: Entertainment costs are not reimbursable, including: 1. Movie costs for “Pay for View” or Cable service. 2. Alcohol costs. 3. Monetary Tips (tipping) for any and all services related to all forms of travel (and/or entertainment).

DELIVERABLE SCHEDULE

The Consultant shall complete the requested services in accordance with the timelines and schedules outlined in **Attachments “A”** and the Notice to Proceed.

ATTACHMENT "E" INSURANCE CERTIFICATE



SURRSTU-01

TRIGAUD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/15/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER HUB International Insurance Services (SOW) 2905 Rodeo Park Drive East Building 6, Suite 100 Santa Fe, NM 87505	CONTACT NAME: PHONE (A/C, No, Ext): (505) 982-4296 FAX (A/C, No): (866) 621-0427 E-MAIL ADDRESS: ADDRESS:														
INSURED Surroundings Studio LLC 1611 Paseo De Peralta Santa Fe, NM 87501	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A : American Hallmark Insurance Company</td> <td style="text-align: center;">43494</td> </tr> <tr> <td>INSURER B : Hartford Ins Co of the Midwest</td> <td style="text-align: center;">37478</td> </tr> <tr> <td>INSURER C : Travelers Casualty Insurance Company of Americ</td> <td style="text-align: center;">19046</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : American Hallmark Insurance Company	43494	INSURER B : Hartford Ins Co of the Midwest	37478	INSURER C : Travelers Casualty Insurance Company of Americ	19046	INSURER D :		INSURER E :		INSURER F :	
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INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	LTS	TYPE OF INSURANCE	ADOL	SUBR	POLICY NUMBER	POLICY EFF	POLICY EXP	LIMITS
A	X	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			44-CL-454498-13	5/23/2021	5/23/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP AGG \$ 1,000,000
A		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			44-CL-454498-13	5/23/2021	5/23/2022	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NM) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	34WECPU7551	3/9/2021	3/9/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C		Errors & Omissions/P			105270551	4/22/2021	4/22/2022	Pro Liability \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Project : TIRZOSALLEYWAY

CERTIFICATE HOLDER City of Santa Fe Po Box 909 Santa Fe, NM 87504	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--



File #: 22-51, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

District 3

Capital Improvement Department, Yvette Hernandez, (915) 212-1860

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

That the City Manager, or designee, is authorized to sign a Memorandum of Understanding with the El Paso Water Utilities - Public Service Board to provide for the construction of right of way and stormwater improvements at the intersection of Delta Drive and Manny Martinez Drive. Further, that the City Manager, or designee, is authorized to exercise all rights under the memorandum, perform all obligations under the memorandum, and sign any amendments to the memorandum.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: N/A
CONTACT PERSON(S) NAME AND PHONE NUMBER: Yvette Hernandez, (915) 212-1860
DISTRICT(S) AFFECTED: 3
STRATEGIC GOAL: No.7: Enhance and Sustain El Paso's Infrastructure Network
SUBGOAL: N/A

SUBJECT:

That the City Manager, or designee, is authorized to sign a Memorandum of Understanding with the El Paso Water Utilities – Public Service Board to provide for the construction of right of way and stormwater improvements at the intersection of Delta Drive and Manny Martinez Drive. Further, that the City Manager, or designee, is authorized to exercise all rights under the memorandum, perform all obligations under the memorandum, and sign any amendments to the memorandum.

BACKGROUND / DISCUSSION:

The City is replacing the Delta Bridge at the intersection of Delta Drive and Manny Martinez Drive. The project includes stormwater improvements. This MOU with the El Paso Water Utilities outlines the City and El Paso Water responsibilities for access, improvements, and maintenance.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ___ YES ___ NO

PRIMARY DEPARTMENT: Capital Improvement Department

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager, or designee, is authorized to sign a Memorandum of Understanding with the El Paso Water Utilities – Public Service Board (the “memorandum”) to provide for the construction of right of way and stormwater improvements at the intersection of Delta Drive and Manny Martinez Drive; and that the City Manager, or designee, is authorized to exercise all rights under the memorandum, perform all obligations under the memorandum, and sign any amendments to the memorandum.

ADOPTED this _____ day of _____, 2022.

THE CITY OF EL PASO:

ATTEST:

Oscar Leeser
Mayor

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Leslie B. Jean-Pierre
Leslie B. Jean-Pierre
Assistant City Attorney

Sam Rodriguez
Sam Rodriguez
City Engineer

STATE OF TEXAS
COUNTY OF EL PASO

MEMORANDUM OF UNDERSTANDING
Delta Bridge Replacement

This Memorandum of Understanding ("**MOU**") is made this ____ day of _____, 2022, by between the EL PASO WATER UTILITIES- PUBLIC SERVICE BOARD, a component unit of the City of El Paso, Texas, a Texas home rule municipality ("**EPWater**", "), and the CITY OF EL PASO, TEXAS (the "**CITY**") for the purposes described herein. EPWater and the City may be referred to herein individually as a "**Party**" or collectively as the "**Parties.**"

RECITALS

WHEREAS, Section 15020.070 of the Texas Government Code allows a municipality to vest the management and control of the municipal utility system in the board of trustees; and

WHEREAS, the El Paso City Council adopted Ordinance 752 establishing the El Paso Water Utilities Public Service Board (the "**PSB**") and delegated to the PSB the authority to manage and control the municipal utility system; and

WHEREAS, the El Paso City Council adopted Ordinance 016668 establishing a Municipal Drainage Utility System and delegated to the PSB the authority to manage and control said system; and

WHEREAS, the City is replacing a bridge at the intersection of Delta Drive and Manny Martinez Drive (the "**Delta Bridge Replacement**") located in El Paso, Texas 79905, and is more particularly described on Exhibits A-1 and A-2, attached hereto and incorporated fully herein (the "**Site**"); and

WHEREAS, the Parties contemplate the construction of stormwater improvements as well as the post-construction allocation of maintenance responsibilities in connection with the Delta Bridge Replacement (the "**Project**"), the scope of which is more particularly described on Exhibit B, attached hereto and incorporated fully herein (the "**Project Scope**"); and

WHEREAS, the Parties agree that in order for the Project to proceed expeditiously the Project and Project Scope must be coordinated and accomplished by the Parties in accordance with the terms of this MOU and that the responsibilities of the Parties shall be as set forth herein; and

NOW THEREFORE, in consideration of the foregoing, the mutual terms and conditions hereinafter set forth, to be by them kept and performed, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties adopt the recitals and hereby agree as follows:

AGREEMENT

1. **Effective Date.** The respective duties and obligations of the Parties hereto shall commence upon the date this MOU is executed by both Parties.
2. **Term.** This MOU shall commence on the Effective Date and shall terminate upon completion of the Project and acceptance of the Project by both Parties (the “*Term*”) unless otherwise terminated by the Parties in accordance with the terms herein.
3. **Responsibilities of EPWater.**
 - 3.1 **Project Scope.** EPWater agrees to abide by the Project Scope, attached hereto as Exhibit B and incorporated fully herein
 - 3.2 **Project Coordination.** The Project shall be completed in accordance with the PS&E Documents and EPWater shall cooperate and assist the CITY during the construction of the Project.
 - 3.3 **Stormwater Access.** EPWater shall grant access to the CITY and the CITY’s contractors to stormwater areas and infrastructure when necessary to complete the Project. The CITY shall coordinate such access with EPWater
 - 3.4 **Payment of Base Bid II & Base Bid III Items.** EPWater shall be responsible for the payment of all Base Bid II – Water Improvements & Base Bid III – Sanitary Sewer Improvements, which are identified on Exhibit C and Exhibit D. EPWater will make the payments to the City in a timely manner.
 - 3.5 **Maintenance of Ditch Upon Completion of the Project.** Upon completion of the Project, EPWater shall maintain the ditch related to the Project.
 - 3.6 **Maintenance of Stormwater Improvements Upon Completion.** Upon completion of the stormwater improvements for the Project, EPWater shall notify the CITY that it accepts the work completed. Upon acceptance of the work, EPWater shall assume responsibility for the maintenance of the completed stormwater improvements unless otherwise specified in this MOU.
4. **Responsibilities of the City.**
 - 4.1 **Design.** The City shall complete all plans, specifications and estimates for the Project (the “*PS&E Documents*”).
 - 4.2 **Project Scope.** The CITY agrees to abide by the Project Scope, attached hereto as Exhibit B and incorporated fully herein.
 - 4.3 **Construction and Inspection.** The CITY shall cause the Project to be constructed in accordance with the plans and specifications approved for the Project and inspect all work performed hereunder and provide such

engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved PS&E documents provided to EPWater. It will be the sole responsibility of the CITY to provide all correspondence and instructions to the General Contractor selected by the CITY to perform the work on the Project.

- 4.4 **Payment of Base Bid 1 Items.** The CITY shall be responsible for the payment of all Base Bid 1 items for the Delta Bridge Replacement, which are identified on Exhibit E.
- 4.5 **Coordination with EPWater Stormwater.** The CITY shall coordinate with EPWater's Stormwater Division prior to accessing EPWater property or stormwater areas for the construction of the Project.
- 4.6 **Maintenance of Roadways and Bridges Upon Completion.** Upon completion of the Project, the CITY shall maintain and operate all roadways and bridge structures related to the Project.

- 5. **Notice.** All notices under this MOU must be in writing and shall be effective: (i) three (3) business days after being sent by certified mail, return receipt requested, postage prepaid, (ii) one (1) business day after being sent by overnight express mail or by a nationally recognized courier service (e.g., UPS or FedEx), (iii) on the day of delivery if delivered by hand with receipt of delivery, or (iv) on the day of transmission of a facsimile, provided that service by facsimile after 5:00 p.m. Mountain Standard Time shall be deemed delivered on the following business day, in each case, at the respective addresses set forth below or such other addresses as either Party may designate by notice to the other from time to time:

TO THE CITY:

Capital Improvement Department
The City of El Paso Texas
Attn: City Manager
300 N. Campbell, 2nd Floor
El Paso, Texas 79901

COPY TO:

The City of El Paso Texas
Attn: City Engineer
300 N. Campbell, 2nd Floor
El Paso, Texas 79901

TO EPWater:

El Paso Water
Gilbert Trejo, P.E., Chief Technical Officer

1154 Hawkins
El Paso, Texas 79925
GTrejo@epwater.org

COPY TO:

El Paso Water
Attn: Gisela Dagnino
1154 Hawkins
El Paso, Texas 79925
GDagnino@epwater.org

6. **Governmental Function.** The Parties expressly recognize that the other is performing a governmental function in pursuing their respective obligations under this MOU.
7. **Termination.** Prior to the expiration of the Term, this MOU may be terminated (i) by the mutual written agreement and consent of the Parties; (ii) by either Party upon failure of the other Party to fulfill any obligation set forth in this MOU upon notice and an opportunity to cure the same within ten (10) days; or (iii) by either party for any reason following a thirty (30) calendar day written notice to the non-terminating party. If the MOU is terminated by EPWater for failure of the CITY to fulfill any material obligation in this MOU following an opportunity to cure, then the CITY will be responsible for the payment of all costs incurred by EPWater on behalf of the CITY in connection with the Project up to the time of termination. If the MOU is terminated by the CITY for failure of EPWater to fulfill any material obligation in this MOU following an opportunity to cure, then EPWater will be responsible for the payment of all costs incurred by the CITY in connection with the Project up to the time of termination. If either Party terminates this Agreement for any other reason, then the terminating party will be responsible for the payment of all costs incurred by the non-terminating party up to the date of termination.
8. **Joint Venture.** The Parties acknowledge that neither is an agent, servant, or employee of the other, nor are the Parties engaged in a joint enterprise, and each Party is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work on the Project.
9. **Entire Agreement.** This MOU sets forth the entire agreement of the Parties with respect to the Project and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Project.
10. **Severability.** If any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.
11. **Amendment.** This MOU may be amended only by the mutual written consent of both Parties hereto.
12. **Successors and Assigns.** This MOU shall be binding upon the parties hereto and their

respective successors and assigns and shall inure to the benefit of and be binding upon the heirs, personal representatives, administrators, successors, and assigns, as applicable of the respective Parties hereto.

13. **Choice of Law.** For the purpose of determining the place of contract and the law governing the same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas.
14. **Venue.** Venue for all causes of action arising from or in connection with this Agreement shall be in El Paso County, Texas.
15. **Signatory Warranty.** Each signatory warrants that the signatory has the necessary authority to execute this MOU on behalf of the entity represented.

[Signatures Begin on the Following Page]

WITNESSETH THE EXECUTION of this MOU on this ____ day of _____, 2021.

EPWater:

**EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD**, a component
unit of the City of El Paso

Marcela Navarrete

Marcela Navarrete
Vice President - Strategic, Financial, and
Management Services

APPROVED AS TO FORM:

Michaela Grambling
Michaela Grambling
Assistant General Counsel

APPROVED AS TO CONTENT:

Gisela Dagnino
Gisela Dagnino
Engineering Division Manager

ACKNOWLEDGMENT

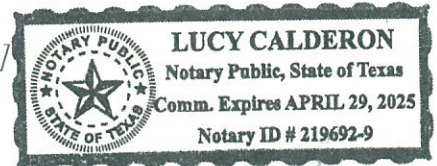
STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this the 13th day of December, 2021, by MARCELA NAVARRETE; Vice President - Strategic, Financial, and Management Services, on behalf of the City of El Paso, El Paso Water Utilities Public Service Board.

4/29/25
My Commission Expires:

Lucy Calderon
Notary Public, State of Texas

[Signatures Continue on the Following Page]



WITNESSETH THE EXECUTION of this MOU on this ____ day of _____, 2022.

CITY OF EL PASO, TEXAS

By: _____
Tomás Gonzáles
City Manager

APPROVED AS TO FORM:

Leslie Jean-Pierre
Leslie Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:

Samuel Rodriguez
For Samuel Rodriguez, P.E., City Engineer
Capital Improvement Department

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

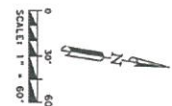
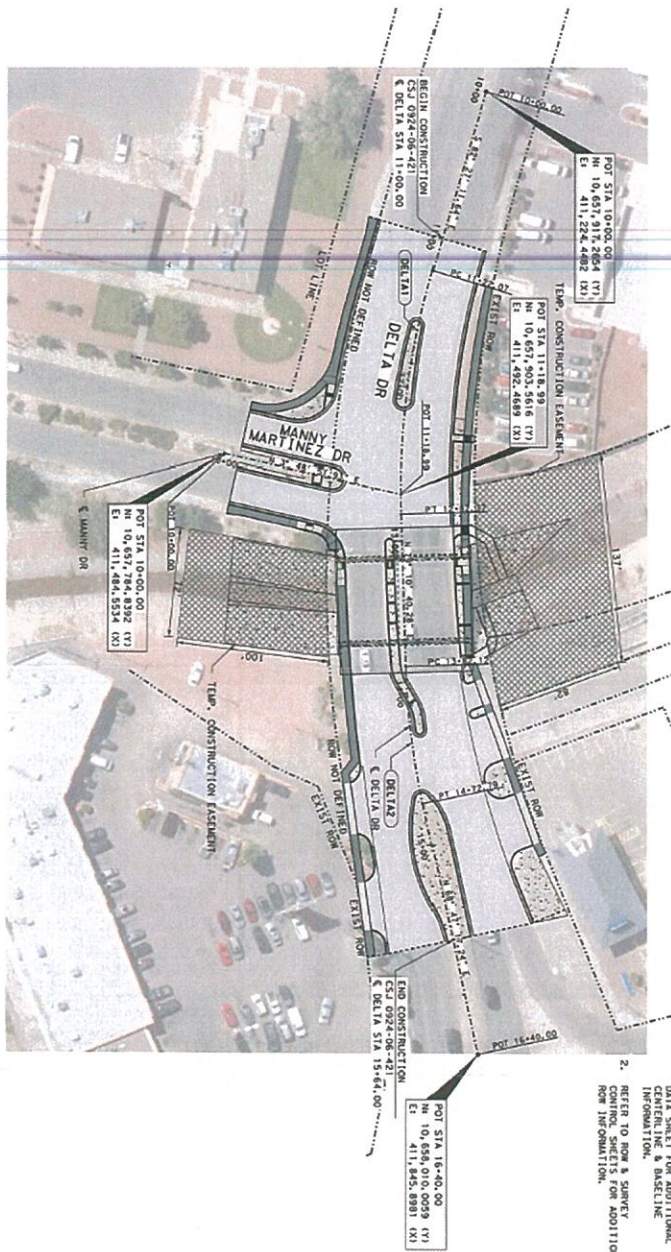
The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Tomás Gonzáles, City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas.

My Commission Expires:

Notary Public, State of Texas

EXHIBIT A-1

21-1004-1314
11/26/2019
\\S:\PROJECTS\21-1004-1314\21-1004-1314-001\Drawings\21-1004-1314-001.dwg



- LEGEND**
- (XX) CURVE LABEL
 - [Hatched Box] PROPOSED ASPHALT
 - [Dotted Box] TEMP. CONSTRUCTION EASEMENT
 - [Dashed Line] EXISTING ROW
 - [Dotted Line] PROPOSED CENTERLINE/BASELINE
 - [Dashed Line] PROPOSED CONSTRUCTION LIMITS
- NOTE:**
1. REFER TO HORIZONTAL CONTROL CENTERLINE & BASELINE INFORMATION.
 2. REFER TO ROW & SURVEY CONTROL SHEETS FOR ADDITIONAL ROW INFORMATION.

238619

 CONSOR <small>F-1340</small>	 CAPITAL IMPROVEMENT	PROJECT NAME		DELTA BRIDGE REPLACEMENT	
		SHEET NO.		238619	
PROJECT LOCATION & CONTROL		ENGINEER'S SEAL		REVISIONS - REWORKS	
DATE: 11/26/2019		DRAWN BY: [Name]		CHECKED BY: [Name]	
SCALE: 1" = 60'		DATE: 11/26/2019		PROJECT NO.: 21-1004-1314	

EXHIBIT A-2

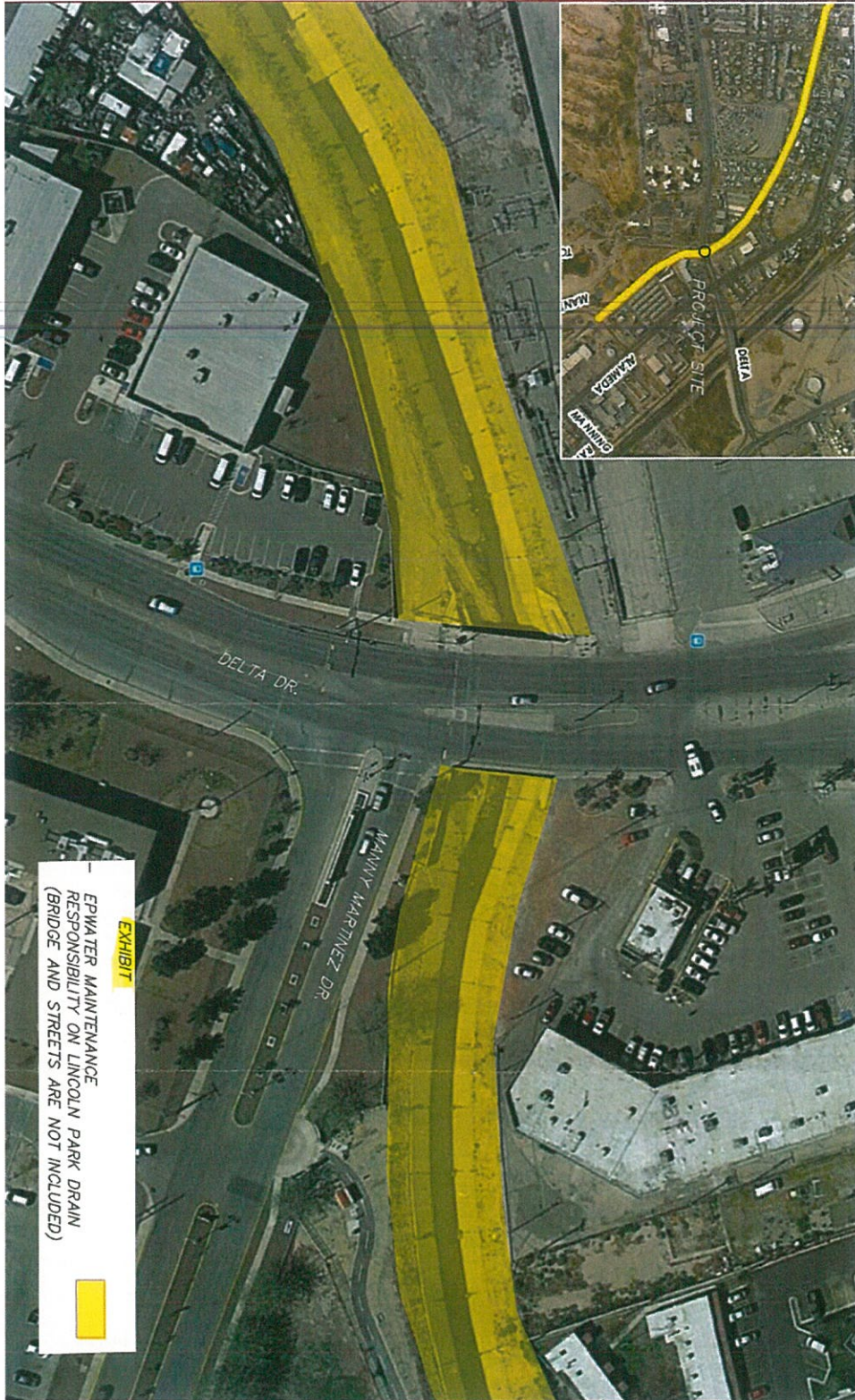


EXHIBIT B
Project Scope

BRIDGE REPLACEMENT: DELTA BRIDGE REPLACEMENT
Located at the Intersection of
Delta Drive and Manny Martinez Drive

- A bridge will be replaced at the intersection of Delta Drive and Manny Martinez Drive, and EPWater will allow the CITY to replace the bridge.
- Concrete rip rap will be installed at the bottom of the Ditch, and EPWater will allow the CITY to do this work.

- During the construction phase, drainage waterways cannot be used as staging areas.
- The CITY'S Contractor is responsible for maintaining the ditch within the Project limits clean of debris to allow for proper water passage.
- The CITY will be responsible for the maintenance and operation of the Roadway/Bridge Structures.
- EPWater Inspector will work with the CITY Inspector and/or representative and observe and inspect all stormwater, water and sanitary sewer construction work and notify the CITY Inspector and/or representative of any defects and/or deficiencies observed from these activities in timely manner.
- EPWater Inspector and Project Manager will verify the monthly estimate for payment of water and sewer improvements installed on the project. EPWater Project Manager will provide electronic agreement on pay applications to the CITY.
- EPWater Project Manager will advise CITY of work that EPWater determines should be corrected or rejected.
- CITY will provide EPWater Project Manager with all approved submittals regarding stormwater, water, and sewer improvements prior to beginning of installation of the specified work. Should any changes to submittals be requested by the contractor, CITY shall coordinate with EPWater-Project Manager for approval.
- CITY will include and EPWater Project Manager and Inspector will attend weekly construction meetings as requested by CID or its representative.
- CITY will coordinate with EPWater Project Manager to review, negotiate, and approve all field changes and official change orders that modify the design drawings or specifications. Any changes to stormwater, water and sewer infrastructure will require EPWater Project Manager written approval. EPWater agrees to review and either approve or disapprove justification for these estimates after receipt from the CITY in a timely manner.
- EPWater Inspector, Project Manager and Operations Staff will attend walk-thru inspections for the project's final completion and create a punch list of observed items requiring completion or correction for stormwater improvements and provide to the CITY.
- EPWater will assume all responsibility for the maintenance of the new/improved water and stormwater infrastructure after CITY's final acceptance of the project.
- CITY will provide copies of final completion certificates and as-builts to EPWater.

EXHIBIT C

						International Eagle Enterprises, Inc.	
						El Paso, TX BIDDER 1 OF 3	
NO.	ITEM-CODE		BRIEF DESCRIPTION OF ITEM	UNIT	APPROX. QTY.	UNIT PRICE	TOTAL AMOUNT
	ITEM NO.	S.P. NO.					
BASE BID II							
1	402	6001	TRENCH EXCAVATION PROTECTION	LF	428	\$10.00	\$4,280.00
2	7016	6004	WATER MAIN PVC (C-900) 8-INCH	LF	315	\$74.00	\$23,310.00
3	7016	6009	WATER MAIN(DIP)(PC 350)(8")	LF	113	\$145.00	\$16,385.00
4	7016	6019	ABAND/FILL EXIST WATER PIPE (8")	LF	317	\$25.00	\$7,925.00
5	7016	6033	ADDITIONAL FITTINGS	LB	500	\$11.00	\$5,500.00
6	7016	6034	WATER SERVICE RPL & RECON (3/4")	EA	1	\$1,400.00	\$1,400.00
7	0	0	0	0	0	\$0.00	\$0.00
SUM TOTAL BASE BID II; Items 1 – 7:							\$58,800.00

EXHIBIT D

						International Eagle Enterprises, Inc.	
						El Paso, TX BIDDER 1 OF 3	
NO.	ITEM-CODE		BRIEF DESCRIPTION OF ITEM	UNIT	APPROX. QTY.	UNIT PRICE	TOTAL AMOUNT
	ITEM NO.	S.P. NO.					
BASE BID III (EPWU FUNDING) UNIT PRICE SCHEDULE							
1	7016	6061	SAN SEWER MANHOLE (48 IN)(6FT)	EA	2	\$4,100.00	\$8,200.00
2	7016	6071	ABAND/FILL EXIST SAN SEWER PIPE (8")	LF	46	\$32.00	\$1,472.00
3	7016	6073	ABAND/FILL EXIST SAN SEWER PIPE (12")	LF	58	\$32.00	\$1,856.00
SUM TOTAL BASE BID III; Items 1 – 3:							\$11,528.00

EXHIBIT E

						International Eagle Enterprises, Inc.	
						El Paso, TX BIDDER 1 OF 3	
NO.	ITEM-CODE		BRIEF DESCRIPTION OF ITEM	UNIT	APPROX. QTY.	UNIT PRICE	TOTAL AMOUNT
	ITEM NO.	S.P. NO.					
BASE BID UNIT PRICE SCHEDULE - TXDOT							
1	100	6002	PREPARING ROW	STA	7.00	\$1,000.00	\$7,000.00
2	100	6004	PREPARING ROW(TREE)(12" TO 24" DIA)	EA	1.00	\$500.00	\$500.00
3	104	6009	REMOVING CONC (RIPRAP)	SY	804.00	\$12.00	\$9,648.00
4	104	6011	REMOVING CONC (MEDIANS)	SY	338.00	\$10.00	\$3,380.00
5	104	6015	REMOVING CONC (SIDEWALKS)	SY	379.00	\$10.00	\$3,790.00
6	104	6017	REMOVING CONC (DRIVEWAYS)	SY	316.00	\$13.00	\$4,108.00
7	104	6027	REMOVING CONC (APPR SLAB)	SY	236.00	\$35.00	\$8,260.00
8	104	6029	REMOVING CONC (CURB OR CURB & GUTTER)	LF	1321.00	\$8.00	\$10,568.00
9	104	6032	REMOVING CONC (WHEELCHAIR RAMP)	SY	31.00	\$10.00	\$310.00
10	104	6044	REMOVING CONC (FLUME)	SY	62.00	\$15.00	\$930.00
11	105	6002	REMOVING STAB BASE AND ASPH PAV (2")	SY	213.00	\$8.00	\$1,704.00
12	105	6015	REMOVING STAB BASE & ASPH PAV (8"-10")	SY	3364.00	\$5.00	\$16,820.00
13	110	6001	EXCAVATION (ROADWAY)	CY	604.00	\$13.00	\$7,852.00
14	110	6003	EXCAVATION (SPECIAL)	CY	58.00	\$25.00	\$1,450.00
15	132	6002	EMBANKMENT (FINAL)(DENS CONT)(TY A)	CY	12.00	\$100.00	\$1,200.00
16	247	6230	FLBS (CMP IN PLACE)(TY A GR 1-2)(8")	SY	3075.00	\$15.00	\$46,125.00

17	251	6036	REWORK BS MTL (TY C) (8") (DENS CONT)	SY	3075.00	\$6.00	\$18,450.00
18	310	6006	PRIME COAT (CSS-1H)	GAL	677.00	\$6.00	\$4,062.00
19	400	6005	CEM STABIL BKFL	CY	253.00	\$105.00	\$26,565.00
20	403	6001	TEMPORARY SPL SHORING	SF	77.00	\$15.00	\$1,155.00
21	416	6004	DRILL SHAFT (36 IN)	LF	990.00	\$230.00	\$227,700.00
22	416	6031	DRILL SHAFT (TRF SIG POLE) (30 IN)	LF	10.00	\$320.00	\$3,200.00
23	416	6032	DRILL SHAFT (TRF SIG POLE) (36 IN)	LF	12.00	\$340.00	\$4,080.00
24	420	6014	CL C CONC (ABUT)(HPC)	CY	81.00	\$750.00	\$60,750.00

25	422	6002	REINF CONC SLAB (HPC)	SF	4877.00	\$21.00	\$102,417.00
26	422	6014	BRIDGE SIDEWALK (HPC)	SF	550.00	\$7.00	\$3,850.00
27	422	6016	APPROACH SLAB (HPC)	CY	142.00	\$635.00	\$90,170.00
28	425	6020	PRESTR CONC BOX BEAM (5XB20)	LF	605.00	\$280.00	\$169,400.00
29	432	6006	RIPRAP (CONC)(CL B)	CY	196.00	\$350.00	\$68,600.00
30	432	6008	RIPRAP (CONC)(CL B)(RR8&RR9)	CY	21.00	\$350.00	\$7,350.00
31	432	6044	RIPRAP (CONC)(FLUME)	CY	17.00	\$380.00	\$6,460.00
32	442	6007	STR STEEL (MISC NON - BRIDGE)	LB	3020.00	\$6.00	\$18,120.00

33	450	6031	RAIL (TY C221)(HPC)	LF	110.00	\$75.00	\$8,250.00
34	454	6018	SEALED EXPANSION JOINT (4 IN) (SEJ - M)	LF	1178.00	\$5.00	\$5,890.00
35	479	6005	ADJUSTING MANHOLES (WATER VALVE BOX)	EA	5.00	\$800.00	\$4,000.00
36	496	6009	REMOV STR (BRIDGE 0 - 99 FT LENGTH)	EA	1.00	\$40,000.00	\$40,000.00
37	496	6032	REMOV STR (ROCKWALL)	EA	1.00	\$1,500.00	\$1,500.00
38	496	6099	REMOVE STR (RAIL)	LF	8.00	\$20.00	\$160.00
39	500	6001	MOBILIZATION	LS	1.00	\$40,000.00	\$40,000.00
40	502	6001	BARRICADES, SIGNS AND TRAFFIC HANDLING	MO	9.00	\$10,000.00	\$90,000.00
41	506	6001	ROCK FILTER DAMS (INSTALL) (TY 1)	LF	12.00	\$120.00	\$1,440.00
42	506	6011	ROCK FILTER DAMS (REMOVE)	LF	12.00	\$15.00	\$180.00
43	506	6020	CONSTRUCTION EXITS (INSTALL) (TY 1)	SY	156.00	\$25.00	\$3,900.00
44	506	6024	CONSTRUCTION EXITS (REMOVE)	SY	156.00	\$10.00	\$1,560.00
45	506	6035	SANDBAGS FOR EROSION CONTROL	EA	5.00	\$10.00	\$50.00
46	506	6038	TEMP SEDMT CONT FENCE (INSTALL)	LF	284.00	\$4.20	\$1,192.80
47	506	6039	TEMP SEDMT CONT FENCE (REMOVE)	LF	284.00	\$1.00	\$284.00
48	506	6040	BIODEG EROSN CONT LOGS (INSTL) (8")	LF	40.00	\$15.00	\$600.00

49	506	6043	BIODEG EROSN CONT LOGS (REMOVE)	LF	40.00	\$1.00	\$40.00
50	512	6029	PORT CTB (MOVE)(F- SHAPE)(TY 1)	LF	360.00	\$5.00	\$1,800.00
51	512	6053	PORT CTB (REMOVE)(F- SHAPE)(TY 1)	LF	600.00	\$15.00	\$9,000.00
52	512	6067	PTB (FRN&INSTL)(F SHAPE)(TY 1) OR (STL)	LF	600.00	\$50.00	\$30,000.00
53	529	6008	CONC CURB & GUTTER (TY II)	LF	1063.00	\$14.00	\$14,882.00
54	529	6013	CONC CURB (SPECIAL) (TYPE II)	LF	195.00	\$11.00	\$2,145.00
55	530	6004	DRIVEWAYS (CONC)	SY	329.00	\$40.00	\$13,160.00
56	531	6001	CONC SIDEWALKS (4")	SY	339.00	\$31.00	\$10,509.00
57	531	6034	CURB RAMPS (TY 7)(MOD)	EA	1.00	\$1,100.00	\$1,100.00
58	531	6036	CURB RAMPS (TY 2)(MOD)	EA	1.00	\$1,100.00	\$1,100.00
59	531	6040	CURB RAMPS (TY 2)(MOD)	EA	2.00	\$1,100.00	\$2,200.00
60	531	6054	CURB RAMPS (TY 21) (MOD)	EA	2.00	\$1,200.00	\$2,400.00
61	536	6002	CONC MEDIAN (NOSE)	SY	327.00	\$36.00	\$11,772.00
62	536	6005	CONC MEDIAN	SY	25.00	\$50.00	\$1,250.00
63	542	6001	REMOVE METAL BEAM GUARD FENCE	LF	26.00	\$5.00	\$130.00
64	545	6003	CRASH CUSH ATTEN (MOVE & RESET)	EA	1.00	\$800.00	\$800.00

65	545	6005	CRASH CUSH ATTEN (REMOVE)	EA	2.00	\$800.00	\$1,600.00
66	545	6012	CRASH CUSH ATTEN (INSTL)(R)(N)(TL2)	EA	2.00	\$15,000.00	\$30,000.00
67	610	6004	RELOCATE RD IL ASM (TRANS- BASE)	EA	1.00	\$1,300.00	\$1,300.00
68	618	6023	CONDT (PVC) (SCH 40) (2")	LF	410.00	\$14.00	\$5,740.00
69	618	6024	CONDT (PVC) (SCH 40) (2") (BORE)	LF	255.00	\$25.00	\$6,375.00
70	618	6029	CONDT (PVC) (SCH 40) (3")	LF	15.00	\$28.00	\$420.00
71	618	6030	CONDT (PVC) (SCH 40) (3") (BORE)	LF	110.00	\$31.00	\$3,410.00
72	618	6033	CONDT (PVC) (SCH 40) (4")	LF	95.00	\$23.00	\$2,185.00
73	618	6034	CONDT (PVC) (SCH 40) (4") (BORE)	LF	100.00	\$34.00	\$3,400.00
74	620	6010	ELEC CONDR (NO.6) INSULATED	LF	1095.00	\$3.75	\$4,106.25
75	624	6001	GROUND BOX TY A (122311)	EA	1.00	\$1,100.00	\$1,100.00
76	624	6010	GROUND BOX TY D (162922)W/APRON	EA	9.00	\$1,480.00	\$13,320.00
77	624	6028	REMOVE GROUND BOX	EA	9.00	\$300.00	\$2,700.00
78	644	6068	RELOCATE SM RD SN SUP&AM TY 10BWG	EA	5.00	\$800.00	\$4,000.00
79	644	6076	REMOVE SM RD SN SUP&AM	EA	2.00	\$300.00	\$600.00
80	662	6060	WK ZN PAV MRK REMOV (W)4"(BRK)	LF	420.00	\$2.25	\$945.00

81	662	6061	WK ZN PAV MRK REMOV (W)4"(DOT)	LF	102.00	\$2.25	\$229.50
82	662	6063	WK ZN PAV MRK REMOV (W)4"(SLD)	LF	3308.00	\$2.25	\$7,443.00
83	662	6073	WK ZN PAV MRK REMOV (W)12"(SLD)	LF	200.00	\$8.00	\$1,600.00
84	662	6075	WK ZN PAV MRK REMOV (W)24"(SLD)	LF	211.00	\$10.00	\$2,110.00
85	662	6080	WK ZN PAV MRK REMOV (W)(ARROW)	EA	4.00	\$220.00	\$880.00
86	662	6090	WK ZN PAV MRK REMOV (W)(WORD)	EA	4.00	\$280.00	\$1,120.00
87	662	6094	WK ZN PAV MRK REMOV (Y)4"(DOT)	LF	30.00	\$2.25	\$67.50
88	662	6095	WK ZN PAV MRK REMOV (Y)4"(SLD)	LF	6847.00	\$1.75	\$11,982.25
89	662	6109	WK ZN PAV MRK SHT TERM (TAB)TY W	EA	165.00	\$4.00	\$660.00
90	662	6110	WK ZN PAV MRK SHT TERM (TAB)TY Y	EA	83.00	\$4.00	\$332.00
91	666	6006	REFL PAV MRK TY I (W)4"(DOT)(100MIL)	LF	183.00	\$2.50	\$457.50
92	666	6045	REFL PAV MRK TY I (W)18"(SLD)(100MIL)	LF	448.00	\$8.00	\$3,584.00
93	666	6048	REFL PAV MRK TY I (W)24"(SLD)(100MIL)	LF	141.00	\$10.00	\$1,410.00
94	666	6105	REFL PAV MRK TY I (W)(BIKE ARW)(100MIL)	EA	3.00	\$130.00	\$390.00
95	666	6111	REFL PAV MRK TY I(W)(BIKE SYML)(100MIL)	EA	3.00	\$230.00	\$690.00
96	666	6138	REFL PAV MRK TY I (Y)8"(SLD)(100MIL)	LF	104.00	\$5.00	\$520.00

97	666	6224	PAVEMENT SEALER 4"	LF	125.00	\$5.00	\$625.00
98	666	6225	PAVEMENT SEALER 6"	LF	145.00	\$7.00	\$1,015.00
99	666	6229	PAVEMENT SEALER 18"	LF	135.00	\$6.00	\$810.00
100	666	6230	PAVEMENT SEALER 24"	LF	40.00	\$10.00	\$400.00
101	666	6300	RE PM W/RET REQ TY I (W)4"(BRK)(100MIL)	LF	680.00	\$1.50	\$1,020.00
102	666	6303	RE PM W/RET REQ TY I (W)4"(SLD)(100MIL)	LF	570.00	\$1.50	\$855.00
103	666	6309	RE PM W/RET REQ TY I (W)6"(SLD)(100MIL)	LF	891.00	\$2.00	\$1,782.00
104	666	6312	RE PM W/RET REQ TY I (Y)4"(BRK)(100MIL)	LF	205.00	\$2.00	\$410.00
105	666	6315	RE PM W/RET REQ TY I (Y)4"(SLD)(100MIL)	LF	822.00	\$2.00	\$1,644.00
106	677	6001	ELIM EXT PAV MRK & MRKS (4")	LF	1936.00	\$1.25	\$2,420.00
107	677	6005	ELIM EXT PAV MRK & MRKS (12")	LF	286.00	\$4.00	\$1,144.00
108	677	6021	ELIM EXT PAV MRK & MRKS (JIGGLE)	EA	100.00	\$10.00	\$1,000.00
109	680	6011	INSTALL HWY TRF SIG (UPGRADE)	EA	1.00	\$7,000.00	\$7,000.00
110	681	6001	TEMP TRAF SIGNALS	EA	1.00	\$25,000.00	\$25,000.00
111	682	6018	PED SIG SEC (LED)(COUNTDOWN)	EA	4.00	\$600.00	\$2,400.00
112	684	6007	TRF SIG CBL (TY A)(12 AWG)(2 CONDR)	LF	1567.00	\$4.50	\$7,051.50

113	684	6010	TRF SIG CBL (TY A)(12 AWG)(5 CONDR)	LF	2275.00	\$5.50	\$12,512.50
114	684	6012	TRF SIG CBL (TY A)(12 AWG)(7 CONDR)	LF	597.00	\$6.00	\$3,582.00
115	684	6017	TRF SIG CBL (TY A)(12 AWG)(12 CONDR)	LF	567.00	\$10.00	\$5,670.00
116	686	6282	RELOC TRF SG PL AM(S)SNGL MST ARM POLE	EA	2.00	\$3,500.00	\$7,000.00
117	687	6001	PED POLE ASSEMBLY	EA	5.00	\$2,600.00	\$13,000.00
118	688	6001	PED DETECT PUSH BUTTON (APS)	EA	6.00	\$950.00	\$5,700.00
119	690	6001	REMOVAL OF CONDUIT	LF	298.00	\$6.00	\$1,788.00
120	690	6030	REMOVAL OF PEDESTRIAN PUSH BUTTONS	EA	4.00	\$180.00	\$720.00
121	690	6089	REMOVE PED POLE ASSM	EA	1.00	\$1,800.00	\$1,800.00
122	3076	6031	D-GR HMA TY-C PG76-22	TON	542.00	\$100.00	\$54,200.00
123	5009	6001	STONE MASONRY (ROCK WALL)	CY	20.00	\$300.00	\$6,000.00
124	5094	6001	AESTHETIC FENCE (CRIMPED)	LF	106.00	\$350.00	\$37,100.00
125	6001	6002	PORTABLE CHANGEABLE MESSAGE SIGN	EA	1.00	\$8,000.00	\$8,000.00
126	6016	6013	ITS MULTI-DUCT CND (RMC)	LF	75.00	\$190.00	\$14,250.00
127	6306	6001	VIVDS PROSR SYS	EA	1.00	\$7,300.00	\$7,300.00
128	6306	6002	VIVDS CAM ASSY FXD LNS	EA	2.00	\$2,400.00	\$4,800.00

129	6306	6005	VIVDS CNTRL SOFTWARE	EA	1.00	\$700.00	\$700.00
130	6306	6007	VIVDS CABLING	LF	595.00	\$3.25	\$1,933.75
SUM TOTAL BASE BID I; Items 1 – 130:							\$1,592,578.55



File #: 22-20, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Public Health, Angela Mora, (915) 212-6502

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

That the Mayor be authorized to sign a Third Amendment to the Interlocal Agreement for Shared Laboratory Services by and between the City of El Paso ("City"), a home rule municipal corporation, and El Paso County Hospital District d/b/a University Medical Center of El Paso ("UMC"), to add a provision to the Interlocal whereby UMC shall provide chest x-ray services to patients referred by the City.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE:
PUBLIC HEARING DATE:

CONTACT PERSON(S) NAME AND PHONE NUMBER:

DISTRICT(S) AFFECTED:

STRATEGIC GOAL:

SUBGOAL:

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ___ YES ___ NO

PRIMARY DEPARTMENT:

SECONDARY DEPARTMENT:

*******REQUIRED AUTHORIZATION*******

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Third Amendment to the Interlocal Agreement for Shared Laboratory Services by and between the City of El Paso ("City"), a home rule municipal corporation, and El Paso County Hospital District d/b/a University Medical Center of El Paso ("UMC"), to add a provision to the Interlocal whereby UMC shall provide chest x-ray services to patients referred by the City.

APPROVED THIS ___ DAY OF _____, 202__.

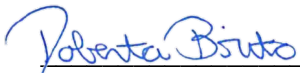
CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

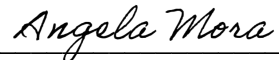
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



Angela Mora, Director
Public Health Department

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

**THIRD AMENDMENT
INTERLOCAL AGREEMENT FOR
SHARED LABORATORY SERVICES**

This Third Amendment to the Interlocal Agreement for Shared Laboratory Services is made by and between the City of El Paso, a Texas municipal corporation (the “*City*”), and El Paso County Hospital District d/b/a University Medical Center of El Paso (“*UMC*”).

WHEREAS, on September 3, 2019, the parties entered into an Interlocal Agreement (the “Agreement”) to share laboratory testing services through the use of request orders; and

WHEREAS, on August 18, 2020 the parties entered into a First Amendment of the Agreement in order to increase the not-to-exceed amount of the Agreement; and

WHEREAS, on December 8, 2020 the parties entered into a Second Amendment of the Agreement to increase the not-to-exceed amount of the Agreement; and

WHEREAS, the parties desire to enter into a Third Amendment for UMC to provide chest x-ray services for patients referred by the City.

NOW THEREFORE, in consideration of the mutual promises set forth in this Third Amendment and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Paragraph 2.0 (Scope of Services) is amended to add the following Subparagraphs 2.2.1; 2.2.2; and 2.2.3:

2.2.1 **X-Ray Services.** When presented with a request order, UMC shall provide chest x-ray services to patients referred by the City to UMC. Chest x-ray services shall include one (1) chest x-ray image and a radiologist interpretation of the image.

2.2.2 **Location of X-Ray Services.** X-ray services shall be performed by UMC at the following locations:

University Medical Center
Main Campus
4815 Alameda Ave.
El Paso, Texas 79905

UMC – East
1521 Joe Battle Blvd.
El Paso, Texas 79936

UMC- Northeast
9839 Kenworthy St.
El Paso, Texas 79924

UMC – West
6600 N. Desert Blvd
El Paso, Texas 79912

2.2.3 **Payments to UMC for X-Ray Services.** The City will pay UMC for each chest x-ray service provided. Each chest x-ray service, which includes one (1) chest x-ray image and a radiologist interpretation of the image, shall be paid in accordance with the lab fee established in Appendix “A”.

2. Appendix “A” of the Agreement is hereby amended to add the following UMC lab fees:

HCPCS	RATE2019	TEST CODE	NAME
71045	\$36.00	26801936	CHEST 1 VIEW
71046	\$36.00	26801951	CHEST 2 VIEW

3. **Terms and Conditions.** All terms and conditions of the Agreement and all subsequent Amendments thereto, except as herein revised, shall remain in full force and effect.
4. **Effective Date.** This Third Amendment becomes effective on the date provided by the City on the signature page.

(Signatures on Following Page)

IN WITNESS WHEREOF, this Third Amendment to the Interlocal Agreement has been executed by the parties reflected on the signatures below.

THE CITY OF EL PASO


Oscar Leeser
Mayor

Date: _____

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



Angela Mora, Director
Public Health Department


d/b/a

**EL PASO COUNTY HOSPITAL DISTRICT
UNIVERSITY MEDICAL CENTER OF EL
PASO:**



R. Jacob Cintron
President & Chief Executive Officer

REVIEWED BY LEGAL DEPT.:



Gabriella Reed, Attorney



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-57, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

Please choose District and Department from drop down menu. Please post exactly as example below.

No Title's, No emails. Please use ARIAL 10 Font.

Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Leticia Arreola to the Civil Service Commission by Representative Cassandra Hernandez, District 3.

DATE: 1.7.22

TO: City Clerk

FROM: City Representative Cassandra Hernandez

ADDRESS: 300 N. Campbell TELEPHONE 915.212.0003

Please place the following item on the (Check one): CONSENT X REGULAR _____

Agenda for the Council Meeting of January 19, 2022

Reappointment of Leticia Arreola to the Civil Service Commission by Representative

Item should read as follows: Cassandra Hernandez, District #3

BOARD COMMITTEE/COMMISSION APPOINTMENT/REAPPOINTMENT FORM

NAME OF BOARD/COMMITTEE/COMMISSION: Civil Service Commission

NOMINATED BY: City Representative Cassandra Hernandez DISTRICT: 3

NAME OF APPOINTEE Leticia Arreola
(Please verify correct spelling of name)

E-MAIL ADDRESS: _____

BUSINESS ADDRESS: _____

CITY: _____ ST: _____ ZIP: _____ PHONE: _____

HOME ADDRESS: _____

CITY: _____ ST: _____ ZIP: _____ PHONE: _____

DOES THE PROPOSED APPOINTEE HAVE A RELATIVE WORKING FOR THE CITY? YES: ____ NO X

IF SO, PLEASE PROVIDE HIS OR HER NAME, CITY POSITION AND RELATIONSHIP TO THE PROPOSED

APPOINTEE: N/A

HAS APPOINTEE BEEN A MEMBER OF OTHER CITY BOARDS/COMMISSIONS/COMMITTEES? IF SO, PLEASE PROVIDE NAMES AND DATES: NO

LIST ALL REAL ESTATE OWNED BY APPOINTEE IN EL PASO COUNTY (BY ADDRESS):

WHO WAS THE LAST PERSON TO HAVE HELD THIS POSITION BEFORE IT BECAME VACANT?

NAME OF INCUMBENT: Leticia Arreola

EXPIRATION DATE OF INCUMBENT: 1.31.22

REASON PERSON IS NO LONGER IN OFFICE (CHECK ONE): TERM EXPIRED: X
RESIGNED _____
REMOVED _____

DATE OF APPOINTMENT: 1.19.22

TERM BEGINS ON : 2.1.22

EXPIRATION DATE OF NEW APPOINTEE: 1.31.25

PLEASE CHECK ONE OF THE FOLLOWING: 1st TERM: _____
2nd TERM: X
UNEXPIRED TERM: _____



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-53, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

Please choose District and Department from drop down menu. Please post exactly as example below.

No Title's, No emails. Please use ARIAL 10 Font.

Members of the City Council, Representative Aleksandra Annello, (915) 212-0002

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Adrian Morales as an Alternate Member to the Zoning Board of Adjustment by Representative Aleksandra Annello, District 2.

DATE: 1.6.22

TO: City Clerk

FROM: City Representative Aleksandra Annelo

ADDRESS: 300 N. Campbell TELEPHONE 915-212-0002

Please place the following item on the (Check one): CONSENT XXX REGULAR _____

Agenda for the Council Meeting of January 19, 2022

Appointment of Adrian Morales as an Alternate Member to the Zoning Board of Adjustment by
Item should read as follows: City Representative Aleksandra Annelo.

BOARD COMMITTEE/COMMISSION APPOINTMENT/REAPPOINTMENT FORM

NAME OF BOARD/COMMITTEE/COMMISSION: Zoning Board of Adjustment

NOMINATED BY: City Representative Aleksandra Annelo DISTRICT: Two

NAME OF APPOINTEE Adrian Morales
(Please verify correct spelling of name)

E-MAIL ADDRESS: _____

BUSINESS ADDRESS: _____

CITY: _____ ST: _____ ZIP: _____ PHONE: _____

HOME ADDRESS: _____

CITY: _____ ST: _____ ZIP: _____ PHONE: _____

DOES THE PROPOSED APPOINTEE HAVE A RELATIVE WORKING FOR THE CITY? YES: ___ NO X

IF SO, PLEASE PROVIDE HIS OR HER NAME, CITY POSITION AND RELATIONSHIP TO THE PROPOSED APPOINTEE:

LIST ALL REAL ESTATE OWNED BY APPOINTEE IN EL PASO COUNTY (BY ADDRESS): N/A
HAS APPOINTEE BEEN A MEMBER OF OTHER CITY BOARDS/COMMISSIONS/COMMITTEES? IF SO, PLEASE PROVIDE NAMES AND DATES: N/A

WHO WAS THE LAST PERSON TO HAVE HELD THIS POSITION BEFORE IT BECAME VACANT?

NAME OF INCUMBENT: Jose Gutierrez

EXPIRATION DATE OF INCUMBENT: 10/1/21

REASON PERSON IS NO LONGER IN OFFICE (CHECK ONE): TERM EXPIRED: X
RESIGNED _____
REMOVED _____

DATE OF APPOINTMENT: 1/19/22

TERM BEGINS ON : 10/02/21

EXPIRATION DATE OF NEW APPOINTEE: 10/1/23

PLEASE CHECK ONE OF THE FOLLOWING: 1st TERM: X

2nd TERM: _____

UNEXPIRED TERM: _____

Adrian Morales

EDUCATION

Graduate School

TEXAS WOMAN'S UNIVERSITY (TWU). Master of Arts in Sociology (Criminology Concentration). **Enrolled:** Spring, 2022; **Expected:** 2025.

UNIVERSITY OF NORTH TEXAS (UNT), College of Education, Denton, Texas. Master of Education with an Emphasis in General Administration. **Enrolled:** Fall, 2019; **Received:** Fall 2021.

UNIVERSITY OF NORTH TEXAS (UNT), School of Library and Information Sciences, Denton, Texas. Graduate Academic Provisional Certification in Archival Management. **Enrolled:** 06/2016; **Received:** 06/2017.

UNIVERSITY OF NORTH TEXAS (UNT), School of Library and Information Sciences, Denton, Texas. School Library Certification program.
Note: Afterwards, I took, and passed, the Texas Examinations of Educator Standards™ (TEXES™) Program School Librarian (150) exam. **Enrolled:** 08/2013; **Completed:** 08/2014.

UNIVERSITY OF NORTH TEXAS (UNT), School of Library and Information Sciences, Denton, Texas. Masters of Library and Information Science. **Received:** 06/2009.

Undergraduate

UNIVERSITY OF TEXAS, EL PASO (UTEP), El Paso, Texas. Bachelors of Fine Arts in Art. **Received:** 05/2007.

Licenses/Certifications

Certified Archivist (Provisional Certification):

ACADEMY OF CERTIFIED ARCHIVIST (ACA). Provisional Certification in Archival Management (Exam date: July 26, 2017). **Received:** 06/2017. **Certificate Expiration Date:** 06/2020.

Texas Teacher Certification:

TEACHERS FOR THE 21st CENTURY- ALTERNATIVE CERTIFICATION PROGRAM. **Enrolled:** 02/2013; **Completed:** 05/2015.

Certification Areas: Art, Early Childhood- 12th Grade; Generalist, Early Childhood-6th Grade.

Effective Date: 05/11/2015; **Expiration Date:** 05/31/2020.
English as a Second Language (ESL) Supplemental, EC- 12th Grade.
Effective Date: 02/13/2016; **Expiration Date:** 05/31/2020.

Student teaching: El Paso Independent School District, Crockett Elementary School, 4th grade.
02/09/2015 - 05/08/2015.

Work Experience

El Paso Community College, Valle Verde Campus Library. *Librarian, Assistant Professor.*

Essential functions include: 1. Providing classroom and individual instruction in library research skills to students and College community; 2. Assisting in the selection of library materials for the district through consultation with faculty members, Deans and other College staff; 3. Assisting in the development and utilization of library research guides and supplemental instructional aids that will facilitate the use of library resources for students, faculty and other staff as determined by College needs; 4. Maintaining records in his/her area of responsibility as deemed necessary for the College library; 5. Posting and maintaining library duty and office hours as per instructional guidelines; 6. Making provisions for students to evaluate instruction and/or orientation and submitting evaluations to designated office; 7. Contributing to the governance of the College through active service on committees and through participation in meetings; 8. Participating in faculty orientation sessions and professional development seminars and activities to enhance professional development; accepting the responsibility for professional awareness and growth; 9. Maintaining liaison with other faculty to provide information on library services, materials and procedures; maintaining liaison with local institutions and organizations; 10. Participating in all areas of divisional and departmental responsibility such as proposing programs, projects and exhibiting leadership in their implementation; participating on committee in an effective, timely manner; working with other faculty to accomplish the goals of the department, division and College; attend all scheduled library and division activities held during the academic year; and 11. Performing all other duties appropriate to this position as assigned or directed. Post Covid-19: Online instruction through Blackboard Collaborate Ultra; video production (using Powerpoint, Zoom, Youtube, and other tools).

Dates of employment: 08/20/2018 - Present.

Hours worked per week: 40

El Paso Independent School District (EPISD). *Dual language teacher:* involved working with a counterpart to teach culturally and linguistically diverse students the basics in English and Spanish (reading, science, math, etc.) supporting their dominant language to develop literacy skills, which are then transferred to their second language: English. This position started in second grade, and then the section closed due to low enrollment in September. I was then moved to kinder.

Kindergarten teacher: involved collaborating with grade level instruction team to create lesson guides for all subjects taught (math, writing, reading, science, and social studies). The components of teaching included technology (ClassDojo for classroom management/morale; Epic!, for assessing reading and providing students with e-books and audio books; Seesaw, an app for measuring reading and math skills; and various websites for assessing reading, writing, listening, and math skills: Starfall, Peep and the Big Wide World, Prodigy, ABCya!); setting up learning centers (these are stations that require hands-on learning with instructional manipulatives, and sometimes technology, and are used to mold self-directed learners, having

specific learning objectives; e.g.: sort the short-a and long-a illustrated cards.); guided math and guided reading (basically, timed activities to involve the student through a daily routine of listening, speaking, reading and writing).

Dates of employment: 08/14/2017 - 11/01/2017.
Hours worked per week: 40

University of Texas at El Paso (UTEP)- Library. *Reference Librarian- Instruction.* Main duties included: 1) Library instruction (developing lesson plans to teach transferable skills such as analyzing texts and arguments, and procedural knowledge such as navigating databases; building libguides on various topics; using OfficeMix to create instructional videos; hosting webinars through Blackboard Collaborate; working with staff/faculty to team-teach; and more); 2) Collections development for assigned subjects: Communications, English, Chicano Studies, Film (which involved handling/ monitoring fund allocations for these and placing orders through book vendor: GOBI); 3) Reference work (involved working with the public, students and UTEP staff/faculty, in person and electronically via email and instant messaging); 4) Miscellaneous: giving library tours; making closed-captioned library videos, disseminating information associated with public/patron services, weeding, etc.

Dates of employment: 06/1/2015 - 2008/10/2017.
Hours worked per week: 40

El Paso Independent School District (EPISD). *Substitute Librarian.* Standard daily procedures involved: opening/closing-up library; processing interlibrary loans and acquisitioning magazines into the collection; checking out books to students and storytime readings for grades pre-k through 5th.

Teaching duties involved following curriculum and collaborating with teachers to deliver timely, relevant lessons

Dates of employment: 02/2014 - 05/2014.
Hours worked per week: 40

St Clements, Elementary and Middle School. *Substitute Work.* I substituted for a teacher when needed/available.

Dates of employment: 05/2013 - 08/2014.
Hours worked per week: 40

El Paso Museum of Art (EPMA). *Library Operations Coordinator* (contract position). Position involved meeting a series of benchmarks as stated in a two year Institute of Museums and Library Services operational grant, which included: organizing and copy-cataloging collection of books and art catalogs using Library of Congress classification system with OCLC, Horizon, and Symphony WorkFlows; developing a collections development policy; booking El Paso Public Libraries (EPPL) to host EPMA traveling art exhibitions; managing EPMA's ongoing World Cinema Series; working with El Paso Public Library to cross-promote events and meet project goals; setting up an intra-library loan agreement with EPPL; opening the EPMA Algur H. Meadows Library to the public; daily library operations; and processing donations.

Dates of employment: 02/13/2012 - 02/28/2013.
Hours worked per week: 40

U.S. Army Sergeants Major Academy (USASMA)/Miratek. *Digital Librarian* (contract position). Duties involved selecting and digitizing student-produced content and documents of historical importance to the academy (videos, oral history interviews, slides, photographs, etc.) and uploading these into a digital archive/library. This involved extracting metadata from each

individual document and using ContentDM (digital collection management software) to catalog and upload content into a digital repository, which is public. Besides being solely tasked as the digital librarian, I also provided the military community with reference/research services, as well as processed interlibrary loan requests for staff and students by placing orders through OCLC FirstSearch, (involved processing mail, keeping track of orders/paperwork, and shipping-out requests received from borrowing libraries). Other duties included library services presentations to staff and students, setting up exhibits, and, on occasion, covering daily operations.

Dates of employment: 9/1/2010 - 2/29/2012.

Hours worked per week: 40

University of Texas at El Paso (UTEP) Library. *Archives Assistant*, Special Collections Department. Under the direction of library archivists, this position involved processing two new collections: 1) the Eleanor Duke papers, which pertained to a staff member suing UTEP for gender discrimination when it came time for assigning promotions; and 2) Alvarado vs. El Paso Independent School District, which dealt with parents suing the school district to de-segregate access to education. The process included: arranging the collection into document types, creating an inventory, categorizing materials, developing a descriptive catalog, storing fragile items into acid-free folders and boxes, and shelving the entire collection according to the Library of Congress classification.

Dates of employment: 06/2007 - 11/2007.

Hours worked per week: 19

University of Texas at El Paso (UTEP) Library. *Work-study Library Assistant*, Special Collections Department.

Facilitated access to archival collections by answering phones, attending to the front desk, pulling up electronic records and physical materials for patrons. Preserved photographs from the Casasola Photography Collection by transferring these onto acid-free folders. Helped put up exhibits.

Dates of employment: 02/2007-5/2007.

Hours worked per week: 19

Volunteer Work

BORDER REGIONAL LIBRARY ASSOCIATION (BRLA). *Recording Secretary*. Involved attending monthly meetings of BRLA executive board members and transcribing their dialogue into a manageable transcript – it's then emailed to BRLA members.

01/2010 - 06/2014.

BORDER REGIONAL LIBRARY ASSOCIATION (BRLA). *Downtown Librarians Coordinator*. Position involved scheduling and coordinating monthly luncheons at hosting libraries located in the downtown library region, and sending out electronic invitations to BRLA members and other interested parties.

01/2015 - 2017.

BORDER REGIONAL LIBRARY ASSOCIATION (BRLA). *Southwest Book Awards Committee*. Involved reading and analyzing books for the yearly Southwest Book Awards, which prizes books about the Southwest published each year in any genre (e.g. fiction, nonfiction,

reference) and directed toward any audience (scholarly, popular, children).

01/15-2017 and 08/2018 - 12/2019.

BORDER REGIONAL LIBRARY ASSOCIATION (BRLA). *Corresponding Secretary.*

The Corresponding Secretary conducts the general correspondence of the organization, as directed by the Executive Board, that is, correspondence that is not a function proper to other offices or to committees. The Corresponding Secretary also checks the BRLA post office box, distributes mail, and is responsible for renewing the post office box rental.

07/2018 - 2019.

ILLUSTRATOR- El Paso Women History Coloring book Version 2. I volunteered to work on this project, which involves converting over thirty historic photos into coloring pages (a slow process that is done by hand).

05/02/2019 - April 2020.

Honors and Awards

CIVILIAN OF THE YEAR, RUNNER UP. U.S. Sergeants Major Academy.

12/2010.

LIBRARY LEADERSHIP DEVELOPMENT INSTITUTE, Grow Our Own Area Librarians (GOAL)
Program Scholarship Recipient.

04/2007.

ANNUAL STUDENT SHOW, UTEP, El Paso, Texas, Winner of Outstanding Ceramic Piece Award and Best Figurative Ceramic Sculpture Award.

04/2007.

Web Accessibility Recognition Award from Center for Accommodations and Support Services (CASS) for continued support of students with disabilities.

8/8/2017.

ACRL 2019 Early Career Scholarship- Early-career Librarian Scholarships provide opportunities for academic and research librarians six years or less of post-MLS experience to expand their professional horizons and to update their skills and knowledge by participating in an ACRL professional development experience.

Thursday, December 13, 2018.

Secured a 2019 Early Career Scholarship from the Association of College & Research Libraries (ACRL) to attend their conference in Cleveland, Ohio, this April. ACRL, a division of the American Library Association, develops programs, products, and services to help those working in academic and research libraries learn, innovate, and lead within the academic community. ACRL also established the Framework for Information Literacy for Higher Education, which librarians and/or teachers can utilize to implement information literacy in college/university classrooms.

01/28/2018.

2020 Library Orientation Exchange (LOEX) Underrepresented Groups Scholarship:

covering the costs of registration (and included a small travel stipend) to attend the Conference. Being one of few national conferences specifically about college libraries and library instruction,

attending this will impart knowledge he would not get locally or even at a state conference.
Tuesday, January 28, 2020.
Recipient of Texas Association of Chicanos in Higher Education (TACHE) Emergency Aid

Awarded \$250 each in emergency aid meant to offset the cost of tuition during the current pandemic. 05/2020.

Languages Fluent in English and Spanish.

Library Liaison **Wellness Coordinator-** As the library liaison for the University of Texas at El Paso Wellness Program, I forwarded upcoming events and news (health walk day, weight loss programs and other offers) to the entire library. I also organized health walk teams to compare weight loss goals, and encourages others by sending them tips for stress-management, office exercises, eating tips and so on. 05/2016 - 08/2017.

School Tours Liaison – Liaison to various schools participating in early-college and dual credit programs, based on assigned subjects (e.g., Fire Technology, Careers, Law, etc.) 08/2018 - Present.

Valle Verde Library Liaison – Liaison to various departments, based on assigned subjects (Accounting, Automotive, Business & Business Management, Careers, Economics, Engineering, Fire Technology, Hospitality/Travel; Information Technology Systems; Military Science; Office Administration; Paralegal; Technical Education/ATC Programs; Industry, Manufacturing & Construction.) 08/2018 - Present.

Publications

Password, the Journal of the El Paso County Historical Society. Volume LX, No. 1, Spring 2016. They published a book review I wrote. 2016.

Library Journal. Assigned to read & review *Bonnie Jack* for *Library Journal's* Fiction section. 04/2021.

Library Journal. Assigned to read & review *The Best New True Crime Stories: Well-Mannered Crooks, Rogues & Criminals*, for *Library Journal's* Social Sciences section. 06/2021.

PRESENTATIONS

BRLA Border Regional Library Association (BRLA) Fall Conference, 2018.

Theme: Libraries are the Stars that Light Communities.

Workshop Title: facing the Flood: An Overview of Digital Curation, Preservation, and Disaster Planning.
Description: We live in a world of “big data” and one must sink or swim in the “data deluge.” One cannot keep everything. So, how does one preserve records set aside for future use? This session discusses preservation strategies for digital and non-digital materials held in cultural heritage institutions.

Date: November 10, 2018.

Border Regional Library Association (BRLA) Fall Conference, 2019.

Theme: Librarians are Superheroes!

Workshop Title: Lies, Librarians, and Information Literacy

Description: Students are exposed to "fake news" or alternative facts on a daily basis where information overload is inevitable. Discover how librarians can help your students become independent information seekers.

Date: Saturday, October 26, 2019.

Border Regional Library Association (BRLA) Fall Conference, 2021.

Theme: Fostering Diversity & Inclusion in the Library.

Workshop Title: What Is a Book Club and How Do They Work?

Description: Book clubs are places readers can gather to congregating with friends and colleagues with the same common purpose. Come see how book clubs transform libraries and should be an activity everyone tries at least once in their lives!

Date: Saturday, October 16, 2021.

**EPCC:
Faculty
Development
Week.**

Spring, 2019, January 12-18 - Faculty Development week

Theme: 50 Years of Student Success & Impact

1) Workshop Description: Know your Emergency Exits! **Presenter(s):** Adrian Morales, Caty Valtierra-Piñon, Manuel R. Herrera, Diana J. Medina, and Donna L. Muñoz **Date:** Monday, January 13, 2020 **Time:** 12:00-1:00 p.m. **Campus/Room:** VV/A2114 **Description:** Your day suddenly takes a turn for the worse when a life-threatening incident occurs. You decide to evacuate the building. Time is of the essence here. But where are the exits? What are you going to do? This workshop hopes to equip you with some basic, but crucial, life-saving information. Recent events and headlines are calls for personal initiative.

2) Workshop Description: Select Books with the VV Library Team! **Presenter(s):** Oscar Baeza, Debi Lopez, Caty Piñon, **Adrian Morales**, Rebecca Retana, Astrid Montes, Alma Anchondo, Brenda Ramos, Christiane Gomez, and Sam Ruiz **Date:** Wednesday, January 15, 2020 **Time:** 10:00-12:00 p.m. **Campus/Room:** Fountains of Farah/Barnes & Noble

Fall 2019, August 19-23 - Faculty Development Week

Theme: New Teaching Approaches

1) Workshop Description: Meet and Greet, Eat and Learn about the Valle Verde Library's Many Services **Presenter(s):** Oscar Baeza, **Adrian Morales**, Catalina Valtierra Pinon, Debi Lopez, and Sam Ruiz **Date:** Wednesday, August 21, 2019 **Time:** 10:00-11:30 a.m. **Campus/Room:** C200/VV Library **Description:** Come meet and greet your Valle Verde Librarians and staff! We will be hosting a tour of the library and demonstrating the many services offered to students, staff and faculty. Circulation desk services, reference services, the circulating book collection, reference books, databases and Internet services will all be covered. Classes offered will also be discussed. Snacks and refreshments will be served. **CB Credit:** #5

2) Workshop Description: Lies, Librarians, and Information Literacy **Presenter(s):** Adrian Morales and Caty Valtierra-Piñon **Date:** Monday, August 19, 2019 **Time:** 2:00-3:00 p.m. **Campus/Room:** VV/B161 **Description:** How to decipher information overload by spotting "fake news" and fact-based truths in media outlets. **CB Credit:** #8

Spring 2020, January 13-17 - Faculty Development Week
Theme: Building the Future: Making Every Student Experience Better

1) Workshop Description: Know your Emergency Exits! Presenter(s): Adrian Morales, Caty Valtierra-Piñon, Manuel R. Herrera, Diana J. Medina, and Donna L. Muñoz Date: Monday, January 13, 2020 Time: 12:00-1:00 p.m. Campus/Room: VV/A2114 Description: Your day suddenly takes a turn for the worse when a life-threatening incident occurs. You decide to evacuate the building. Time is of the essence here. But where are the exits? What are you going to do? This workshop hopes to equip you with some basic, but crucial, life-saving information. Recent events and headlines are calls for personal initiative

2) Workshop Description: Interactive Teaching Strategies Learned at the Southwest Seminar Presenter(s): Adrian Morales, Marco Santos, Maria Tobar, and Sandra Cuevas Date: Tuesday, January 14, 2020 Time: 9:00-10:00 a.m. Campus/Room: RG/A245 Description: A multidisciplinary workshop that presents teaching strategies learned from the 31st Annual Southwest Seminar for Great Teaching. The activities involved active learning techniques that enhance critical thinking by motivating the instructor and the student to collaborate in the learning process. The workshop will incorporate the flipped method, games, role-playing, jigsaw technique, project or team-based learning, student resources, and technology into teaching strategies. CB Credit: #7

3) Workshop Description: Select Books with the VV Library Team! Presenter(s): Oscar Baeza, Debi Lopez, Caty Piñon, Adrian Morales, Rebecca Retana, Astrid Montes, Alma Anchondo, Brenda Ramos, Christiane Gomez, and Sam Ruiz Date: Wednesday, January 15, 2020 Time: 10:00-12:00 p.m. Campus/Room: Fountains of Farah/Barnes & Noble Description: Help us build our Valle Verde Library collection. Faculty are welcome to stop by between the hours of 10 a.m. through 12 p.m. and help us shop for books and DVDs for the VV library. Light sweets provided. So come join us for a fun activity. CB Credit: #9Workshop

Fall 2020, August 17-21 - Faculty Development week

Theme: Health and Wellness

1) Workshop Description: Vote for Health and Wellness! Platform: Bb Collaborate For more information/assistance, please contact: Rachel Murphree @ rmurphre@epcc.edu Presenter(s): Rachel Murphree, Rebecca Perales, Adrian Morales, and Blake Klimasara Date: Wednesday, August 19, 2020 Time: 3:00-3:50 p.m. Description: In this epidemic we see that our health and wellness can be affected by those we elect to fund programs for health and wellness. Younger people traditionally vote in lower numbers, and we need to engage our students to vote for the future they want to see. EPCC Libraries have many Deputy Voter Registrars who can register students, and teaching faculty can promote and encourage registration. This workshop will discuss the need for increased participation, brainstorm ways teaching faculty can help, and the current state of vote by mail efforts in Texas and New Mexico. CB Credit: #1

2) Workshop Description: Getting to Know the Valle Verde Library Platform: Bb Collaborate For more information/assistance, please contact: Debi Lopez @ dlope156@epcc.edu Presenter(s): Debi Lopez, Sam Ruiz, Adrian Morales, Oscar Baeza, and Caty Valtierra Piñon Date: Wednesday, August 19, 2020 Time: 10:00-11:00 a.m. Description: Come get to know the Valle Verde Library, its librarians and staff and all the services we have to offer. CB Credit: #8

Spring 2021, January 11- 14- Faculty Development week

Theme: Best practices in the new normal

1) Workshop Description: Reimagining Collaborative Teaching Partnerships in the Age of Social Distancing Platform: Bb Collaborate – Click on the title link above to join session. For more information/assistance, please contact: Adrian Morales at amoral85@epcc.edu Presenter(s): Adrian Morales, Catalina Valtierra Piñon, Debi Lopez, and Oscar Baeza Date: Monday, January 11, 2021 Time: 10:00-10:50 a.m. Description: Are you interested in collaborating with other instructors to innovate impactful lessons for the virtual environment? Want to explore your field's disciplinary discourse or frameworks/standards, seeing how these intersect with those of other fields? Is the scientist in you eager to mix and match pedagogical theory to put into practice? Are you interested in forming co-teaching relationships to promote EPCC's mission and goals, creating a welcoming, equitable student environment? Librarians are your natural allies when it comes to collaborating on instructional design, advocating for student learning and success, developing a welcoming, inclusive culture, assessing student learning, pursuing lifelong learning, and creating virtual teaching content. CB Credit: #7 - Improving teaching performance, including use of active learning strategies

2) Workshop Description: Equity versus Equality in the Classroom Platform: MS Teams – Click on the title link above to join session. For more information/assistance, please contact: Elizabeth Preza at cnunez9@epcc.edu Presenter(s): Miguel Bonilla, Adrian Morales, Elizabeth Preza, and Cristina Sharp Date: Monday, January 11, 2021 Time: 1:00-1:50 p.m. Description: The purpose of this workshop is to share our knowledge of research-based equity interventions. In this session, you will learn unique ways to apply equity in the classroom. Come learn about our experiences in the Fall 2020 Faculty Working Group/Equitable Learning Classrooms Project. CB Credit: #2 - Addressing differences in learning styles of students

Fall, 2021, August 16-20 - Faculty Development week
Theme: Connecting, Teaching, and Learning through a New Normal

1) Workshop Description: Let's Build a Library Guide for your Class(es) Platform: Blackboard – Click on the title link above to join session. For more information/assistance, please contact: Caty Valtierra-Piñón at cpinon14@epcc.edu Presenter(s): Caty Valtierra-Piñón and Adrian Morales Date: Monday, August 16, 2021 Time: 3:00-3:50 p.m. Description: Librarians will create a library guide for your class(es) to find research materials and other needed resources easily accessible in one place located at the EPCC Libraries Website. This on-stop platform can include reliable websites, library catalogs (books/ebooks), databases, tutorials, videos, citation help, and resources to help students with research, class assignments, and projects. CB Credit: CB#10 Providing technical support for the development of courseware & technology-based instructional materials

2) Workshop Description: The ACRL Framework and Classrooms: Two Frames Platform: Blackboard – Click on the title link above to join session. For more information/assistance, please contact: Diana Olivares at dolivar5@epcc.edu Presenter(s): Diana Olivares, Blake Klimasara, and Adrian Morales Date: Wednesday, August 18, 2021 Time: 11:00-12:00 p.m. Description: The Association of College and Research Libraries (ACRL, division of the American Library Association) created a Framework for Information Literacy in Higher Education. This Framework is intended to address the need for enhancing ethical student engagement with information, data, and scholarship in a rapidly evolving landscape. In Part 1, we address two of the six frames: Authority is constructed and contextual and information creation as a process. We will explain how and why these frames are relevant to your library instruction session and seek your input on how we can foster students' development of their information literacy mastery. Everyone is encouraged to bring their ideas and assignments. CB Credit: CB#4 Staying current in academic or technical field, including business & industry partnerships

Spring 2022 Faculty Development Week- January 10-14, 2022
Theme: Moving Forward with Infinite Possibilities

1) Workshop Title: Using Book Clubs for Student Engagement

Date: Monday, 1/10 Time: 10:00:00 AM - 10:50:00 AM

Presenter(s): Adrian Morales and Blake Klimasara

Platform: Blackboard

Online or F2F: Online

F2F Campus/Room Number:

Description: Presenters will share their survey findings into the research literature on book clubs and their experiences as facilitators. Attendees will learn about the different types of literacies and how to configure book clubs to meet certain student population needs. Discussion points include: Why are book clubs necessary? How do we reinforce the curriculum? How do we improve literacy? And other juicy hot topics surrounding censorship and self-censorship.

CB Credit: CB#3 Addressing the needs of special populations including Developmental Education

2) Workshop Title: Let TACHE Help You and Students Move Forward.

Date: Monday, 1/10 Time: 1:00:00 PM - 1:50:00 PM

Presenter(s): Adrian Moralez, Gilbert Silva, Oscar Velasquez, Deborah Santana, Mary Helen Fabela, Oscar Baeza, and Steven Loera

Platform: Blackboard

Online or F2F: Online

F2F Campus/Room Number:

Description: Texas Association of Chicanos in Higher Education (TACHE) is an organization of Chicanos in higher education that has been active since 1974. Meet the Far West Chapter team. Hear about our initiatives to improve the educational and employment opportunities for Chicanos in higher education, our work with local organizations, and recruitment/retention efforts.

GRANTS

IMLS

Institute of Museum and Library Services (IMLS) grant. Data awarded: August 2019. Amount: \$49,913.00. Program: Accelerating Promising Practices for Small Libraries. Program Categories: LG-APP Digital Inclusion. Helped to plan and write a grant to serve elderly population in the community by teaching them information literacy skills.

Description: The Valle Verde campus library of El Paso Community College in Texas seeks to provide digital literacy education to adult senior citizens in and around El Paso County. The program is called *Seniors Going Digital*. The basic digital literacy training will include two-hour training courses. The goal of the project is to introduce senior citizens to everyday computing, tablet and smartphone use. This will help them communicate with their family members, friends and other members of the community and enhance the overall quality of their lives. Each lesson will be taught in both English and Spanish to ensure full participation and remove language barriers.



More information here: https://www.ims.gov/grants/awarded-grants?field_project_type=All&field_institution=&field_city=el+pasos&field_state=340&field_recipient_type=All&search_api_views_fulltext=&search_api_log_number=&field_fiscal_year_text=2019&sort_by=field_fiscal_year_text&=Apply

August 2019- August 2021.

no-cost grant extension **September 20, 2021- March 31, 2022.**

COMMITTEES

EPCC Committees And Sub- Committees.

Critical Thinking Learning Intervention team: This is a Curriculum Committee subcommittee and a response to the Core Wellness check, to investigate the concept of “critical thinking” and interventions. Also, to pursue intervention for Critical Thinking Outcome (Creativity and Innovation essential, Analysis and Evaluation in remote environment essential, Synthesis recommended). Creativity and Innovation are in decline. Request formation of a team to research Teaching and Learning for Creativity/Innovation. Consider intersectional approaches with Communication. Charge team to forward recommendation on the formation of an intervention for the Core Curriculum.

12/02/2021- 8/31/2024.

Curriculum Committee Charge: To review and advise on credit and non-credit curriculum issues—such as program curriculum revision and additions of new programs and new courses—and the content and assessment of the Core Curriculum.

1/2021 - 8/31/2024.

School Tours Liaison. El Paso Community College (EPCC). As the school tour liaison, I work with public school teachers and staff to schedule tour groups with dual-credit and early-college students. I highlight resources to do specific types of assignments, and show them how to research careers.

8/2018 - Present.

"Family-friendly Spaces" Committee. This Faculty Association sub-committee investigated an initiative to create kid-friendly spaces on campus in support of our students who are also parents. It ended in 2020 when a proposal to add childcare facilities at the college required too many factors outside of the scope of the committee to implement.

12/2018-1/2020.

"Family-friendly Spaces" Grant Search Subcommittee. This subcommittee explored grants for incorporating family-spaces in library or college settings.

1/24/2019-1/2020.

Library Instruction Committee. El Paso Community College (EPCC). This committee was formed to evaluate library instruction and create assessments that measure teaching effectiveness. The goal is to prepare for Southern Association of Colleges and Schools (SACS) accreditation in 2023.

11/2019- present.

Library Instruction, ACRL Sub-Committee. El Paso Community College (EPCC). This subcommittee was formed to create some common learning objectives and evaluations for EPCC Libraries, using the Association of College and Research Libraries' Framework for information literacy: <http://www.ala.org/acrl/standards/ilframework>.

05/2020- present.

Quality Enhancement Plan (QEP) Topic Selection Task Force

Charge: to assist in the QEP topic selection. Mission: to determine what to do for our next QEP, based on data analysis, survey results and discussion. During meetings, we analyze data, compose survey questions, analyze the survey data, and participate in organizing and hosting a QEP Town Hall in the fall semester to bring more representatives into this process. This task force appointment is only for one year.

01/20-01/21.

LibGuides Task Force: This EPCC committee is working closely with the EPCC Webmaster to discuss what the EPCC libraries can do to catch up to accessibility standards and laws. Among the issues discussed were: broken links, duplicated and redundant web content, plagiarized or uncited content, outdated information, lack of naming convention standards, and more. Standards pertain to: terminology (Associated Press Stylebook; if a term is not found there, Librarians refer to the American Library Association, which offers several glossaries online); when it comes to web content accessibility guidelines, EPCC follows WCAG 2.0. EPCC also must follow Section 508 Standards for Electronic and Information Technology.

Wednesday, March 11, 2020 – Present.

Online Classroom Evaluation Committee. El Paso Community College (EPCC). This committee was created by the Faculty Senate in April 2019. The proposal is to work on revisions to the existing classroom student evaluation form and to create a process by which we could move the evaluation online (removing the need to consume paper). This work involved working with faculty members and the Institutional Research Department. 9/26/2019 – 01/2020.

Technology Committee Appointment. El Paso Community College (EPCC). This standing committee is tasked with deciding how to spend the technology budget, taking into account the needs and student populations of each campus. 2019-2021.

Valle Verde Community Resource Fair committee. This committee was formed to plan for the Fall Festival, target date of April 10, Saturday. This included creating a logo design (through a contest, which I contributed a design to). The ambiguous status of being on campus or still in lockdown in the Spring required planning for on-campus possibilities and a off-campus, virtual conference.

09/2019- Present.

Faculty Working Group for Equitable Learning. The purpose of the Equitable Learning Classrooms project is to uncover what may or could be working successfully in EPCC classrooms and an examination of the research behind higher measures of student success in courses, programs, and awards. Each participant joined four or five other colleagues to plan and present a session on the Project during Spring Faculty Development Week (January 2021) to recruit and nurture new participating faculty.

09/2019- 12/2020.

All-In Challenge Committee. This mini-committee, put together by the Student Leadership & Campus Life, met in the fall semester to promote the *All In Challenge* project, which aimed to promote voter enrollment and voting among college students. One result of this was a collaborative video from various faculty, staff and students, promoting this program using a script written by one of the members.

Fall, 2020.

ACRL Subcommittee. This committee was formed to explore the ACRL's Framework for Information Literacy for Higher Education. It included 23 Framework Things, which were a series of reading and lesson-planning assignments. Additional topics included pedagogical strategies, assessments. 8/24/2020 - 4/12/2021.

Instruction & Student Success Piper Professor Nominating Committee. Charge: EPCC will nominate an outstanding professor for the Texas Minnie Stevens Piper Professor Award through the President's office of EPCC each year. As such, the winner of EPCC's Piper Professor Award will be the college's nominee for the state-level award the following year.

Dates: 8/30/2021

**Association of College
& Research Libraries
(ACRL) committees**

ACRL Conference Scholarships Committee

Charge: To develop criteria, review applications, and select recipients for conference scholarships as well as plan any supporting event(s) or program(s) to welcome and recognize scholarship recipients during the event.

Member, Term starts on July 1, 2021, and ends on June 30, 2023.

ACRL Conference Poster Sessions Committee.

Charge: To coordinate the call for, review of, and presentation of the poster sessions at the conference.

Term starts on 01-Jul-2021 and ends on 30-Jun-2023.

Member Appointment- Accepted a 2-year member appointment to **ACRL's Student Learning and Information Literacy Committee**. Term starts on 01-Jul-2019 and ends on 30-Jun-2021.

Charge: To oversee and implement ACRL's Student Learning Initiative as described in the strategic plan. Work with the ACRL Board and other ACRL units to create a comprehensive approach to student learning and information literacy efforts including a) promote and facilitate professional development, publications, research, and advocacy related to information literacy and student learning; b) support the development of the ACRL student learning/information literacy website; and c) monitor and assess the effectiveness of the ACRL Student Learning Initiative. <http://www.ala.org/acrl/aboutacrl/directoryofleadership/committees/acr-center>

Member Appointment- Accepted a 2-year member appointment to **ACRL's Academic/Research Librarian of the Year Award Committee**.

Term starts on 01-Jul-2019 and ends on 30-Jun-2021.

(Chair, July 1, 2021, to June 30, 2022).

Charge: Solicit nominations, market the availability of the award to the academic library community, facilitate the completion of the nomination process, select the award winner, monitor nomination pools and nomination updates, and recommend changes to award web site information. <http://www.ala.org/acrl/aboutacrl/directoryofleadership/committees/acr-awacadres>

Member Appointment- Accepted a 2-year member appointment to ACRL's "Resources for College Libraries" Editorial Board. Term starts on 01-Jul-19 and ends on 30-Jun-21. (Member, July 1, 2021, to June 30, 2023)

Charge: The editorial board serves in an advisory capacity to the editor on the contents of the journal issues, and board members form the core of referees, reviewing manuscripts submitted for possible publication.

Member Appointment- Joined the Systematic Reviews and Related Methods Interest Group in June, 2018.

Charge: To promote and develop competencies around systematic reviews, meta-analyses, scoping reviews, and other related methods of research synthesis, through activities such as: Facilitating discussion and peer-support; Creating and managing a resource page; Encouraging programming and publications around systematic reviews through ACRL.

Member Appointment- Accepted a 2-year member appointment to

Vice-Chair appointment for ACRL Academic/Research Librarian of the Year Award.

Term starts on 01-Jul-2020 and ends on 30-Jun-2021.

Charge: Solicit nominations, market the availability of the award to the academic library community, facilitate the completion of the nomination process, select the award winner, monitor nomination pools and nomination updates, and recommend changes to award web site information. <http://www.ala.org/acrl/aboutacrl/directoryofleadership/committees/acr-awacadres>

Term starts on 01-Jul-2019 and ends on 30-Jun-2021.

Chair for the ACRL Academic/Research Librarian of the Year Award Committee

Term starts on 01-Jul-2021 and ends on 30-Jun-2022.

Charge: ACRL's Awards program will be on hold for the 2021-2022 award season, during which time nominations will not be accepted or juried and no recipients will be chosen for any ACRL awards. Entailed writing a Year-end Report and annual Work Plan, to align with the [ACRL Plan for Excellence](#).

Regional and State Committees

Border Regional Library Association (BRLA) Southwest Book Awards Committee (SWBA). Involves reading and analyzing books for the yearly Southwest Book Awards, which prizes books about the Southwest published each year in any genre (e.g. fiction, nonfiction, reference) and directed toward any audience (scholarly, popular, children).

01/15-2017 and 08/2018.

Parliamentarian. Texas Association of Chicanos in Higher Education (TACHE). I was voted parliamentarian, the person who keeps the board members within the rules of order (following Robert's Rules of Order), on Monday, February 11, 2019-present.

PROGRAMS, OTHER TRAINING

EPCC

Programs

Leadership Academy - The goal of the Academy is to provide participants with leadership skills and a greater understanding of College operations, services, programs, and activities that will enhance their service to EPCC and to the community. Participants engage in creative endeavors; develop innovative projects in service to EPCC; participate in networking events with EPCC, local, and state leaders; collaborate in teambuilding exercises; and develop an Individual Leadership Action Plan that includes personal and professional growth activities.

10/29/18-10/2019.

CAMPUS CLUBS AND ORGANIZATIONS

Faculty Advisor

Chess Club: In October 2018, I started an unofficial chess club. By 1/22/18 I had enough students interested in this program that we developed a Chess Club Constitution and submitted it to the Office of Student Leadership and Student Life to make it an official EPCC club. I am the faculty advisor for this club.

1/22/2018-Present.

Faculty Co-Advisor

PageTurners Book Club: In early Fall 2021 (August), my co-worker Caty Valtierra-Piñón, Librarian, Assistant Professor at the Valle Verde Campus library and I started a book club, registered with the Student Leadership & Campus Life Department at the college. I signed up as the Co-Advisor. My duties include facilitating book club meetings and discussions, scheduling, making flyers and promoting the club, conducting research into book club organization (to implement strategies), and reading books.

08/2021-Present.

LIBRARY ASSOCIATION MEMBERSHIPS

Association Membership

Association of College & Research Libraries (ACRL)	October 2018-Present
American Library Association (ALA)	October 2018-Present
Border Regional Library Association (BRLA)	October 2018-Present
Texas Association of Chicanos in Higher Education (TACHE)	October 2018-Present

CONFERENCES ATTENDED

- REFORMA National Conference VII. Date: November 4 - 7, 2021
- Association of College and Research (ACRL) Conference 2019
- Border Learning Conference, 2019
- Border Regional Library Association (BRLA) Fall Conference 2014, 2015, 2016, 2018, 2019, 2020, 2021
- National Association of Chicana and Chicano Studies (NAACS), 2017
- 2016 Library Orientation Exchange (LOEX) [Virtual] Conference May 5-8, 2020
- Texas Rising, Camp Summer Institute (Jul 25-26 & Aug 1-2, 2020)
- ILL/TexShare Virtual Conference, August 6, 2020

MY WEBSITES

a) The Chatty Librarian.

This library guide seeks to promote reading, exploration and use of EPCC Library collections.

https://epcc.libguides.com/Chatty_Librarian



The Chatty Librarian. (Back-up Site)

<https://thechattylibrarian.wordpress.com/>



b) El Paso Community College (EPCC) Chess Club.

This is an informative guide for EPCC Valle Verde Library's Chess Club.

https://epcc.libguides.com/Chess_Club



El Paso Community College (EPCC) Chess Club. (Back-up Site)

<https://epcc-chess-club.blogspot.com>





El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-82, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

Members of the City Council, Representative Isabel Salcido, (915) 212-0005

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Dion Castro to the City Plan Commission by Representative Isabel Salcido, District 5.

DATE: 01-12-2022

TO: City Clerk

FROM: City Representative Isabel Salcido

ADDRESS: 300 N. Campbell TELEPHONE 915-212-0005

Please place the following item on the (Check one): CONSENT X REGULAR _____

Agenda for the Council Meeting of January 19, 2022

Appointment of Dion Castro to the City Plan Commission by Representative Isabel Salcido,

Item should read as follows: District 5.

BOARD COMMITTEE/COMMISSION APPOINTMENT/REAPPOINTMENT FORM

NAME OF BOARD/COMMITTEE/COMMISSION: City Plan Commission

NOMINATED BY: Representative Isabel Salcido DISTRICT: 5

NAME OF APPOINTEE Dion Castro
(Please verify correct spelling of name)

E-MAIL ADDRESS: [REDACTED]

BUSINESS ADDRESS: [REDACTED]

CITY: [REDACTED] ST: [REDACTED] ZIP: [REDACTED] PHONE: 9-[REDACTED]

HOME ADDRESS: [REDACTED]

CITY: [REDACTED] ST: [REDACTED] ZIP: [REDACTED] PHONE: [REDACTED]

DOES THE PROPOSED APPOINTEE HAVE A RELATIVE WORKING FOR THE CITY? YES: NO X
IF SO, PLEASE PROVIDE HIS OR HER NAME, CITY POSITION AND RELATIONSHIP TO THE PROPOSED APPOINTEE:

HAS APPOINTEE BEEN A MEMBER OF OTHER CITY BOARDS/COMMISSIONS/COMMITTEES? IF SO, PLEASE PROVIDE NAMES AND DATES: JOINT HOUSING TASK FORCE

LIST ALL REAL ESTATE OWNED BY APPOINTEE IN EL PASO COUNTY (BY ADDRESS): N/A

WHO WAS THE LAST PERSON TO HAVE HELD THIS POSITION BEFORE IT BECAME VACANT?

NAME OF INCUMBENT: _____

EXPIRATION DATE OF INCUMBENT: _____

REASON PERSON IS NO LONGER IN OFFICE (CHECK ONE): TERM EXPIRED: _____
RESIGNED _____
REMOVED _____

DATE OF APPOINTMENT: January 19, 2022

TERM BEGINS ON: January 19, 2022

EXPIRATION DATE OF NEW APPOINTEE: January 18, 2024

PLEASE CHECK ONE OF THE FOLLOWING: 1ST TERM: x

2nd TERM: _____

UNEXPIRED TERM: _____

Dion J. Castro

Castro Enterprises



EXPERIENCE

Castro Enterprises — Franchisee Applicant

February 2021 - PRESENT

Training to become a McDonald's Franchise Owner within the family organization of restaurants.

Consumer Law Protection Firm — Director of Sales

January 2020 - February 2021

Conducted 45 minute timeshare presentations to pre-set appointments around the country, ranging anywhere from 5 to 200 people, on a weekly basis while managing a team of 8 salesmen. Out of 10 teams in the company, I consistently had mine in the top 3 in both volume and collected funds on closed deals.

VOI Consulting Group - Owner/Salesman

November 2018 - January 2020

Traveled the country to meet with pre-set timeshare exit appointments on a weekly basis. Meetings were informational regarding Timeshare updates and laws. Clients would meet with my consultants as well as myself in a 1 on 1 environment to ensure questions and concerns were addressed. Clients seeking an exit or vacation alternative were sold service packages based on their specific situation.

EDUCATION

Our Lady of the Lake University, San Antonio, Tx — Bachelor of Arts (Major: English/Minor: Digital Journalism)

2015 Graduate

Received a full scholarship to the men's basketball organization. Participated in school plays, open mics, sportscasting and videography throughout my attendance at the University.

SKILLS

Sales.
Public Speaking.
Writing.
Team leadership.

AWARDS

Full Athletic Scholarship
Played collegiate basketball on a full athletic scholarship at Our Lady of the Lake University.

Sales Team of the Month (2 months in a row) Produced the highest sales volume with 90% collection 2 months in a row.

Hamburger University Team Leadership Award Led my assigned team in presenting a business plan for a teammate's McDonald's restaurant. Competed against 6 teams. Winners were chosen through votes. Our team was chosen unanimously.

LANGUAGES

Fluent in both English and Spanish



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-56, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Tax Office, Maria O. Pasillas, (915) 212-1737

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

That the tax refunds listed on the attachment posted with this agenda be approved. This action would allow us to comply with state law which requires approval by the legislative body of refunds of tax overpayments greater than \$2,500.00. (See Attachment A)

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Maria O. Pasillas, (915) 212-1737

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 6 – Set the Standard for Sound Governance and Fiscal Management

SUBGOAL: 6.11 Provide efficient and effective services to taxpayers

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the tax refunds listed on the attachment posted with this agenda be approved. This action would allow us to comply with state law which requires approval by the legislative body of refunds of tax overpayments greater than \$2,500.00. (See Attachment A)

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Approve property tax overpayment refunds greater than \$2,500.00, per the Texas Property Tax Code, Sec. 31.11 – Refunds of Overpayments or Erroneous Payments.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Council has considered this previously on a routine basis.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Tax Office
SECONDARY DEPARTMENT: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Maia O. Pasillas

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

TAX REFUNDS
January 19, 2022

1. Car-Paso Partners LP, in the amount of \$6,820.21 made an overpayment on December 14, 2021 of 2021 taxes.
(Geo. # T212-999-0020-0100)
2. 4Mat Family LP, in the amount of \$7,655.24 made an overpayment on December 1, 2021 of 2021 taxes.
(Geo. # B202-999-0790-2600)
3. Stryker Orthopaedics, in the amount of \$4,219.59 made an overpayment on January 31, 2020 of 2019 taxes.
(Geo. # 2001-999-4092-0034)
4. Amanda Kovach Poulin, in the amount of \$4,756.98 made an overpayment on November 22, 2021 of 2021 taxes.
(Geo. # G195-000-019F-1500)

Laura D. Prine
City Clerk

Maria O. Pasillas

Maria O. Pasillas, RTA
Tax Assessor Collector



TAX OFFICE RECEIVED

DEC 23 2021

MARIA O. PASILLAS, RTA
CITY OF EL PASO TAX ASSESSOR COLLECTOR
221 N. KANSAS, STE 300
EL PASO, TX 79901

PH: (915) 212-0106 FAX: (915) 212-0107 www.elpasotexas.gov/tax-office

Geo No. T212-999-0020-0100	Prop ID 197214
Legal Description of the Property 2 THE PLAZA AT LOMAS DEL SOL #1 I (EXC SLY PTS) (144462.38 SQ FT) 1500 E REDD RD 79911	
OWNER: CAR-PASO PARTNERS LP	

Handwritten: 22500 ✓

CAR-PASO PARTNERS LP
6500 MONTANA AVE
EL PASO, TX 79925-2129

2021 OVERAGE AMOUNT \$6,820.21

1: CITY OF EL PASO, 6: COUNTY OF EL PASO, 7: EL PASO COMMUNITY COLLEGE, 8: UNIVERSITY MEDICAL CENTER OF EL PASO, 18: CANUTILLO ISD

Dear Taxpayer:

Our records indicate that an overpayment exists on the property tax account listed above as of the date of this letter. If you paid the taxes on this account and believe you are entitled to a refund, please complete the application below, sign it, and return it to our office. If the taxes were paid by your mortgage/title company or any other party, you must obtain a written letter of release in order for the refund to be issued in your name. If you did not make the payment(s) on this account, please forward this letter to the person who paid these taxes. You may also request the transfer of this overpayment to other tax accounts and/or tax years in the space provided or by attaching an additional sheet if necessary. Your application for refund must be submitted within three years from the date of the overpayment, or you waive the right to the refund (Sec. 31.11c). Governing body approval is required for refunds in excess of \$2500.

APPLICATION FOR PROPERTY TAX REFUND: This application must be completed, signed, and submitted with supporting documentation to be valid.

Step 1. Identify the refund recipient.
Show information for whomever will be receiving the refund.

Who should the refund be issued to:

Name: *Car-Paso Partners LP*

Address: *6500 Montana Ave*

City, State, Zip: *El Paso, TX 79925*

Daytime Phone No.: *915-342-5106* E-Mail Address: *SWeber@mincopropti-co*

Step 2. Provide payment information.
Please attach copy of cancelled check, original receipt, online payment confirmation or bank/credit card statement.

Payment made by:	Check No.	Date Paid	Amount Paid
<i>Car-Paso Partners LP</i>	<i>1312</i>	<i>12/14/21</i>	<i>38,300.10</i>

TOTAL AMOUNT PAID (sum of the above amounts)

Step 3. Provide reason for this refund.
Please list any accounts and/or years that you intended to pay with this overage.

Please check one of the following:

I paid this account in error and I am entitled to the refund.

I overpaid this account. Please refund the excess to the address listed in Step 1. ✓

I want this payment applied to next year's taxes.

This payment should have been applied to other tax account(s) and/or year(s), escrow (listed below):

Step 4. Sign the form.
Unsigned applications cannot be processed.

By signing below, I hereby apply for the refund of the above-described taxes and certify that the information I have given on this form is true and correct. (If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under the Texas Penal Code, Sec. 37.10.)

SIGNATURE OF REQUESTOR (REQUIRED) *Steven Weber*

PRINTED NAME & DATE *12/17/21*
Steven Weber, Controller

TAX OFFICE USE ONLY: Approved Denied By: *NH* Date: *12-27-21*

Notes

Go To :

LUZR
ACT80122 v1.90

01/04/2022 12:43:44
ACTEP

DEPOSIT Remittance Detail

Summary Query

Summary

Deposit No.	Account No.	Remit Seq No.	Check No.	Payment Amount	Payment Agreement No.
A12142101	T21299900200100				

Check/Receipt Images	Deposit No.	Receipt Date	Remit Seq No.	Check No.	Payment Type	Payment Amount	Applied Amount	Transaction Type	Account No.	Payer
	A12142101	12/14/2021	48466145	1312	CH	\$156,823.29	\$6,820.21	LG	T21299900200100	CAR-PASO PARTNERS L
	A12142101	12/14/2021	48466145	1312	CH	\$156,823.29	\$31,479.89	AA	T21299900200100	CAR-PASO PARTNERS L
	A12042065	12/04/2020	45116515	1279	CH	\$171,077.93	\$31,940.04	PA	T21299900200100	CAR-PASO PARTNERS L
	A12091981	12/09/2019	42165622	1259	CH	\$149,029.64	\$32,335.62	PA	T21299900200100	CAR-PASO PARTNERS L
	A12051886	12/05/2018	39140003	1239	CH	\$146,926.95	\$32,133.67	PA	T21299900200100	CAR-PASO PARTNERS L
	A12041765	12/04/2017	36152341	1220	CH	\$147,475.19	\$31,457.20	PA	T21299900200100	CAR-PASO PARTNERS L
*	X0110172005	01/10/2017	33924510	86685	CH	\$174,273.63	\$36,624.05	PA	T21299900200100	C & R DISTRIBUTING INC
*	X1209152000	12/09/2015	30224140	84960	CH	\$156,561.86	\$36,096.74	PA	T21299900200100	C & R DISTRIBUTING INC
*	X015152003	01/15/2015	27995225	83612	CH	\$149,967.03	\$35,677.38	PA	T21299900200100	C & R DISTRIBUTING INC
*	X0127142000	01/27/2014	25318702	81894	CH	\$151,200.94	\$34,606.01	PA	T21299900200100	C & R DISTRIBUTING INC
*	X0129132009	01/29/2013	22720157	80369	CH	\$117,750.52	\$25,857.30	PA	T21299900200100	C & R DISTRIBUTING INC
*	X0207122001	01/31/2012	20484548	78766	CH	\$386,502.87	\$25,428.93	PA	T21299900200100	C & R DISTRIBUTING INC

Applied Total \$464,139.13



TAX OFFICE RECEIVED

DEC 08 2021

MARIA O. PASILLAS, RTA
CITY OF EL PASO TAX ASSESSOR COLLECTOR
221 N. KANSAS, STE 300
EL PASO, TX 79901

PH: (915) 212-0106 FAX: (915) 212-0107 www.elpasotexas.gov/tax-office

4MAT FAMILY LP
826 S. STANTON
EL PASO, TX 79901

OP
+2500
✓

Geo No. B202-999-0790-2600	Prop ID 322940
Legal Description of the Property 79 BASSETT 19 & 20 & E 1/2 OF 18 & W 1/2 OF 21 (9000 SQ FT) 2405 WYOMING AVE	
OWNER: 4MAT FAMILY LP	

2021 OVERAGE AMOUNT \$7,655.24 ✓

1. CITY OF EL PASO. 3. EL PASO ISD. 6. COUNTY OF EL PASO. 7. EL PASO COMMUNITY COLLEGE. 8. UNIVERSITY MEDICAL CENTER OF EL PASO

Dear Taxpayer:

Our records indicate that an overpayment exists on the property tax account listed above as of the date of this letter. If you paid the taxes on this account and believe you are entitled to a refund, please complete the application below, sign it, and return it to our office. If the taxes were paid by your mortgage/title company or any other party, you must obtain a written letter of release in order for the refund to be issued in your name. If you did not make the payment(s) on this account, please forward this letter to the person who paid these taxes. You may also request the transfer of this overpayment to other tax accounts and/or tax years in the space provided or by attaching an additional sheet if necessary. Your application for refund must be submitted within three years from the date of the overpayment, or you waive the right to the refund (Sec. 31.11c). Governing body approval is required for refunds in excess of \$2500.

APPLICATION FOR PROPERTY TAX REFUND: This application must be completed, signed, and submitted with supporting documentation to be valid.

Step 1. Identify the refund recipient. Show information for whomever will be receiving the refund.	Who should the refund be issued to:			
	Name:			
	Address:			
	City, State, Zip:			
Daytime Phone No.:		E-Mail Address:		
Step 2. Provide payment information. Please attach copy of cancelled check, original receipt, online payment confirmation or bank/credit card statement.	Payment made by:	Check No.	Date Paid	Amount Paid
	Echeck	3951565	12/1/21	7655.24
	Echeck	3951558	12/1/21	7655.24
TOTAL AMOUNT PAID (sum of the above amounts)				
Step 3. Provide reason for this refund. Please list any accounts and/or years that you intended to pay with this overage.	Please check one of the following:			
	<input type="checkbox"/> I paid this account in error and I am entitled to the refund.			
	<input checked="" type="checkbox"/> I overpaid this account. Please refund the excess to the address listed in Step 1. ✓			
	<input type="checkbox"/> I want this payment applied to next year's taxes.			
This payment should have been applied to other tax account(s) and/or year(s), escrow (listed below):				
Step 4. Sign the form. Unsigned applications cannot be processed.	By signing below, I hereby apply for the refund of the above-described taxes and certify that the information I have given on this form is true and correct. (If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under the Texas Penal Code, Sec. 37.10.)			
	SIGNATURE OF REQUESTOR (REQUIRED)		PRINTED NAME & DATE	
Jue 11/4/22		Elsa Mata ✓		

Rec'd P.O.P.
v52.1.7

TAX OFFICE RECEIVED
Approved Denied
DEC 21 2021

By: NH Date: 12-27-21

Notes

Go To

LUZR
ACT80122 v1.90

01/04/2022 12:30:39
ACTEP

DEPOSIT Remittance Detail

Summary Query

Summary

Deposit No.	Account No.	Remit Seq No.	Check No.	Payment Amount	Payment Agreement No.
EC120121	B20299907902600				

Check/Receipt Images	Deposit No.	Receipt Date	Remit Seq No.	Check No.	Payment Type	Payment Amount	Applied Amount	Transaction Type	Account No.	Payer
	EC120121	12/01/2021	48274362	CC003951565	EC	\$7,655.24	\$7,655.24	LG	B20299907902600	30202112-4MAT FAMILY L
	EC120121	12/01/2021	48274361	CC003951558	EC	\$7,655.24	\$7,655.24	PA	B20299907902600	30202111-4MAT FAMILY L
	RD3712650	03/17/2021	45146389	0000233201	CH	\$5,994.73	\$5,994.73	RD	B20299907902600	29633690-4MAT FAMILY L
	EC12072098	12/07/2020	45146389	CC003262901	EC	\$13,800.37	\$13,800.37	PA	B20299907902600	28864950-4MAT FAMILY L
	RC210312	12/07/2020	45146389	CC003262901	EC	\$5,994.73	\$5,994.73	TR	B20299907902600	29633690-4MAT FAMILY L
	RC210312	12/07/2020	45146389	CC003262901	EC	\$5,994.73	\$5,994.73	TR	B20299907902600	4MAT FAMILY LP
	RF210311	12/07/2020	45146389	CC003262901	EC	\$0.00	\$2,531.23	DA	B20299907902600	28864950-4MAT FAMILY L
	RF210311	12/07/2020	45146389	CC003262901	EC	\$0.00	\$0.00	DA	B20299907902600	28864950-4MAT FAMILY L
	RF210311	12/07/2020	45146389	CC003262901	EC	\$0.00	\$0.00	DA	B20299907902600	28864950-4MAT FAMILY L
	RF210311	12/07/2020	45146389	CC003262901	EC	\$0.00	\$268.53	DA	B20299907902600	4MAT FAMILY LP
	RF210311	12/07/2020	45146389	CC003262901	EC	\$0.00	\$268.53	DA	B20299907902600	28864950-4MAT FAMILY L
	RF210311	12/07/2020	45146389	CC003262901	EC	\$0.00	\$0.00	DA	B20299907902600	28864950-4MAT FAMILY L

Applied Total \$123,481.80

DEC 22 2021

THE CITY OF EL PASO
CONSOLIDATED TAX OFFICE
221 N. Kansas, Suite 300
El Paso, Texas 79901

Phone (915) 212-0106. Fax (915) 212-0108

OP/

APPLICATION FOR TAX REFUND

The Consolidated Tax Office collects property taxes for all eligible property taxing entities within El Paso County.

APPLICANT MUST PROVIDE THE FOLLOWING INFORMATION:

Refund To: STRYKER ORTHOPAEDICS RYAN TAX COMPLIANCE ✓		Phone: HOME: WORK: 763.445.4186	Property ID# (One application per account) 504444 2001-999-4092-0034		
Address (mail refund to): 150 South Fifth Street Suite 2500 Minneapolis, MN 55402 ✓		Property Address: And/or Legal Description: INV MACH SIGN VEH.			
Tax year requested:	Date payment made:	Check No. & Date, if known:	Amount of taxes paid:	Amount of refund requested: ✓	
1. 2020	2/13/2020			4,219.59	
2.					
3.					
TOTAL AMOUNT (sum of the above amounts)				4,219.59	

(City Council approval required if over \$2,500)

REQUIRED: Copy of original receipt, front & back of negotiated check, OR
Bank statement showing item cleared (with the bank & taxpayer must appear)

REASON FOR OVERPAYMENT: Unknown

"I certify that information given to obtain this refund is true and correct."

Requestor signature: [Signature] Date: 12/16/21 ✓

Printed name: Mike Cincotta Title: Director, Asset Recovery

Any person who knowingly submits false information is subject to (1) imprisonment for 1 to 10 years, or (2) a fine of \$1,000, or both. (3) Any person who is convicted of this offense shall be ineligible for the office of collector of the property taxes of the county for 10 years.

TAX OFFICE Entry: (4) REFUND APPROVED ✓

Tax Office Approval: [Signature] Date: 12-30-21

(Placed on City Council Agenda over \$2,500)

() DISAPPROVED () Returned to sender () See below/attached

() Required documentation (Tax receipt, Canceled Check, Bank Statement, or Other) not submitted.

() Record of overpayment not found on this property.

() Property not found as identified, resubmit after correction.

() Other: _____

Notes

Go To :

LUZR
ACT80122 v1.90

01/04/2022 11:46:33
ACTEP

DEPOSIT Remittance Detail

Summary Query

Summary

Deposit No.	Account No.	Remit Seq No.	Check No.	Payment Amount	Payment Agreement No.					
B02132094	200199940920034									
Check/Receipt Images	Deposit No.	Receipt Date	Remit Seq No.	Check No.	Payment Type	Payment Amount	Applied Amount	Transaction Type	Account No.	Payer
	A01152179	01/15/2021	45992061	00001358	CH	\$152,021.05	\$101,971.72	PA	200199940920034	28821015-RYAN TAX COM
	R80093020MP	09/30/2020	29286371	1161789	CH	\$3,770.32	\$3,770.32	TR	200199940920034	STRYKER ORTHOPEAEC
	R80092920MP	09/29/2020	29286371	1161789	CH	\$0.00	\$3,770.32	TR	200199940920034	23240781-STRYKER
	R80092920MP	09/29/2020	29286371	1161789	CH	\$0.00	\$0.00	TR	200199940920034	STRYKER ORTHOPEAEC
	R80092920MP	09/29/2020	29286371	1161789	CH	\$0.00	\$3,770.32	TR	200199940920034	STRYKER ORTHOPEAEC
	B02132094	01/31/2020	43725496	1057	CH	\$156,296.33	\$4,219.59	LG	200199940920034	24273661-RYAN TAX COM
	B02132094	01/31/2020	43725496	1057	CH	\$156,296.33	\$102,810.66	PA	200199940920034	24273661-RYAN TAX COM
	RC211230	01/31/2020	43725496	1057	CH	\$4,219.59	\$4,219.59	TR	200199940920034	30399150-STRYKER ORTI
	RC211230	01/31/2020	43725496	1057	CH	\$4,219.59	\$4,219.59	TR	200199940920034	24273661-RYAN TAX COM
	A01281975	01/28/2019	40199714	00000769	CH	\$153,009.80	\$105,488.36	PA	200199940920034	24273661-RYAN TAX COM
	B02021875	01/31/2018	37587668	00000535	CH	\$115,549.71	\$99,426.04	PA	200199940920034	24273661-RYAN TAX COM
	X0203172007	01/31/2017	34843376	00303	CH	\$92,404.80	\$83,120.02	PA	200199940920034	STRYKER ORTHOPEAEC
Applied Total							\$830,634.84			

TAX OFFICE RECEIVED

JAN 04 2022

THE CITY OF EL PASO CONSOLIDATED TAX OFFICE
221 N. Kansas, Suite 300
El Paso, Texas 79901
Phone (915) 212-0106, Fax (915) 212-0108, Email: taxforms@elpasotexas.gov

APPLICATION FOR TAX REFUND

The Consolidated Tax Office collects property taxes for all eligible property taxing entities within El Paso County.

APPLICANT MUST PROVIDE THE FOLLOWING INFORMATION:

Form with fields: Refund To: Amanda Kovach Poulin; Phone: HOME 832-928-6174, WORK; Property ID#: 682995; Address: 3712 Hartline Hills Way, Celina, TX 75009; Property Address: 12429 Triple Crown Ave., El Paso, TX 79928; Table with columns: Tax year requested, Date payment made, Check No. & Date, Amount of taxes paid, Amount of refund requested.

(City Council approval required if over \$2,500)

REQUIRED: Copy of original receipt, front & back of negotiated check, OR bank statement showing item cleared (both the bank & taxpayer name must appear)

REASON FOR OVERPAYMENT: I sold my house in El Paso in October 2021 and paid my share of property taxes to the new homeowner at closing. I received the 2021 property tax bill in the mail at my new residence and mistakenly paid the 2021 property taxes (when the new homeowner should have paid them). I am writing to request a refund for the 2021 property taxes that I paid in error.

"I certify that information given to obtain this refund is true and correct."

Handwritten signature of Amanda Kovach

Date: 01/04/22

Requestor signature:

Printed name: Amanda Kovach

Title: Prior Homeowner

Printed name:

Title:

Any person knowingly submitting false entries is subject to: (1) Imprisonment of 2 to 10 years, or \$5,000 fine, or both. (2) Imprisonment up to one year, or fine not over \$2,000, or both. (Sec 37.10 Penal Code) An application for a refund must be made within 3 years after the date of the payment or the taxpayer waives the right to the refund (Sec 31.11 (c)).

TAX OFFICE Entry: (X) REFUND APPROVED

Tax Office Approval: Maria O. Pasillas; Date: 1/5/2022; JMC; Date: 1/7/22

(Placed on City Council Agenda over \$2,500)

- () DISAPPROVED () Returned to sender () See below/attached
() Required documentation (Tax receipt, Canceled Check, Bank Statement, or Other) not submitted.
() Record of overpayment not found on this property.
() Property not found as identified, resubmit after correction.
() Other:

Notes

Go To :

LUZR
ACT80122 v1.90

01/07/2022 13:46:50
ACTEP

DEPOSIT Remittance Detail

Summary Query

Summary

Deposit No.	Account No.	Remit Seq No.	Check No.	Payment Amount	Payment Agreement No.
T11222100007	G195000019F1500				

Check/Receipt Images	Deposit No.	Receipt Date	Remit Seq No.	Check No.	Payment Type	Payment Amount	Applied Amount	Transaction Type	Account No.	Payer
	R030122367	11/22/2021	48177788	00511	CH	\$0.00	\$4,756.98	TR	G195000019F1500	KOVACH AMANDA S
	R030122367	11/22/2021	48177788	00511	CH	\$0.00	\$4,756.98	TR	G195000019F1500	KOVACH AMANDA S
*	T11222100007	11/22/2021	48177788	00611	CH	\$4,756.98	\$4,756.98	PA	G195000019F1500	KOVACH AMANDA S
*	T11052000006	11/02/2020	44787171	00507	CH	\$4,485.50	\$4,485.50	PA	G195000019F1500	KOVACH AMANDA S
	A12231981	12/23/2019	42389044	009367	CH	\$467.79	\$467.79	PA	G195000019F1500	25664744-SIERRA TITLE C

Applied Total	\$9,710.27
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El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-83, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

Please choose District and Department from drop down menu. Please post exactly as example below.

No Title's, No emails. Please use ARIAL 10 Font.

Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

For notation pursuant to Section 2.92.080 of the City Code, receipt of campaign contribution by Representative Cassandra Hernandez of \$1,000 from Eduardo and Margarita Escudero.



Legislation Text

File #: 22-84, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003

Members of the City Council, Representative Aleksandra Annello, (915) 212-0002

Members of the City Council, Representative Joe Molinar, (915) 212-0004

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Discussion and action to approve a Resolution authorizing the expenditure of District 3 discretionary funds in an amount of \$500, the expenditure of District 2 discretionary funds in the amount of \$500, and the expenditure of District 4 discretionary funds in the amount of \$500 to go towards the efforts to fund the design, construct, and installation highway markers naming a specific portion or segment the Korean War Veterans Memorial Highway and declaring that such expenditure meets a municipal purpose to promote the visual image of El Paso by improving the visual impression of the community gateways.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
AGENDA SUMMARY FORM**

DEPARTMENT:

AGENDA DATE:

CONTACT PERSON NAME AND PHONE NUMBER:

DISTRICT(S) AFFECTED:

STRATEGIC GOAL:

SUBJECT:

BACKGROUND/DISCUSSION:

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

*****REQUIRED AUTHORIZATION*****

RESOLUTION

WHEREAS, during the Korean War over 50,000 American soldiers lost their lives and double that amount were wounded. Despite this grueling conflict, the Korean War has been referred to as the "Forgotten War";

WHEREAS, efforts to honor the veterans who fought and gave the ultimate sacrifice in the Korean War have been under taken by the Korean War Veterans Association in El Paso, the City of El Paso and the State of Texas;

WHEREAS, during the 87 Texas Legislative Session, SB 1704 was authored by State Senator Cesar Blanco to amend the Transportation Code to designate a portion of U.S. Highway 54 in El Paso County as the Korean War Veterans Memorial Highway;

WHEREAS, on April 13, 2021 City Council approved an item to support SB 1704 by adding the item to the City's State 87th Legislative Session Agenda as a support item and that a letter of support for SB 1704 be provided to the Senator and any committees that will be considering the bill;

WHEREAS, on June, 18, 2021 Governor Greg Abbot signed SB 1704 into law designating a portion of U.S. Highway 54 in El Paso County as the Korean War Veterans Memorial Highway;

WHEREAS, SB 1704 requires the Texas Department of Transportation (TxDOT) to design, construct, and erect highway markers naming a specific portion or segment of the state highway;

WHEREAS, SB 1704 did not appropriate funds and according to the Texas Transportation Code, Section 225.021(c), the Texas Department of Transportation (TxDOT) may not design, construct, or erect a marker under this subchapter unless a grant or donation of funds is made to TxDOT to cover the cost;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Approve a resolution authorizing the expenditure of District 3 discretionary funds in an amount of \$500, the expenditure of District 2 discretionary funds in the amount of \$500, and the expenditure of District 4 discretionary funds in the amount of \$500 to go towards the efforts to fund the design, construct, and installation highway markers naming a specific portion or segment the Korean War Veterans Memorial Highway and declaring that such expenditure meets a

municipal purpose to promote the visual image of El Paso by improving the visual impression of the community gateways.

Further, the City Council authorizes the expenditure of the funds as described above and, that the City Manager is authorized to effectuate any budget transfers necessary to ensure that the funds are properly expended for such purpose and is authorized to execute any related agreements, amendments to such agreements, and documents necessary to carry out the purpose of this Resolution.

PASSED and APPROVED this _____ of _____, 2022


THE CITY OF EL PASO

Oscar Lesser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Evy A. Sotelo
Assistant City Attorney



File #: 22-85, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003

Members of the City Council, Representative Aleksandra Annello, (915) 212-0002

Members of the City Council, Representative Joe Molinar, (915) 212-0004

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Discussion and action for City Council to approve a Resolution recognizing the Korean War Veteran Association (KWVA), Col. Joseph C. Rodriguez, Medal of Honor, Chapter 249 for their efforts with Texas State Senator Cesar Blanco, through the passage of SB 1704, to erect state highway signage honoring Korean War Memorial Veterans and supports the highway signage project designating a segment of Patriot Freeway (U.S. 54) as the "Korean War Memorial Highway".

**CITY OF EL PASO, TEXAS
AGENDA ITEM
AGENDA SUMMARY FORM**

DEPARTMENT:

AGENDA DATE:

CONTACT PERSON NAME AND PHONE NUMBER:

DISTRICT(S) AFFECTED:

STRATEGIC GOAL:

SUBJECT:

BACKGROUND/DISCUSSION:

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

*****REQUIRED AUTHORIZATION*****

RESOLUTION

WHEREAS, the Korean War was one of the first conflicts of the Cold War, beginning when North Korean forces crossed the 38th parallel into South Korea on June 25, 1950; stiff resistance from United Nations troops led to the intervention of the People's Republic of China in November of 1950; and

WHEREAS, often called the Forgotten War, the Korean War continued for three years and cost the lives of more than 54,000 American servicemembers, with more than 103,000 wounded; the courage and sacrifice of these brave men and women prevented a communist takeover of South Korea, which has since become a prosperous, thriving United States ally; and

WHEREAS, during the Korean War, approximately 1,789,000 members of the United States Armed Forces served in theater of operations along with the forces of the Republic of Korea and 20 other members of the United Nations to defend freedom and democracy: and

WHEREAS, casualties of the United States during the Korean War included 54,246 dead (of whom 33,739 were battle deaths), more than 103,284 wounded, and approximately 8,055 listed as missing in action or prisoners of war; and

WHEREAS, the Korean War Veterans Recognition Act (Public Law 111-41) was enacted on July 27, 2009, so that the honorable service and noble sacrifice by members of the United States Armed Forces in the Korean War will never be forgotten; and

WHEREAS, in the 72 years since the outbreak of the Korean War, the Republic of Korea has emerged from a war-torn economy into one of the major economies in the world and one of the largest trading partners of the United States; and

WHEREAS, since the end of the Korean War era, more than 28,500 members of the United States Armed Forces have served annually in the United States Forces Korea to defend the Republic of Korea against external aggression, and to promote regional peace; and

WHEREAS, from the ashes of war and sharing of spilled blood on the battlefield, the United States and the Republic of Korea have continuously stood should-to-shoulder to promote and defend international peace and security, economic prosperity, human rights, and the rule of law both on the Korean Peninsula and beyond: and

WHEREAS, we will forever honor the legacy of Korean War Veterans who uphold the ideals they secured through this hard-won victory, and we pay tribute to the American Patriots who fought for freedom and democracy throughout the Korean War; and

WHEREAS, it is truly fitting that the Korean War and its veterans receive recognition for their bravery and their devotion to duty; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. honors the noble service and sacrifice of the United States Armed Forces and the armed forces of allied countries that served in Korea since 1950 to the present; and
2. recognizes the commitment of the United States to its alliance with the Republic of Korea for the betterment of peace and prosperity on the Korean Peninsula; and
3. honors and recognizes those souls who gave the ultimate sacrifice during this war; and
4. recognizes the Korean War Veteran Association (KWVA), Col. Joseph C. Rodriguez, Medal of Honor, Chapter 249 for their efforts with Texas State Senator Cesar Blanco, through the passage of SB 1704, to erect state highway signage honoring Korean War Memorial Veterans; and
5. supports the highway signage project designating a segment of Patriot Freeway (U.S. 54) as the “Korean War Memorial Highway”.

PASSED and APPROVED this _____ of _____, 2022

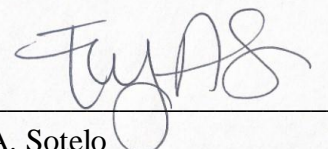
THE CITY OF EL PASO

Oscar Lesser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Evy A. Sotelo
Assistant City Attorney



File #: 22-33, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Members of the City Council, Representative Cassandra Hernandez, (915) 212-0003

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Discussion and action to authorize District 3 City Representative Cassandra Hernandez to attend Council meetings by video conference more than one regular meeting week in a row, on the meeting weeks of January 31, 2022, February 14, 2022 and of February 28, 2022.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
AGENDA SUMMARY FORM**

DEPARTMENT:

AGENDA DATE:

CONTACT PERSON NAME AND PHONE NUMBER:

DISTRICT(S) AFFECTED:

STRATEGIC GOAL:

SUBJECT:

BACKGROUND/DISCUSSION:

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

*****REQUIRED AUTHORIZATION*****



File #: 22-58, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Members of the City Council, Mayor Oscar Leeser, (915) 212-0021

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Discussion and action on a Resolution to appoint a member to the El Paso Water Utilities Public Service Board of Trustees in the area of expertise of Consumer or Citizen Advocacy as recommended by the El Paso Water Utilities Public Service Board Selection Committee:

- Ranked 1st Marybeth Stevens
- Ranked 2nd Luis Rosas
- Ranked 3rd Stefani Block Uribarri

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Office of the Mayor

AGENDA DATE: January 19, 2022

CONTACT PERSON NAME/PHONE NUMBER: Mayor Oscar Leeser (915) 212-0021

DISTRICT(S) AFFECTED: All Districts

SUBJECT: Approve the following Resolution

Discussion and action on a Resolution to appoint a member to the El Paso Water Utilities Public Service Board of Trustees in the area of expertise of Consumer or Citizen Advocacy as recommended by the El Paso Water Utilities Public Service Board Selection Committee:

Ranked 1 st	Marybeth Stevens
Ranked 2 nd	Luis Rosas
Ranked 3 rd	Stefani Block Uribarri

BACKGROUND / DISCUSSION:

The second term of the Public Service Board member serving in the area of expertise of Consumer or Citizen Advocacy, Mr. Christopher Antcliff, expires on January 15, 2022. Ms. Antcliff is not eligible to be appointed for another term since board members are limited to two terms.

On December 1, 2021, as required by Ordinance Number 017167, the El Paso Water Utilities Public Service Board Selection Committee (hereinafter "Selection Committee") met and reviewed the applications submitted by qualified applicants. I, as Mayor, serve as the Chairperson of the Selection Committee. The Selection Committee's membership consists of the Public Service Board members and eight persons (1 vacancy) appointed by City Council. The Selection Committee now forwards a slate of three candidates, in order of their ranking, to the City Council for consideration and appointment.

Advertisement for applicants interested in this position were placed in the El Paso, Inc., and on the City of El Paso and El Paso Water's websites.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes. The City Council approved a Resolution on February 16, 2021 appointing Lisa Saenz to fill a vacancy of the El Paso Water Utilities Public Service Board of Trustees in the area of expertise of Financial Management.

AMOUNT AND SOURCE OF FUNDING:

The El Paso Water Utilities Public Service Board budget.

BOARD/COMMISSION ACTION:

On December 1, 2021, the Selection Committee approved a Resolution selecting and ranking the qualified applicants in the area of expertise of Consumer or Citizen Advocacy. The Committee's Resolution is attached.

RESOLUTION

WHEREAS, a vacancy in the El Paso Water Utilities Public Service Board will occur on January 15, 2022 with the expiration of the second term of Christopher Antcliff, in the area of Consumer or Citizen Advocacy; and

WHEREAS, the City of El Paso adopted Ordinance Number 017167 which requires that any vacancy in the membership of the El Paso Water Utilities Public Service Board be filled by the City Council; and

WHEREAS, the City of El Paso by Resolution established the El Paso Water Utilities Public Service Board Selection Committee, to be comprised of the members of the Public Service Board and such additional members as appointed by the City Council to assist City Council in selecting eligible candidates to fill the vacancy; and

WHEREAS, under the Resolution, the El Paso Water Utilities Public Service Board Selection Committee reviews resumes submitted by persons interested in filling the vacant position and submits to the City Council the names and the ranking of three eligible candidates; and

WHEREAS, a quorum of the El Paso Water Utilities Public Service Board Selection Committee met on December 1, 2021 pursuant to the Texas Open Meetings Act and approved the nomination, ranking and recommendation of eligible candidates for consideration and appointment by City Council;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

THAT, a quorum of the El Paso Water Utilities Public Service Board Selection Committee met on December 1, 2021 pursuant to the Texas Open Meetings Act and approved the nomination, ranking and recommendation to the City Council the following candidates to fill a vacancy on the El Paso Water Utilities Public Service Board in the area of Consumer or Citizen Advocacy:

- Ranked 1st Marybeth Stevens
- Ranked 2nd Luis Rosas
- Ranked 3rd Stefani Block Uribarri

THAT, the El Paso City Council hereby appoints _____ to fill the vacancy on the El Paso Water Utilities Public Service Board in the area of Consumer or Citizen Advocacy. The term of appointment shall commence on February 9, 2022 and shall be for a four (4) year term.

PASSED, APPROVED and ADOPTED this _____ day of January, 2022.


THE CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Karla M. Nieman
City Attorney



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-54, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Capital Improvement Department, Sam Rodriguez, (915) 212-1845

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Council briefing on the status of the Public Safety Bond Capital Program.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: Not Applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:
Sam Rodriguez, Chief Operations and Transportation Officer, Aviation Director
and City Engineer, (915) 212-1845

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 2 – Set the Standard for a Safe and Secure City

SUBGOAL: 2.3 – Increase public safety operational efficiency

SUBJECT:

Council briefing on the status of the Public Safety Bond Capital Program.

BACKGROUND / DISCUSSION:

The voters approved the public safety bond in November 2019. Significant progress has been made with two facilities Fire Station 36 and the Eastside Regional Command Center moving to construction in early 2022 and a number of other facilities in design. This briefing will provide a program status update.

SELECTION SUMMARY:

NA

CONTRACT VARIANCE:

N/A

PROTEST

N/A

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

2019 Public Safety Bond

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Capital Improvement Department

SECONDARY DEPARTMENT: El Paso Police and Fire Departments

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Jerry DeMuro/for

Sam Rodriguez, Chief Operations and Transportation Officer,
Aviation Director and City Engineer



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-80, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Police, Assistant Chief Peter Pacillas, (915) 212-4302

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Public Safety (Police and Fire) Staffing and Recruitment Update.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: 01/19/22
PUBLIC HEARING DATE:

CONTACT PERSON(S) NAME AND PHONE NUMBER: Assist. Chief Peter Pacillas 915-212-4302

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: #2: Set The Standard For A Safe And Secure City

SUBGOAL:

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Public Safety (Police & Fire) Staffing & Recruitment Update

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

City Council request & discussion during December 2021 Strategic Planning sessions and the December 14, 2021, City Council meeting over background checks requirements, public safety staffing and the ability to increase the number of academies to meet the departments needs.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

N/A

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: El Paso Police & Fire

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD: Chief G. K. Allen



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-62, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Communications and Public Affairs, Laura Cruz-Acosta, (915) 212-1061

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

Strategic Communications Update and City TV.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Communications and Public Affairs

AGENDA DATE: January 19, 2021

PUBLIC HEARING DATE: N/A

CONTACT PERSON NAME AND PHONE NUMBER: Laura Cruz-Acosta, (915) 212-1061

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: Goal 5 – Promote Transparent and Consistent Communication amongst All Members of the Community

SUBGOAL: 5.5 – Advance two way communication of key messages to external customers

SUBJECT:

Strategic Communications Update and City TV.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

PRIOR COUNCIL ACTION:

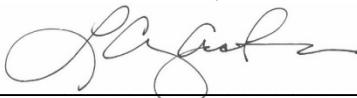
Has the Council previously considered this item or a closely related one?

AMOUNT AND SOURCE OF FUNDING:

Not applicable.

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)



File #: 22-35, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting a renewal of non-exclusive franchise to A-1 Disposal, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBGOAL:

SUBJECT:

An ordinance granting a renewal of non-exclusive franchise to A-1 Disposal, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in section 9.04.630 of the El Paso city code.

BACKGROUND / DISCUSSION:

A franchise is required for solid waste collection haulers that are permitted by the Environmental Services Department. This agreement between the franchisee and City identifies standards to be maintained for the operation of solid waste collection services.

PRIOR COUNCIL ACTION:

Non-exclusive franchises for solid waste collection services are routinely approved by Council.

AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Environmental Services Department

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWAL OF NON-EXCLUSIVE FRANCHISE TO A-1 DISPOSAL, TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by ordinance passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the State of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, the attached franchise agreement is a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City of El Paso requires in City Code Section 9.04, that all haulers of municipal solid waste are required to enter into a franchise agreement with the City; and

WHEREAS, A-1 DISPOSAL is engaged in the business of collection and transportation of solid waste within the City and has requested a franchise to use the City's rights-of-way; and,

WHEREAS, A-1 DISPOSAL has agreed to the terms of the Solid Waste Franchise Agreement with the City of El Paso, granting A-1 DISPOSAL, a non-exclusive franchise to operate and maintain a solid waste collection service using the City's rights-of-way; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

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

1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.
2. The City Manager is authorized to sign a non-exclusive Solid Waste Franchise Agreement by and between the City of El Paso and A-1 DISPOSAL for the franchisee to operate and maintain a Solid Waste Collection Service, in, over, along and across the Public Rights-of-Way in the Authorized Area, to end on December 31, 2026, as set forth and defined in the document labeled Exhibit "A", attached and incorporated by reference for all purposes.

3. All ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

4. The City Manager or authorized agent is authorized to extend this agreement for an additional five years at the end of the date of the contract.

5. This ordinance shall take effect on January 1, 2022.

PASSED AND APPROVED this ____ day of ____, 2022.


CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E. Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this ____ day of _____, 2022.

A-1 DISPOSAL

By: _____
Its: Owner

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 202__, by _____, owner of A-1 DISPOSAL.

Notary Public, State of Texas
Notary's Printed or Typed Name:

My Commission Expires:

EXHIBIT “A”

**SOLID WASTE
FRANCHISE AGREEMENT**

**BY AND BETWEEN
CITY OF EL PASO, TEXAS**

AND

A-1 DISPOSAL

EFFECTIVE DATE: JANUARY 1, 2022

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STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

THIS Solid Waste Franchise Agreement (“Agreement”) effective January 1, 2022 is entered into this ____ day of _____, 2022, by and between the CITY OF EL PASO, a Texas home rule municipality, hereinafter referred to as the "CITY", and A-1 DISPOSAL, hereinafter referred to as “Franchisee”.

RECITALS

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by Agreement passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the state of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, this franchise agreement is a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City desires to exercise the authority provided to it by ordinance, charter and state law to grant a franchise for the collection, transportation, hauling and disposal of Solid Waste as further defined herein, within the corporate limits of the City and under the terms of this Agreement as set out below; and,

WHEREAS, Franchisee desires to obtain a franchise to provide for the collection, transportation, hauling and disposal of Solid Waste from the City of El Paso, and agrees to comply with the terms and conditions of this Agreement; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Agreement are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

WITNESSETH:

SECTION I. PREAMBLE

That the declarations contained in the preamble to this Agreement are material and incorporated herein as a part of this Agreement as though they were fully set forth in this Agreement in their entirety.

SECTION II. DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word “shall” is mandatory and not merely directory. The word “may” is not mandatory and is merely permissive. The word “day” means a calendar day and not a business day. Words defined elsewhere in this Agreement shall be accorded that meaning throughout this Agreement. Words not defined shall be given their common and ordinary meaning.

a. **Affiliate** and **Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.

b. **Agreement** shall mean this document.

c. **Authorized Area** means the entire area within the corporate limits of the City of El Paso, including any territory annexed into the City limits after the Effective Date of this Agreement.

d. **City** means the City of El Paso, a home rule municipal corporation, a political subdivision of the State of Texas.

e. **City Charter** means the City’s organic law, equivalent to a constitution, which defines the City’s existence and prescribes the powers, duties, and organization of the City’s governmental structure.

f. **City Code** shall mean the ordinances of the City codified into the EL PASO CITY CODE, as amended from time to time.

g. **City Manager** shall mean the City Manager or the City Manager’s designated representative.

h. **Container** shall mean any receptacle for waste as defined by Title 9.04 to include Dumpsters, Containers, Carts, Roll-Offs and Compactors.

i. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

j. **Council** shall mean the governing body of the City of El Paso. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. Unless otherwise stated in this Agreement or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Agreement and to the Franchisee's exercise of the rights and privileges conferred in this Agreement.

k. **Director** means the Director of the Environmental Services Department of the City, or any successor department, or any Director as designated by the City Manager, or the Director's designated representative.

l. **Effective Date** means January 1, 2022.

m. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Rights-of-Way under this Agreement, and all of the incidental rights and obligations as described by this Agreement.

n. **Franchisee** shall mean A-1 Disposal hereinafter referred to as "Franchisee", the grantee of rights under this Agreement; or the successor, transferee, or assignee of this Agreement, including the officers, employees, agents, contractors, and subcontractors.

o. **Junk Removal Service** shall mean the collection and transportation of solid waste generated from a Property Clean-up Event by a Self-Transporter or Permitted Hauler, as defined within Chapter 9.04 of the El Paso City Code, when the waste is placed directly into a vehicle or trailer attached to a vehicle, or when a container placed at a property is removed within seven days.

p. **Property Clean-up Event** shall mean the removal of Solid Waste from the interior of a building or premises of a property for the purpose of abating a nuisance, resolving a violation of the El Paso City Code, or removing unsanitary or slightly debris or waste, when the duration of the event does not exceed seven days.

q. **Public Rights-of-Way** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated and accepted by the City as a public right-of-way. "Public Rights-of-Way" shall not include property of the City which is not a

dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated or accepted by the City as a public right-of-way.

r. **Solid Waste Collection Service** shall mean the collection and transportation of Solid Waste, not including a Junk Removal Service, as that term is defined herein within the Authorized Area, from a dumpster, roll-off container, or other container larger than two cubic yards in volume, or from a container less than two cubic yards in volume when providing service to more than four customers, for processing or disposal at an Authorized Municipal Solid Waste Facility as defined in Chapter 9.04 of the El Paso City Code or as may be subsequently amended from time to time.

s. **Solid Waste** shall mean that term as defined in Title 30 of the Texas Administrative Code § 330.3, or as may subsequently be amended from time to time, excluding Excluded Waste as defined in section 9.04.020 of the City Code, as may subsequently be amended from time to time. Solid Waste does not include any municipal solid waste and program recyclable materials generated at residential properties in which the City is the exclusive hauler as set forth in chapter 9.04 (Solid Waste Management) of the City Code.

SECTION III. GRANTING OF FRANCHISE

Subject to all the terms and conditions contained in this Agreement, the Constitution of the United States of America or of the State of Texas, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal or state law, the City hereby grants the Franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Rights-of-Way in the Authorized Area. This grant is subject to the following additional conditions:

a. **Non-Exclusive.**

Nothing herein contained shall be construed as granting an exclusive use or right to the Franchisee to the Public Rights-of-Way, and the City may grant an additional franchise, lease or special privilege to any other applicant in its discretion for the same Public Rights-of-Way described herein. The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Agreement.

b. **Authorized Municipal Solid Waste Facility.**

Franchisee shall deposit all Solid Waste only at an Authorized Municipal Solid Waste Facility in accordance with the City Code, as may be amended from time to time.

c. **Other Services.**

By granting this Agreement, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

d. No Priority.

This Agreement does not establish any priority for the use of the Public Rights-of-Way by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

e. City's Use of Public Rights-of-Way.

The Franchisee acknowledges that by this Agreement it obtains no rights to use or further use of the Public Rights-of-Way other than those expressly granted in this Agreement. The City reserves the right to use the surface or subsurface or airspace above the Public Rights-of-Way covered by this Agreement for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Rights-of-Way. Further the City expressly reserves the right to install, repair, or reconstruct the Public Rights-of-Way used or occupied by Franchisee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, including but not limited to, drainage and utility facilities and structures.

The Franchisee acknowledges and accepts at its own risk, that the City may make use in the future of the Public Rights-of-Way as described above or as otherwise permitted by law, in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Rights-of-Way for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation or further remedy from the City unless compensation is available to all users of the Public Rights-of-Way which are affected in a similar manner.

f. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee or close or otherwise restrict the use of Public Rights-of-Way in the event of a public emergency or calamity as determined in the City's sole discretion. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee.

g. Compliance with Law and Standards of Operation.

The parties shall be subject to and comply with the Constitutions of the United States of America and the State of Texas, all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Agreement does not relieve the Franchisee of, and the Franchisee shall comply with, any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Agreement shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person, entity or individual. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

SECTION IV. SERVICE REQUIREMENTS

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all Solid Waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, expressly excluding services for which the City is the exclusive hauler as defined in Chapter 9.04 of the City Code. The Franchisee shall, at its own expense, furnish personnel and equipment to collect Solid Waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner, maintain a valid, current Hauler Permit issued by the City of El Paso, and shall comply with all requirements of the City Code, including but not limited to Chapter 9.04 of the City Code.

b. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Rights-of-Way and other facilities that are damaged as a result of the negligence, willful misconduct, or intentional acts of the Franchisee during the Franchisee's operations pursuant to this Agreement.

c. The Franchisee will comply with all rules, regulations, laws and agreements pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction.

d. Waste Containers

1. Graffiti.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the Container, as defined in Chapter 9.04 of the City Code or as amended from time to time, free from graffiti. Franchisee's Containers may display the name, address and/or phone number of

the Franchisee, identification numbering or lettering assigned by the Franchisee, and any warnings, notices or instructions posted by Franchisee. If Franchisee's customers do not remove graffiti from the Franchisee's Containers, then Franchisee shall remove the graffiti and may bill its customer for the cost or replace the Container at the customer's expense.

If, after five days notice from the Director, the Franchisee or its customer has not removed the graffiti or replaced the Containers, then the City may cover or remove the graffiti or the Container.

2. Over-Capacity.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the area around the Container clean and free of rubbish, litter, Solid Waste, garbage, recyclables, or other unsightly material, regardless of the cause of the placement of the rubbish, litter, Solid Waste, garbage or recyclables around the Container. Franchisee shall monitor its customer's use of their Containers and ensure that the customer is not overfilling the Container beyond the acceptable capacity of the Container.

If the City observes that the lid of a Container is not securely closed as a result of overfilling the Container, or rubbish, Solid Waste, garbage, recyclables or unsightly material of any kind has accumulated or is being stored outside the Container, or is visible above the top level of the Container, then the City may: (1) notify the Franchisee or the customer of the violation and require immediate removal of the rubbish, Solid Waste, garbage, recyclables or unsightly materials; or (2) may remove the rubbish, Solid Waste, garbage, recyclables or unsightly materials and bill the Franchisee for its actual expense in cleaning the site around the Container.

If the City observes and records three or more instances of a violation of this section or violations of the City's ordinances by the Franchisee's customer, then it shall notify the Franchisee and the Franchisee shall require the customer to contract for additional Solid Waste services, additional Containers or a larger Container sufficient to satisfy its Solid Waste and recyclables needs, or take other steps to ensure compliance with the City's ordinances. Compliance with the provisions of this section by a Franchisee customer shall not waive the City's right to seek all remedies available under the law or this Agreement whether against the Franchisee or the Franchisee's customer.

3. Franchisee shall affix a label to each Container supplied to its customers that reads "NO SCAVENGING/KEEP LIDS CLOSED." For roll-off Containers which are not equipped with lids, only "NO SCAVENGING" shall be required on the label. Label may be in the form of a decal or paint; letters shall be capitalized and either black or white in color, whichever more contrasts the paint color of the Container. The label may consist of either one or two lines, and should be clearly visible from a distance of 20 feet.

SECTION V. INDEMNITY AND INSURANCE

a. INDEMNIFICATION OF CITY.

1. THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS, CONTRACTORS AND SUBCONTRACTORS (HEREINAFTER REFERRED TO COLLECTIVELY AS “INDEMNITEES”), FROM AND AGAINST:

(A) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OR FOR HARM SUFFERED OR ALLEGED TO HAVE BEEN SUFFERED BY ANY PERSON OR PERSONS (INCLUDING THIRD PARTIES, WHETHER INDIVIDUALS OR ENTITIES), THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE AGREEMENT, (ii) BY ANY ACT OR OMISSION CONSTITUTING NEGLIGENCE, GROSS NEGLIGENCE OR OTHER FAULT OF FRANCHISEE, ITS OFFICERS, DIRECTORS, PARTNERS, OWNERS OR OTHER PRINCIPALS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, OR FOR WHICH THE FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS (ALL COLLECTIVELY “FRANCHISEE PERSONS”), OR (iii) FOR WHICH THE FRANCHISEE OR FRANCHISEE PERSONS MAY BE STRICTLY LIABLE, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; AND

(B) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, FEES, PENALTIES OR OTHER ASSESSMENTS, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES THAT MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR SUFFERED BY ANY INDEMNITEES ARISING FROM OR RELATED TO ANY VIOLATION BY FRANCHISEE OR ANY FRANCHISEE PERSON OF ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE, OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE OR ANY FRANCHISEE PERSON, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER

WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION, INCLUDING ANY AND ALL COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT AGAINST THE CITY OR ANY OTHER INDEMNITEE RELATED TO ANY SUCH CLAIM.

2. FRANCHISEE'S OBLIGATION TO INDEMNIFY INCLUDES INDEMNIFICATION FOR ANY ATTORNEY'S FEES, COSTS OF COURT OR EXPENSES OF ANY THIRD PARTY ASSESSED AGAINST THE CITY OR ANY OTHER INDEMNITEE; AND ANY ATTORNEY'S FEES, COSTS AND EXPENSES OF DEFENSE OR SETTLEMENT OR ATTEMPTED SETTLEMENT (INCLUDING BUT NOT LIMITED TO INFORMAL SETTLEMENT DISCUSSIONS, MEDIATION, ARBITRATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS) BY THE CITY OR ANY OTHER INDEMNITEES.

3. FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO ALL CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH FOR WHICH ONE OR MORE INDEMNITEES MAY BE CONTRIBUTORILY LIABLE, PROVIDED, HOWEVER, THAT ANY INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW; AND PROVIDED, FURTHER, THAT THIS APPLICATION OF PROPORTIONATE RESPONSIBILITY IS NOT A WAIVER OF ANY GOVERNMENTAL IMMUNITY FOR SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS LAW, AND FURTHER DOES NOT CONSTITUTE A WAIVER OF ANY OTHER DEFENSES AVAILABLE TO EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW.

4. FRANCHISEE'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY JUDGMENT OF LIABILITY AGAINST THE CITY RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

5. THIS SUBSECTION V.a. DOES NOT, AND SHALL NOT, BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO THE CITY OR ANY INDEMNITEE UNDER TEXAS OR FEDERAL LAW, INCLUDING ANY INDIVIDUAL ABSOLUTE OR QUALIFIED IMMUNITY. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE OTHER INDEMNITEES AND THE FRANCHISEE, AND ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. FRANCHISEE'S ASSUMPTION OF RISK.

1. FRANCHISEE UNDERTAKES AND ASSUMES ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CONTROLLED PROPERTY, INCLUDING THE PUBLIC RIGHTS-OF-WAY.

2. FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND INDEMNITEES FROM AND AGAINST ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, AGREEMENT OR REGULATION.

c. Survival. **THE INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS SECTION V. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY ACTION, CLAIM, LAWSUIT OR OTHER PROCEEDING, OR JUDGMENT ARISING FROM EVENTS OCCURING DURING THE TERM OF THIS AGREEMENT.**

d. Defense of City and other Indemnitees.

In the event any action or proceeding shall be brought against any Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, and at the Franchisee's sole cost and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld. The Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's and other Indemnitees' written consent. Further, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified herein without the prior written consent of the Franchisee.

e. Expenses of Defense; Participation by Indemnitees.

The Indemnitees shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section V. Nothing herein shall prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in their defense, provided that the participation has been requested or required by the Franchisee in conducting the defense of the action, suit, or other proceeding. These covered expenses include reasonable attorney's fees and expenses, out-of-pocket expenses reasonably and necessarily incurred, the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed or incurred by the Indemnitees in connection with such suits, actions or proceedings. Covered expenses shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by the Franchisee.

f. Insurance Required.

Not later than the Effective Date, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Attachment “1”, attached to and made a part of this Agreement. The insurance shall be written by a company(ies) approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The City shall be named a beneficiary and co-insured of such policy(ies). Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee.

THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the City Council approves this Agreement, then this Agreement shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of current continuous insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on at least an annual basis, no later than the anniversary date of this Agreement; and the Director shall have the right to request evidence of current insurance at any time. If the Franchisee fails to maintain insurance as required by this subsection, then the Franchisee shall forfeit any rights to contribution as defined in subsection V.a.3 above, and Franchisee shall be solely liable *in toto* for any judgment, award, claim or demand arising from the Franchisee’s operation of a Solid Waste Collection Service, whether the City or any other Indemnitee is or may be contributorily liable under applicable law or not.

g. Adjustments to Insurance Requirements.

The Director reserves the right to review the insurance requirements stated herein during the term of this Agreement and to recommend to the City Council reasonable adjustments in the insurance requirements prior to any anniversary renewal of the insurance when deemed necessary or prudent by the City. Any adjustments recommended and approved by the City Council may be based upon changes in statutory law, applicable court decisions, the claims history of the industry as well as of the Franchisee, or a commercially reasonable determination by the City that existing coverage is inadequate for the risks associated with the services to be provided hereunder. When any insurance coverage limits are changed, the Franchisee shall pay any resulting increase in cost due to the changes. If Franchisee does not agree to an increase in coverage recommended by the City and approved by Council, the City may opt to pay the difference in premium that would be required for such increased coverage; but if the City declines to do so, the City shall have the right to terminate this Agreement as of the end of the current insurance term, or at the next contract year anniversary, whichever is sooner.

h. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability

for indemnity, damages and accidents as set forth in the Agreement. The bankruptcy, insolvency, receivership or denial of liability by any insurer of Franchisee shall not excuse the Franchisee from the responsibility for indemnity, liability of, or damages payable by the Franchisee as provided in this Agreement.

SECTION VI. FEES, PAYMENTS AND COMPENSATION.

a. Consideration.

Council finds and determines that Franchisee has incurred, or will incur, significant costs to upgrade its facilities as costs associated with performance under this Franchise Agreement. Council finds that such expenditures as well as the promises contained in this Franchise Agreement are satisfactory consideration to support this Agreement.

b. Additional Consideration.

Upon notice from the City, Franchisee shall provide Solid Waste removal, collection, and transport, services to the City following natural disasters or Acts of God. The term “Acts of God” as used herein, shall include, but not be limited to, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability. Franchisee understands that it is not guaranteed to receive compensation for these services. Council and the Franchisee agree that this obligation to provide emergency services without a guarantee of compensation constitutes part of the consideration offered by the Franchisee to support this Franchise Agreement.

c. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due or owed under this Agreement or of any other obligation of the Franchisee.

SECTION VII. TERM, TERMINATION AND PERFORMANCE EVALUATION

a. Term and Extensions.

This Agreement shall be effective as of the Effective Date, and, unless it is terminated earlier pursuant to its terms, shall continue in effect until December 31, 2026, with the possibility for one two-year extension as mutually agreed to by the City and the Franchisee. Franchisee shall give ninety (90) days written notice to the City prior to the expiration of the term to request an extension. The City in its sole discretion may decide to approve or decline the extension, or request an amendment of this Agreement prior to such extension.

b. Termination.

1. Right to Terminate

This Agreement may be terminated by either party, for cause or convenience, by providing ninety (90) days’ written notice to the non-terminating party. Notwithstanding the foregoing, the City may terminate this Agreement if the City determines in its sole discretion termination is necessary to secure the efficiency of public service at a reasonable rate, to assure the Public Rights-of-Way are maintained

in good order throughout the term of this Agreement, or termination is in the public interest when Franchisee is utilizing the Public Rights-of-Way in a manner the City deems is inconsistent with the public use of the City's Public Rights-of-Way without providing prior notice to the Franchisee. If the City chooses to act pursuant to this authority it shall notify the Franchisee of its decision within three days of the termination of this Agreement.

2. Rights Upon Termination.

Subject to applicable law, or as specifically provided for otherwise in this Agreement, this Agreement and all rights, permissions, and privileges of the parties defined in this Agreement shall automatically cease upon the termination of this Agreement, unless such rights are extended by mutual agreement of the parties, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

In the event the Franchisee continues use of the Public Rights-of-Way after the expiration or termination of this Agreement the City may utilize any means available in law or in equity to prevent violations of the EL PASO CITY CODE or this Agreement. Franchisee shall be responsible for all attorney's fees and court costs incurred as a result of any action taken by the City pursuant to this paragraph.

c. Performance Evaluation.

In order to: (i) assure that the Franchisee is complying with the terms of this Agreement, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation during the term of the Agreement in accordance with the following process:

1. At least sixty (60) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(ii) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within thirty (30) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, a minimum, the following areas:

- (i) documentation that all of Franchisee's vehicles used in accordance with this agreement have been properly inspected for compliance with safety and air emission standards in the vehicles' state of registration, and documentation related to local government requirements for the permitting of vehicles for the hauling of Solid Waste;
- (ii) any other topic deemed material or relevant by the City for its enforcement of this Agreement.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information collected from the Effective Date, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than twenty-four (24) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than twenty (20) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

SECTION VIII. TRANSFERS OF OWNERSHIP AND CONTROL

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates identified herein, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, this Agreement or the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Assignee: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee and its Affiliates shall request approval from Council in writing and shall provide the Council with the Assignee's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

2. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs. If the Franchisee cannot provide at least sixty (60) days notice before a transfer solely for

security purposes, then Franchisee must notify the Director in writing of such a transfer at the earliest possible date after becoming aware of such transfer.

3. The Franchisee may not transfer or assign this Agreement to an Affiliate not identified herein, without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee shall request approval from Council in writing and shall provide the Council with the Affiliate's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

b. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Attachment "2", attached to and made a part of this Agreement, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Agreement.

SECTION IX. DEFAULT

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Agreement shall constitute an Event of Default by the Franchisee under this Agreement:

1. The failure or refusal by the Franchisee to pay consideration when due as prescribed by this Agreement.

2. The Franchisee's material violation of or failure to comply with any provision or condition of chapter 9.04 of the City Code relating to Solid Waste collection service or any other applicable provision or condition of the City Code.

3. The suspension or revocation of the Franchisee's Hauler Permit.

4. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Agreement, or the Franchisee's failure or refusal to perform any obligation contained in this Agreement.

5. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real property taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

6. The entry of any judgment against the Franchisee by which another party becomes entitled to possession of any of the Franchisee's Solid Waste Collection Service's assets, and for which transfer of these assets requires prior consent of the

Council, and such judgment is not stayed pending rehearing or appeal following entry of the judgment for a period of forty-five (45) or more days.

7. The dissolution of the Franchisee.

8. The Franchisee's filing of a voluntary petition in bankruptcy; the filing of an involuntary petition in bankruptcy against the Franchisee; an adjudication finding the Franchisee insolvent; the Franchisee's obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of the Franchisee, or any of Franchisee's property or this Agreement or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Agreement.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Agreement.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Agreement.

12. The Franchisee's failure or refusal to comply with a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section X. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section X, unless the Director, the City Manager, or the Council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section X.

SECTION X. REMEDIES

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section IX., the Director shall report the occurrence of default to the City Manager and the Council. The Council shall be entitled in its sole discretion to exercise any or all of the following remedies, which shall be cumulative:

1. Exercise its rights to liquidated damages as described in subsection c. of this Section X.
2. Commence an action at law against the Franchisee for monetary damages.
3. Commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable, or other equitable relief.
4. Revoke the Franchise granted under this Agreement.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Agreement. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Agreement shall be automatically terminated and deemed null and void and shall have no further force or effect, and the provisions that are contractual in nature which are also included as a part of this Agreement are hereby automatically terminated, other than provisions that expressly are continued after termination or which impose obligations or rights of a kind that are intended and appropriate to be continued beyond termination, such as but not limited to Franchisee's obligations to defend and indemnify.

Upon revocation, the City shall retain any portion of the consideration and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered or decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. The Council reserves the right, in its sole discretion, to seek liquidated damages or to pursue other remedies as provided in this Section X, or allowed in law or equity in addition to revocation.

c. Liquidated Damages.

In addition to the other remedies provided for in this Section X., other remedies provided in this Agreement and remedies available at law or in equity, in the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Agreement, the Franchisee shall pay Two Hundred Dollars (\$200.00) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted. This subsection X.c. does not apply to the failure or refusal by the Franchisee to pay the Franchise Fee or other consideration when it becomes due (Event of

Default, subsection IX.a.1.) or the failure or the refusal to pay or cause to be paid any of the City's governmentally imposed taxes (Event of Default, subsection IX.a.4).

d. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section X. shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control to have prevented or avoided, the Council may pursue any or all of the remedies provided in Section X. or otherwise at law or in equity. The remedies of the City created under this Agreement shall be cumulative of other remedies under the Agreement, at law or in equity to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Agreement shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default.

e. Curable Violations.

The Franchisee shall not be found in violation of this Agreement or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee; provided, that the Franchisee has made reasonably diligent efforts to have prevented or avoided the violation, or the violation occurs as a result of circumstances beyond Franchisee's control or its ability to have prevented or avoided, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship, or election of actions based on, or for the purpose of realizing economic benefit or advantage; nor by the negligence or misfeasance or malfeasance of its directors, officers, principals, employees, agents, representatives, contractors or subcontractors.

SECTION XI. RECORDKEEPING AND AUDIT

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations in the Authorized Area under and in connection with this Agreement in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates within the scope of this Agreement during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Agreement. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law. To the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this

Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Reports.

If the Franchisee is a publicly traded company, the Franchisee shall file with the City by the end of each calendar year a copy of its certified financial statements filed with the Security and Exchange Commission, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City for inspection upon request.

d. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Agreement. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION XII. MISCELLANEOUS

a. Entire Agreement.

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Agreement. This Agreement can only be modified by an Agreement amendment approved by Council.

b. Notices.

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by any of the means described in subsection XII.d. of this Agreement. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to:

City of El Paso, Environmental Services Department
Attention: Director
7968 San Paulo
El Paso, Texas 79907

And:

City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

If to the Franchisee:

A-1 Disposal
Attn: Jesus Adrian Munoz, Owner

El Paso, Texas 799_____

Either the City or the Franchisee may change its address or personnel for the receipt of notices at any time by giving notice of the change to the other party as provided in this subsection XII.b. Any notice given by either the City or the Franchisee must be signed by an authorized representative.

c. Notice of Claim.

This Agreement is subject to the provisions of Section 1.5 of the El Paso City Charter, as amended, relating to requirements for filing a notice of a claim against the City. Section 1.5 of the El Paso City Charter, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Franchisee shall comply with the requirements of Section 1.5 as a precondition of any claim against the City relating to or arising out of this Agreement.

d. Delivery of Notices.

Notices required to be given under this Agreement may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.
2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.
3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.
4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement

transmission as a recipient shall request) and with a hard copy on the same date or the next day mailed to all by first class mail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Agreement or the services or facilities of the Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Agreement, acknowledges that it has not been induced to accept this Agreement by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Agreement. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Agreement.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Agreement.

k. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by the EL PASO CITY CODE, and any other applicable laws and regulations. If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, such provision shall be modified to the

minimum extent necessary to make such provision valid and enforceable and neither the remainder hereof nor the application of such provision to other persons, entities, or circumstances or other instruments shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law. To the extent that any party's performance under this contract becomes impossible or illegal as a result of future and unknown regulations not contemplated by the parties, and the parties are not able to modify the terms of this Agreement as contemplated above, then the parties shall be excused from further performance under those portions of this Agreement, and such offending portions shall be severed and excluded from this Agreement.

l. City Retained Powers.

In addition to all rights provided in this Agreement, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City Agreements which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Agreement which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Agreement and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Agreement.

n. Time is of the Essence.

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Agreement.

o. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term "force majeure" shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Agreement, Franchisee shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

p. Recognition of Rights.

The Franchisee agrees that by adopting this Agreement, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Agreement in whole or in part upon the Franchisee.

q. Police Powers.

1. In accepting this Agreement, the Franchisee acknowledges that its rights under this Agreement are subject to the police power of the City to adopt and enforce general Agreements necessary to the health, safety, and welfare of the public. Except as otherwise agreed to by the parties or exempted by a City ordinance, Franchisee shall comply with all applicable general laws and Agreements enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Agreement as convenient and necessary to promote the public's interest.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

r. No Presumption of Renewal

This Agreement and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

s. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the El Paso City Charter. Any request by the Franchisee for an amendment to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

t. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

u. This Agreement may be amended, revised or modified only by a written instrument, executed by the parties hereto.

v. The headings, captions and arrangements contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. If the context required, words used in the singular shall be read as including the plural and vice versa, and pronouns of any gender shall include all genders. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, paragraph, subparagraph, section or article.

w. This Agreement is executed for the sole benefit of parties hereto and is not for the benefit of any third party. No other party will have rights under this Agreement.

x. Authorization. Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective entity.

y. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

z. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

aa. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an attachment or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of El Paso, EL PASO CITY CODE, and the ordinance granting this Agreement and all exhibits thereto.

bb. No discrimination. Franchisee, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of this contract, or be otherwise subjected to discrimination in the execution of this contract.

2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in or denied the benefits of said services, or otherwise be subjected to discrimination.

3. If applicable, Franchisee shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. If applicable, Franchisee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

4. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

List of Attachments:

Attachment “1” – Insurance Requirements

Attachment “2” – Schedule of Ownership

STATE OF TEXAS)
)
COUNTY OF EL PASO)

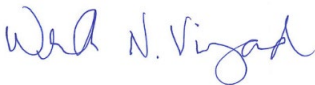
SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and A-1 Disposal.

THE CITY OF EL PASO:

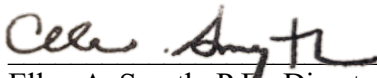
Tomás González
City Manager

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

STATE OF TEXAS)
)
COUNTY OF EL PASO) **SOLID WASTE FRANCHISE AGREEMENT**

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and A-1 Disposal.

A-1 DISPOSAL:

By: _____
Jesus Adrian Munoz
Owner

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Jesus Adrian Munoz, as Owner of A-1 Disposal , known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Adela M. Torres, and that he/she executed the same as the act of A-1 Disposal for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2022.

Notary Public
State of _____

SEAL

ATTACHMENT "1"

INSURANCE REQUIREMENTS

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE:

For the duration of this Agreement and any extension hereof, Franchisee shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

2. WORKERS' COMPENSATION

For the duration of this Agreement and any extension hereof, Franchisee shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law:

\$500,000.00

3. AUTOMOBILE LIABILITY INSURANCE

Minimum \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.

ATTACHMENT “2”

SCHEDULE OF OWNERSHIP

Franchisee Name: A-1 Disposal
Legal Entity: A-1 Disposal

Identity of Owners:
(Identify each partner, member, shareholder, or other owner. For each owner identified identify the individual ownership interest, to include total number of shares owned.)



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-36, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting a renewal of non-exclusive franchise to Alareal Corporation, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBGOAL:

SUBJECT:

An ordinance granting a renewal of non-exclusive franchise to Alareal Corporation, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in section 9.04.630 of the El Paso city code.

BACKGROUND / DISCUSSION:

A franchise is required for solid waste collection haulers that are permitted by the Environmental Services Department. This agreement between the franchisee and City identifies standards to be maintained for the operation of solid waste collection services.

PRIOR COUNCIL ACTION:

Non-exclusive franchises for solid waste collection services are routinely approved by Council.

AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Environmental Services Department

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWAL OF NON-EXCLUSIVE FRANCHISE TO ALAREAL CORPORATION, TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by ordinance passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the State of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, the attached franchise agreement is a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City of El Paso requires in City Code Section 9.04, that all haulers of municipal solid waste are required to enter into a franchise agreement with the City; and

WHEREAS, ALAREAL CORPORATION is engaged in the business of collection and transportation of solid waste within the City and has requested a franchise to use the City's rights-of-way; and,

WHEREAS, ALAREAL CORPORATION has agreed to the terms of the Solid Waste Franchise Agreement with the City of El Paso, granting ALAREAL CORPORATION a non-exclusive franchise to operate and maintain a solid waste collection service using the City's rights-of-way; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

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

1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

2. The City Manager is authorized to sign a renewal of non-exclusive Solid Waste Franchise Agreement by and between the City of El Paso ALAREAL CORPORATION for the franchisee to operate and maintain a Solid Waste Collection Service, in, over, along and across the Public Rights-of-Way in the Authorized Area, to end on December 31, 2026, as set forth and defined in the document labeled Exhibit "A", attached and incorporated by reference for all purposes.

3. All ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

4. The City Manager or authorized agent is authorized to extend this agreement for an additional five years at the end of the date of the contract.

5. This ordinance shall take effect on January 1, 2022.

PASSED AND APPROVED this ____ day of ____, 2022.


CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 5 day of January, 2022.

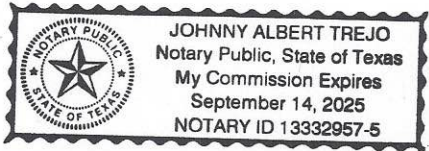
ALAREAL CORPORATION

[Signature]
By: Antonio Alarcon, Owner

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 5 day of January 2022, by Antonio Alarcon, Owner of Alareal Corporation.



[Signature]
Notary Public, State of Texas
Notary's Printed or Typed Name:
Johnny Trejo

My Commission Expires:
September 14, 2025

EXHIBIT “A”

**SOLID WASTE
FRANCHISE AGREEMENT**

BY AND BETWEEN

CITY OF EL PASO, TEXAS

AND

ALAREAL CORPORATION

EFFECTIVE DATE: January 1, 2022

TABLE OF CONTENTS

SECTION I.	Preamble
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SECTION VII.	Term, Termination and Performance Evaluation
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SECTION IX.	Default
SECTION X.	Remedies
SECTION XI.	Recordkeeping and audit
SECTION XII.	Miscellaneous

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

THIS Solid Waste Franchise Agreement (“Agreement”) is entered into this ____ day of _____, 2022, by and between the CITY OF EL PASO, a Texas home rule municipality, hereinafter referred to as the "CITY", and ALAREAL CORPORATION, hereinafter referred to as “Franchisee”.

RECITALS

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by Agreement passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the state of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, this franchise agreement is a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City desires to exercise the authority provided to it by ordinance, charter and state law to grant a franchise for the collection, transportation, hauling and disposal of Solid Waste as further defined herein, within the corporate limits of the City and under the terms of this Agreement as set out below; and,

WHEREAS, Franchisee desires to obtain a franchise to provide for the collection, transportation, hauling and disposal of Solid Waste from the City of El Paso, and agrees to comply with the terms and conditions of this Agreement; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Agreement are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

WITNESSETH:

SECTION I. PREAMBLE

That the declarations contained in the preamble to this Agreement are material and incorporated herein as a part of this Agreement as though they were fully set forth in this Agreement in their entirety.

SECTION II. DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word “shall” is mandatory and not merely directory. The word “may” is not mandatory and is merely permissive. The word “day” means a calendar day and not a business day. Words defined elsewhere in this Agreement shall be accorded that meaning throughout this Agreement. Words not defined shall be given their common and ordinary meaning.

a. **Affiliate** and **Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.

b. **Agreement** shall mean this document.

c. **Authorized Area** means the entire area within the corporate limits of the City of El Paso, including any territory annexed into the City limits after the Effective Date of this Agreement.

d. **City** means the City of El Paso, a home rule municipal corporation, a political subdivision of the State of Texas.

e. **City Charter** means the City’s organic law, equivalent to a constitution, which defines the City’s existence and prescribes the powers, duties, and organization of the City’s governmental structure.

f. **City Code** shall mean the ordinances of the City codified into the EL PASO CITY CODE, as amended from time to time.

g. **City Manager** shall mean the City Manager or the City Manager’s designated representative.

h. **Container** shall mean any receptacle for waste as defined by Title 9.04 to include Dumpsters, Containers, Carts, Roll-Offs and Compactors.

i. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

j. **Council** shall mean the governing body of the City of El Paso. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. Unless otherwise stated in this Agreement or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Agreement and to the Franchisee's exercise of the rights and privileges conferred in this Agreement.

k. **Director** means the Director of the Environmental Services Department of the City, or any successor department, or any Director as designated by the City Manager, or the Director's designated representative.

l. **Effective Date** means January 1, 2022.

m. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Rights-of-Way under this Agreement, and all of the incidental rights and obligations as described by this Agreement.

n. **Franchisee** shall mean ALAREAL CORPORATION hereinafter referred to as "Franchisee", the grantee of rights under this Agreement; or the successor, transferee, or assignee of this Agreement, including the officers, employees, agents, contractors, and subcontractors.

o. **Junk Removal Service** shall mean the collection and transportation of solid waste generated from a Property Clean-up Event by a Self-Transporter or Permitted Hauler, as defined within Chapter 9.04 of the El Paso City Code, when the waste is placed directly into a vehicle or trailer attached to a vehicle, or when a container placed at a property is removed within seven days.

p. **Property Clean-up Event** shall mean the removal of Solid Waste from the interior of a building or premises of a property for the purpose of abating a nuisance, resolving a violation of the El Paso City Code, or removing unsanitary or slightly debris or waste, when the duration of the event does not exceed seven days.

q. **Public Rights-of-Way** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated and accepted by the City as a public right-of-way. "Public Rights-of-Way" shall not include property of the City which is not a dedicated public way, street, highway, or alley or available for use by the

general public or easements not dedicated or accepted by the City as a public right-of-way.

r. **Solid Waste Collection Service** shall mean the collection and transportation of Solid Waste, not including a Junk Removal Service, as that term is defined herein within the Authorized Area, from a dumpster, roll-off container, or other container larger than two cubic yards in volume, or from a container less than two cubic yards in volume when providing service to more than four customers, for processing or disposal at an Authorized Municipal Solid Waste Facility as defined in Chapter 9.04 of the El Paso City Code or as may be subsequently amended from time to time.

s. **Solid Waste** shall mean that term as defined in Title 30 of the Texas Administrative Code § 330.3, or as may subsequently be amended from time to time, excluding Excluded Waste as defined in section 9.04.020 of the City Code, as may subsequently be amended from time to time. Solid Waste does not include any municipal solid waste and program recyclable materials generated at residential properties in which the City is the exclusive hauler as set forth in chapter 9.04 (Solid Waste Management) of the City Code.

SECTION III. GRANTING OF FRANCHISE

Subject to all the terms and conditions contained in this Agreement, the Constitution of the United States of America or of the State of Texas, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal or state law, the City hereby grants the Franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Rights-of-Way in the Authorized Area. This grant is subject to the following additional conditions:

a. **Non-Exclusive.**

Nothing herein contained shall be construed as granting an exclusive use or right to the Franchisee to the Public Rights-of-Way, and the City may grant an additional franchise, lease or special privilege to any other applicant in its discretion for the same Public Rights-of-Way described herein. The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Agreement.

b. **Authorized Municipal Solid Waste Facility.**

Franchisee shall deposit all Solid Waste only at an Authorized Municipal Solid Waste Facility in accordance with the City Code, as may be amended from time to time.

c. **Other Services.**

By granting this Agreement, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

d. No Priority.

This Agreement does not establish any priority for the use of the Public Rights-of-Way by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

e. City's Use of Public Rights-of-Way.

The Franchisee acknowledges that by this Agreement it obtains no rights to use or further use of the Public Rights-of-Way other than those expressly granted in this Agreement. The City reserves the right to use the surface or subsurface or airspace above the Public Rights-of-Way covered by this Agreement for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Rights-of-Way. Further the City expressly reserves the right to install, repair, or reconstruct the Public Rights-of-Way used or occupied by Franchisee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, including but not limited to, drainage and utility facilities and structures.

The Franchisee acknowledges and accepts at its own risk, that the City may make use in the future of the Public Rights-of-Way as described above or as otherwise permitted by law, in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Rights-of-Way for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation or further remedy from the City unless compensation is available to all users of the Public Rights-of-Way which are affected in a similar manner.

f. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee or close or otherwise restrict the use of Public Rights-of-Way in the event of a public emergency or calamity as determined in the City's sole discretion. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee.

g. Compliance with Law and Standards of Operation.

The parties shall be subject to and comply with the Constitutions of the United States of America and the State of Texas, all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Agreement does not relieve the Franchisee of, and the Franchisee shall comply with, any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Agreement shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person, entity or individual. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

SECTION IV. SERVICE REQUIREMENTS

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all Solid Waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, expressly excluding services for which the City is the exclusive hauler as defined in Chapter 9.04 of the City Code. The Franchisee shall, at its own expense, furnish personnel and equipment to collect Solid Waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner, maintain a valid, current Hauler Permit issued by the City of El Paso, and shall comply with all requirements of the City Code, including but not limited to Chapter 9.04 of the City Code.

b. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Rights-of-Way and other facilities that are damaged as a result of the negligence, willful misconduct, or intentional acts of the Franchisee during the Franchisee's operations pursuant to this Agreement.

c. The Franchisee will comply with all rules, regulations, laws and agreements pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction.

d. Waste Containers

1. Graffiti.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the Container, as defined in Chapter 9.04 of the City Code or as amended from time to time, free from graffiti. Franchisee's Containers may display the name, address and/or phone number of

the Franchisee, identification numbering or lettering assigned by the Franchisee, and any warnings, notices or instructions posted by Franchisee. If Franchisee's customers do not remove graffiti from the Franchisee's Containers, then Franchisee shall remove the graffiti and may bill its customer for the cost or replace the Container at the customer's expense.

If, after five days notice from the Director, the Franchisee or its customer has not removed the graffiti or replaced the Containers, then the City may cover or remove the graffiti or the Container.

2. Over-Capacity.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the area around the Container clean and free of rubbish, litter, Solid Waste, garbage, recyclables, or other unsightly material, regardless of the cause of the placement of the rubbish, litter, Solid Waste, garbage or recyclables around the Container. Franchisee shall monitor its customer's use of their Containers and ensure that the customer is not overfilling the Container beyond the acceptable capacity of the Container.

If the City observes that the lid of a Container is not securely closed as a result of overfilling the Container, or rubbish, Solid Waste, garbage, recyclables or unsightly material of any kind has accumulated or is being stored outside the Container, or is visible above the top level of the Container, then the City may: (1) notify the Franchisee or the customer of the violation and require immediate removal of the rubbish, Solid Waste, garbage, recyclables or unsightly materials; or (2) may remove the rubbish, Solid Waste, garbage, recyclables or unsightly materials and bill the Franchisee for its actual expense in cleaning the site around the Container.

If the City observes and records three or more instances of a violation of this section or violations of the City's ordinances by the Franchisee's customer, then it shall notify the Franchisee and the Franchisee shall require the customer to contract for additional Solid Waste services, additional Containers or a larger Container sufficient to satisfy its Solid Waste and recyclables needs, or take other steps to ensure compliance with the City's ordinances. Compliance with the provisions of this section by a Franchisee customer shall not waive the City's right to seek all remedies available under the law or this Agreement whether against the Franchisee or the Franchisee's customer.

3. Franchisee shall affix a label to each Container supplied to its customers that reads "NO SCAVENGING/KEEP LIDS CLOSED." For roll-off Containers which are not equipped with lids, only "NO SCAVENGING" shall be required on the label. Label may be in the form of a decal or paint; letters shall be capitalized and either black or white in color, whichever more contrasts the paint color of the Container. The label may consist of either one or two lines, and should be clearly visible from a distance of 20 feet.

SECTION V. INDEMNITY AND INSURANCE

a. INDEMNIFICATION OF CITY.

1. THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS, CONTRACTORS AND SUBCONTRACTORS (HEREINAFTER REFERRED TO COLLECTIVELY AS “INDEMNITEES”), FROM AND AGAINST:

(A) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OR FOR HARM SUFFERED OR ALLEGED TO HAVE BEEN SUFFERED BY ANY PERSON OR PERSONS (INCLUDING THIRD PARTIES, WHETHER INDIVIDUALS OR ENTITIES), THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE AGREEMENT, (ii) BY ANY ACT OR OMISSION CONSTITUTING NEGLIGENCE, GROSS NEGLIGENCE OR OTHER FAULT OF FRANCHISEE, ITS OFFICERS, DIRECTORS, PARTNERS, OWNERS OR OTHER PRINCIPALS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, OR FOR WHICH THE FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS (ALL COLLECTIVELY “FRANCHISEE PERSONS”), OR (iii) FOR WHICH THE FRANCHISEE OR FRANCHISEE PERSONS MAY BE STRICTLY LIABLE, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; AND

(B) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, FEES, PENALTIES OR OTHER ASSESSMENTS, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES THAT MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR SUFFERED BY ANY INDEMNITEES ARISING FROM OR RELATED TO ANY VIOLATION BY FRANCHISEE OR ANY FRANCHISEE PERSON OF ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE, OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE OR ANY FRANCHISEE PERSON, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER

WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION, INCLUDING ANY AND ALL COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT AGAINST THE CITY OR ANY OTHER INDEMNITEE RELATED TO ANY SUCH CLAIM.

2. FRANCHISEE'S OBLIGATION TO INDEMNIFY INCLUDES INDEMNIFICATION FOR ANY ATTORNEY'S FEES, COSTS OF COURT OR EXPENSES OF ANY THIRD PARTY ASSESSED AGAINST THE CITY OR ANY OTHER INDEMNITEE; AND ANY ATTORNEY'S FEES, COSTS AND EXPENSES OF DEFENSE OR SETTLEMENT OR ATTEMPTED SETTLEMENT (INCLUDING BUT NOT LIMITED TO INFORMAL SETTLEMENT DISCUSSIONS, MEDIATION, ARBITRATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS) BY THE CITY OR ANY OTHER INDEMNITEES.

3. FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO ALL CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH FOR WHICH ONE OR MORE INDEMNITEES MAY BE CONTRIBUTORILY LIABLE, PROVIDED, HOWEVER, THAT ANY INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW; AND PROVIDED, FURTHER, THAT THIS APPLICATION OF PROPORTIONATE RESPONSIBILITY IS NOT A WAIVER OF ANY GOVERNMENTAL IMMUNITY FOR SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS LAW, AND FURTHER DOES NOT CONSTITUTE A WAIVER OF ANY OTHER DEFENSES AVAILABLE TO EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW.

4. FRANCHISEE'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY JUDGMENT OF LIABILITY AGAINST THE CITY RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

5. THIS SUBSECTION V.a. DOES NOT, AND SHALL NOT, BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO THE CITY OR ANY INDEMNITEE UNDER TEXAS OR FEDERAL LAW, INCLUDING ANY INDIVIDUAL ABSOLUTE OR QUALIFIED IMMUNITY. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE OTHER INDEMNITEES AND THE FRANCHISEE, AND ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. FRANCHISEE'S ASSUMPTION OF RISK.

1. FRANCHISEE UNDERTAKES AND ASSUMES ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CONTROLLED PROPERTY, INCLUDING THE PUBLIC RIGHTS-OF-WAY.

2. FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND INDEMNITEES FROM AND AGAINST ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, AGREEMENT OR REGULATION.

c. Survival. **THE INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS SECTION V. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY ACTION, CLAIM, LAWSUIT OR OTHER PROCEEDING, OR JUDGMENT ARISING FROM EVENTS OCCURING DURING THE TERM OF THIS AGREEMENT.**

d. Defense of City and other Indemnitees.

In the event any action or proceeding shall be brought against any Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, and at the Franchisee's sole cost and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld. The Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's and other Indemnitees' written consent. Further, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified herein without the prior written consent of the Franchisee.

e. Expenses of Defense; Participation by Indemnitees.

The Indemnitees shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section V. Nothing herein shall prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in their defense, provided that the participation has been requested or required by the Franchisee in conducting the defense of the action, suit, or other proceeding. These covered expenses include reasonable attorney's fees and expenses, out-of-pocket expenses reasonably and necessarily incurred, the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed or incurred by the Indemnitees in connection with such suits, actions or proceedings. Covered expenses shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by the Franchisee.

f. Insurance Required.

Not later than the Effective Date, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Attachment “1”, attached to and made a part of this Agreement. The insurance shall be written by a company(ies) approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The City shall be named a beneficiary and co-insured of such policy(ies). Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee.

THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the City Council approves this Agreement, then this Agreement shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of current continuous insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on at least an annual basis, no later than the anniversary date of this Agreement; and the Director shall have the right to request evidence of current insurance at any time. If the Franchisee fails to maintain insurance as required by this subsection, then the Franchisee shall forfeit any rights to contribution as defined in subsection V.a.3 above, and Franchisee shall be solely liable *in toto* for any judgment, award, claim or demand arising from the Franchisee’s operation of a Solid Waste Collection Service, whether the City or any other Indemnitee is or may be contributorily liable under applicable law or not.

g. Adjustments to Insurance Requirements.

The Director reserves the right to review the insurance requirements stated herein during the term of this Agreement and to recommend to the City Council reasonable adjustments in the insurance requirements prior to any anniversary renewal of the insurance when deemed necessary or prudent by the City. Any adjustments recommended and approved by the City Council may be based upon changes in statutory law, applicable court decisions, the claims history of the industry as well as of the Franchisee, or a commercially reasonable determination by the City that existing coverage is inadequate for the risks associated with the services to be provided hereunder. When any insurance coverage limits are changed, the Franchisee shall pay any resulting increase in cost due to the changes. If Franchisee does not agree to an increase in coverage recommended by the City and approved by Council, the City may opt to pay the difference in premium that would be required for such increased coverage; but if the City declines to do so, the City shall have the right to terminate this Agreement as of the end of the current insurance term, or at the next contract year anniversary, whichever is sooner.

h. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability

for indemnity, damages and accidents as set forth in the Agreement. The bankruptcy, insolvency, receivership or denial of liability by any insurer of Franchisee shall not excuse the Franchisee from the responsibility for indemnity, liability of, or damages payable by the Franchisee as provided in this Agreement.

SECTION VI. FEES, PAYMENTS AND COMPENSATION.

a. Consideration.

Council finds and determines that Franchisee has incurred, or will incur, significant costs to upgrade its facilities as costs associated with performance under this Franchise Agreement. Council finds that such expenditures as well as the promises contained in this Franchise Agreement are satisfactory consideration to support this Agreement.

b. Additional Consideration.

Upon notice from the City, Franchisee shall provide Solid Waste removal, collection, and transport, services to the City following natural disasters or Acts of God. The term “Acts of God” as used herein, shall include, but not be limited to, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability. Franchisee understands that it is not guaranteed to receive compensation for these services. Council and the Franchisee agree that this obligation to provide emergency services without a guarantee of compensation constitutes part of the consideration offered by the Franchisee to support this Franchise Agreement.

c. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due or owed under this Agreement or of any other obligation of the Franchisee.

SECTION VII. TERM, TERMINATION AND PERFORMANCE EVALUATION

a. Term and Extensions.

This Agreement shall be effective as of the Effective Date, and, unless it is terminated earlier pursuant to its terms, shall continue in effect until December 31, 2026, with the possibility for one two-year extension as mutually agreed to by the City and the Franchisee. Franchisee shall give ninety (90) days written notice to the City prior to the expiration of the term to request an extension. The City in its sole discretion may decide to approve or decline the extension, or request an amendment of this Agreement prior to such extension.

b. Termination.

1. Right to Terminate

This Agreement may be terminated by either party, for cause or convenience, by providing ninety (90) days’ written notice to the non-terminating party. Notwithstanding the foregoing, the City may terminate this Agreement if the City determines in its sole discretion termination is necessary to secure the efficiency of public service at a reasonable rate, to assure the Public Rights-of-Way are maintained

in good order throughout the term of this Agreement, or termination is in the public interest when Franchisee is utilizing the Public Rights-of-Way in a manner the City deems is inconsistent with the public use of the City's Public Rights-of-Way without providing prior notice to the Franchisee. If the City chooses to act pursuant to this authority it shall notify the Franchisee of its decision within three days of the termination of this Agreement.

2. Rights Upon Termination.

Subject to applicable law, or as specifically provided for otherwise in this Agreement, this Agreement and all rights, permissions, and privileges of the parties defined in this Agreement shall automatically cease upon the termination of this Agreement, unless such rights are extended by mutual agreement of the parties, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

In the event the Franchisee continues use of the Public Rights-of-Way after the expiration or termination of this Agreement the City may utilize any means available in law or in equity to prevent violations of the EL PASO CITY CODE or this Agreement. Franchisee shall be responsible for all attorney's fees and court costs incurred as a result of any action taken by the City pursuant to this paragraph.

c. Performance Evaluation.

In order to: (i) assure that the Franchisee is complying with the terms of this Agreement, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation during the term of the Agreement in accordance with the following process:

1. At least sixty (60) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(ii) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within thirty (30) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, a minimum, the following areas:

- (i) documentation that all of Franchisee's vehicles used in accordance with this agreement have been properly inspected for compliance with safety and air emission standards in the vehicles' state of registration, and documentation related to local government requirements for the permitting of vehicles for the hauling of Solid Waste;
- (ii) any other topic deemed material or relevant by the City for its enforcement of this Agreement.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information collected from the Effective Date, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than twenty-four (24) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than twenty (20) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

SECTION VIII. TRANSFERS OF OWNERSHIP AND CONTROL

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates identified herein, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, this Agreement or the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Assignee: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee and its Affiliates shall request approval from Council in writing and shall provide the Council with the Assignee's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

2. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs. If the Franchisee cannot provide at least sixty (60) days notice before a transfer solely for

security purposes, then Franchisee must notify the Director in writing of such a transfer at the earliest possible date after becoming aware of such transfer.

3. The Franchisee may not transfer or assign this Agreement to an Affiliate not identified herein, without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee shall request approval from Council in writing and shall provide the Council with the Affiliate's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

b. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Attachment "2", attached to and made a part of this Agreement, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Agreement.

SECTION IX. DEFAULT

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Agreement shall constitute an Event of Default by the Franchisee under this Agreement:

1. The failure or refusal by the Franchisee to pay consideration when due as prescribed by this Agreement.

2. The Franchisee's material violation of or failure to comply with any provision or condition of chapter 9.04 of the City Code relating to Solid Waste collection service or any other applicable provision or condition of the City Code.

3. The suspension or revocation of the Franchisee's Hauler Permit.

4. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Agreement, or the Franchisee's failure or refusal to perform any obligation contained in this Agreement.

5. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real property taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

6. The entry of any judgment against the Franchisee by which another party becomes entitled to possession of any of the Franchisee's Solid Waste Collection Service's assets, and for which transfer of these assets requires prior consent of the

Council, and such judgment is not stayed pending rehearing or appeal following entry of the judgment for a period of forty-five (45) or more days.

7. The dissolution of the Franchisee.

8. The Franchisee's filing of a voluntary petition in bankruptcy; the filing of an involuntary petition in bankruptcy against the Franchisee; an adjudication finding the Franchisee insolvent; the Franchisee's obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of the Franchisee, or any of Franchisee's property or this Agreement or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Agreement.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Agreement.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Agreement.

12. The Franchisee's failure or refusal to comply with a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section X. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section X, unless the Director, the City Manager, or the Council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section X.

SECTION X. REMEDIES

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section IX., the Director shall report the occurrence of default to the City Manager and the Council. The Council shall be entitled in its sole discretion to exercise any or all of the following remedies, which shall be cumulative:

1. Exercise its rights to liquidated damages as described in subsection c. of this Section X.
2. Commence an action at law against the Franchisee for monetary damages.
3. Commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable, or other equitable relief.
4. Revoke the Franchise granted under this Agreement.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Agreement. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Agreement shall be automatically terminated and deemed null and void and shall have no further force or effect, and the provisions that are contractual in nature which are also included as a part of this Agreement are hereby automatically terminated, other than provisions that expressly are continued after termination or which impose obligations or rights of a kind that are intended and appropriate to be continued beyond termination, such as but not limited to Franchisee's obligations to defend and indemnify.

Upon revocation, the City shall retain any portion of the consideration and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered or decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. The Council reserves the right, in its sole discretion, to seek liquidated damages or to pursue other remedies as provided in this Section X, or allowed in law or equity in addition to revocation.

c. Liquidated Damages.

In addition to the other remedies provided for in this Section X., other remedies provided in this Agreement and remedies available at law or in equity, in the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Agreement, the Franchisee shall pay Two Hundred Dollars (\$200.00) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted. This subsection X.c. does not apply to the failure or refusal by the Franchisee to pay the Franchise Fee or other consideration when it becomes due (Event of

Default, subsection IX.a.1.) or the failure or the refusal to pay or cause to be paid any of the City's governmentally imposed taxes (Event of Default, subsection IX.a.4).

d. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section X. shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control to have prevented or avoided, the Council may pursue any or all of the remedies provided in Section X. or otherwise at law or in equity. The remedies of the City created under this Agreement shall be cumulative of other remedies under the Agreement, at law or in equity to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Agreement shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default.

e. Curable Violations.

The Franchisee shall not be found in violation of this Agreement or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee; provided, that the Franchisee has made reasonably diligent efforts to have prevented or avoided the violation, or the violation occurs as a result of circumstances beyond Franchisee's control or its ability to have prevented or avoided, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship, or election of actions based on, or for the purpose of realizing economic benefit or advantage; nor by the negligence or misfeasance or malfeasance of its directors, officers, principals, employees, agents, representatives, contractors or subcontractors.

SECTION XI. RECORDKEEPING AND AUDIT

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations in the Authorized Area under and in connection with this Agreement in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates within the scope of this Agreement during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Agreement. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law. To the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this

Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Reports.

If the Franchisee is a publicly traded company, the Franchisee shall file with the City by the end of each calendar year a copy of its certified financial statements filed with the Security and Exchange Commission, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City for inspection upon request.

d. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Agreement. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION XII. MISCELLANEOUS

a. Entire Agreement.

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Agreement. This Agreement can only be modified by an Agreement amendment approved by Council.

b. Notices.

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by any of the means described in subsection XII.d. of this Agreement. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to:

City of El Paso, Environmental Services Department
Attention: Director
7968 San Paulo
El Paso, Texas 79907

And:

City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

If to the Franchisee:

ALAREAL CORPORATION
Attn: Antonio Alarcon , Owner
8417 Beverly Pl
El Paso, Texas 79907

Either the City or the Franchisee may change its address or personnel for the receipt of notices at any time by giving notice of the change to the other party as provided in this subsection XII.b. Any notice given by either the City or the Franchisee must be signed by an authorized representative.

c. Notice of Claim.

This Agreement is subject to the provisions of Section 1.5 of the El Paso City Charter, as amended, relating to requirements for filing a notice of a claim against the City. Section 1.5 of the El Paso City Charter, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Franchisee shall comply with the requirements of Section 1.5 as a precondition of any claim against the City relating to or arising out of this Agreement.

d. Delivery of Notices.

Notices required to be given under this Agreement may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.
2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.
3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.
4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement

transmission as a recipient shall request) and with a hard copy on the same date or the next day mailed to all by first class mail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Agreement or the services or facilities of the Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Agreement, acknowledges that it has not been induced to accept this Agreement by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Agreement. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Agreement.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Agreement.

k. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by the EL PASO CITY CODE, and any other applicable laws and regulations. If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, such provision shall be modified to the

minimum extent necessary to make such provision valid and enforceable and neither the remainder hereof nor the application of such provision to other persons, entities, or circumstances or other instruments shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law. To the extent that any party's performance under this contract becomes impossible or illegal as a result of future and unknown regulations not contemplated by the parties, and the parties are not able to modify the terms of this Agreement as contemplated above, then the parties shall be excused from further performance under those portions of this Agreement, and such offending portions shall be severed and excluded from this Agreement.

l. City Retained Powers.

In addition to all rights provided in this Agreement, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City Agreements which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Agreement which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Agreement and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Agreement.

n. Time is of the Essence.

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Agreement.

o. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term "force majeure" shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Agreement, Franchisee shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

p. Recognition of Rights.

The Franchisee agrees that by adopting this Agreement, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Agreement in whole or in part upon the Franchisee.

q. Police Powers.

1. In accepting this Agreement, the Franchisee acknowledges that its rights under this Agreement are subject to the police power of the City to adopt and enforce general Agreements necessary to the health, safety, and welfare of the public. Except as otherwise agreed to by the parties or exempted by a City ordinance, Franchisee shall comply with all applicable general laws and Agreements enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Agreement as convenient and necessary to promote the public's interest.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

r. No Presumption of Renewal

This Agreement and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

s. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the El Paso City Charter. Any request by the Franchisee for an amendment to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

t. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

u. This Agreement may be amended, revised or modified only by a written instrument, executed by the parties hereto.

v. The headings, captions and arrangements contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. If the context required, words used in the singular shall be read as including the plural and vice versa, and pronouns of any gender shall include all genders. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, paragraph, subparagraph, section or article.

w. This Agreement is executed for the sole benefit of parties hereto and is not for the benefit of any third party. No other party will have rights under this Agreement.

x. Authorization. Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective entity.

y. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

z. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

aa. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an attachment or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of El Paso, EL PASO CITY CODE, and the ordinance granting this Agreement and all exhibits thereto.

bb. No discrimination. Franchisee, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of this contract, or be otherwise subjected to discrimination in the execution of this contract.

2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in or denied the benefits of said services, or otherwise be subjected to discrimination.

3. If applicable, Franchisee shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. If applicable, Franchisee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

4. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

List of Attachments:

Attachment “1” – Insurance Requirements

Attachment “2” – Schedule of Ownership

STATE OF TEXAS)
)
COUNTY OF EL PASO)

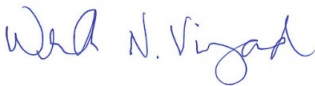
SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and ALAREAL CORPORATION.

THE CITY OF EL PASO:


Tomás González
City Manager

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E. Director
Department of Environmental Services

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and ALAREAL CORPORATION.

ALAREAL CORPORATION:

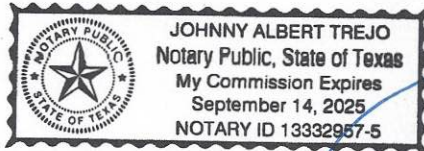
By: *Antonio Alarcon*
Antonio Alarcon, Owner

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Antonio Alarcon as Owner of ALAREAL CORPORATION, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me and that he/she executed the same as the act of ALAREAL CORPORATION for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 5 day of JANUARY 2022.



SEAL

Johnny Albert Trejo
Notary Public
State of TEXAS

ATTACHMENT "1"

INSURANCE REQUIREMENTS

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE:

For the duration of this Agreement and any extension hereof, Franchisee shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

2. WORKERS' COMPENSATION

For the duration of this Agreement and any extension hereof, Franchisee shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law:

\$500,000.00

3. AUTOMOBILE LIABILITY INSURANCE

Minimum \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.

ATTACHMENT “2”

SCHEDULE OF OWNERSHIP

Franchisee Name: ALAREAL CORPORATION
Legal Entity: ALAREAL CORPORATION

Identity of Owners: Antonio Alarcon (100%)_____

(Identify each partner, member, shareholder, or other owner. For each owner identified identify the individual ownership interest, to include total number of shares owned.)



File #: 22-37, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting a renewal of non-exclusive franchise to Anvaco Corporation, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBGOAL:

SUBJECT:

An ordinance granting a renewal of non-exclusive franchise to Anvaco Corporation, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in section 9.04.630 of the El Paso city code.

BACKGROUND / DISCUSSION:

A franchise is required for solid waste collection haulers that are permitted by the Environmental Services Department. This agreement between the franchisee and City identifies standards to be maintained for the operation of solid waste collection services.

PRIOR COUNCIL ACTION:

Non-exclusive franchises for solid waste collection services are routinely approved by Council.

AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Environmental Services Department

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWAL OF NON-EXCLUSIVE FRANCHISE TO ANVACO CORPORATION, TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by ordinance passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the State of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, the attached franchise agreement is a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City of El Paso requires in City Code Section 9.04, that all haulers of municipal solid waste are required to enter into a franchise agreement with the City; and

WHEREAS, ANVACO Corporation is engaged in the business of collection and transportation of solid waste within the City and has requested a franchise to use the City's rights-of-way; and,

WHEREAS, ANVACO Corporation has agreed to the terms of the Solid Waste Franchise Agreement with the City of El Paso, granting ANVACO Corporation a non-exclusive franchise to operate and maintain a solid waste collection service using the City's rights-of-way; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

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

1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

2. The City Manager is authorized to sign a non-exclusive Solid Waste Franchise Agreement by and between the City of El Paso and ANVACO Corporation for the franchisee to operate and maintain a Solid Waste Collection Service, in, over, along and across the Public Rights-of-Way in the Authorized Area, to end on December 31, 2026, as set forth and defined in the document labeled Exhibit "A", attached and incorporated by reference for all purposes.

3. All ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

4. The City Manager or authorized agent is authorized to extend this agreement for an additional five years at the end of the date of the contract.

5. This ordinance shall take effect on January 1, 2022.

PASSED AND APPROVED this ____ day of ____, 2022.


CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

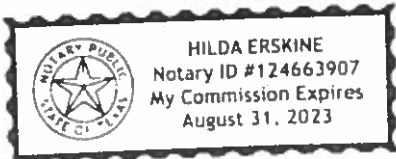
The above instrument, with all conditions thereof, is hereby accepted this 5 day of January, 2022.

ANVACO Corporation
[Signature]
By: Carolina Juarez
Its: President

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 5th day of January, 2022, by Carolina Juarez, President of ANVACO Corporation.



[Signature]
Notary Public, State of Texas
Notary's Printed or Typed Name:
Hilda Erskine

My Commission Expires:
8-31-23

EXHIBIT “A”

**SOLID WASTE
FRANCHISE AGREEMENT**

**BY AND BETWEEN
CITY OF EL PASO, TEXAS**

AND

ANVACO Corporation

EFFECTIVE DATE: JANUARY 1, 2022

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SECTION I.	Preamble
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SECTION III.	Granting of Franchise
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SECTION VII.	Term, Termination and Performance Evaluation
SECTION VIII.	Transfers of Ownership and Control
SECTION IX.	Default
SECTION X.	Remedies
SECTION XI.	Recordkeeping and audit
SECTION XII.	Miscellaneous

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

THIS Solid Waste Franchise Agreement (“Agreement”) effective January 1, 2022 is entered into this ____ day of _____, 2022, by and between the CITY OF EL PASO, a Texas home rule municipality, hereinafter referred to as the "CITY", and ANVACO CORPORATION, hereinafter referred to as “Franchisee”.

RECITALS

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by Agreement passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the state of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, this franchise agreement is a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City desires to exercise the authority provided to it by ordinance, charter and state law to grant a franchise for the collection, transportation, hauling and disposal of Solid Waste as further defined herein, within the corporate limits of the City and under the terms of this Agreement as set out below; and,

WHEREAS, Franchisee desires to obtain a franchise to provide for the collection, transportation, hauling and disposal of Solid Waste from the City of El Paso, and agrees to comply with the terms and conditions of this Agreement; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Agreement are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

WITNESSETH:

SECTION I. PREAMBLE

That the declarations contained in the preamble to this Agreement are material and incorporated herein as a part of this Agreement as though they were fully set forth in this Agreement in their entirety.

SECTION II. DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word “shall” is mandatory and not merely directory. The word “may” is not mandatory and is merely permissive. The word “day” means a calendar day and not a business day. Words defined elsewhere in this Agreement shall be accorded that meaning throughout this Agreement. Words not defined shall be given their common and ordinary meaning.

a. **Affiliate** and **Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.

b. **Agreement** shall mean this document.

c. **Authorized Area** means the entire area within the corporate limits of the City of El Paso, including any territory annexed into the City limits after the Effective Date of this Agreement.

d. **City** means the City of El Paso, a home rule municipal corporation, a political subdivision of the State of Texas.

e. **City Charter** means the City’s organic law, equivalent to a constitution, which defines the City’s existence and prescribes the powers, duties, and organization of the City’s governmental structure.

f. **City Code** shall mean the ordinances of the City codified into the EL PASO CITY CODE, as amended from time to time.

g. **City Manager** shall mean the City Manager or the City Manager’s designated representative.

h. **Container** shall mean any receptacle for waste as defined by Title 9.04 to include Dumpsters, Containers, Carts, Roll-Offs and Compactors.

i. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

j. **Council** shall mean the governing body of the City of El Paso. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. Unless otherwise stated in this Agreement or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Agreement and to the Franchisee's exercise of the rights and privileges conferred in this Agreement.

k. **Director** means the Director of the Environmental Services Department of the City, or any successor department, or any Director as designated by the City Manager, or the Director's designated representative.

l. **Effective Date** means _____, 2022.

m. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Rights-of-Way under this Agreement, and all of the incidental rights and obligations as described by this Agreement.

n. **Franchisee** shall mean ANVACO Corporation hereinafter referred to as "Franchisee", the grantee of rights under this Agreement; or the successor, transferee, or assignee of this Agreement, including the officers, employees, agents, contractors, and subcontractors.

o. **Junk Removal Service** shall mean the collection and transportation of solid waste generated from a Property Clean-up Event by a Self-Transporter or Permitted Hauler, as defined within Chapter 9.04 of the El Paso City Code, when the waste is placed directly into a vehicle or trailer attached to a vehicle, or when a container placed at a property is removed within seven days.

p. **Property Clean-up Event** shall mean the removal of Solid Waste from the interior of a building or premises of a property for the purpose of abating a nuisance, resolving a violation of the El Paso City Code, or removing unsanitary or slightly debris or waste, when the duration of the event does not exceed seven days.

q. **Public Rights-of-Way** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated and accepted by the City as a public right-of-way. "Public Rights-of-Way" shall not include property of the City which is not a

dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated or accepted by the City as a public right-of-way.

r. **Solid Waste Collection Service** shall mean the collection and transportation of Solid Waste, not including a Junk Removal Service, as that term is defined herein within the Authorized Area, from a dumpster, roll-off container, or other container larger than two cubic yards in volume, or from a container less than two cubic yards in volume when providing service to more than four customers, for processing or disposal at an Authorized Municipal Solid Waste Facility as defined in Chapter 9.04 of the El Paso City Code or as may be subsequently amended from time to time.

s. **Solid Waste** shall mean that term as defined in Title 30 of the Texas Administrative Code § 330.3, or as may subsequently be amended from time to time, excluding Excluded Waste as defined in section 9.04.020 of the City Code, as may subsequently be amended from time to time. Solid Waste does not include any municipal solid waste and program recyclable materials generated at residential properties in which the City is the exclusive hauler as set forth in chapter 9.04 (Solid Waste Management) of the City Code.

SECTION III. GRANTING OF FRANCHISE

Subject to all the terms and conditions contained in this Agreement, the Constitution of the United States of America or of the State of Texas, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal or state law, the City hereby grants the Franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Rights-of-Way in the Authorized Area. This grant is subject to the following additional conditions:

a. **Non-Exclusive.**

Nothing herein contained shall be construed as granting an exclusive use or right to the Franchisee to the Public Rights-of-Way, and the City may grant an additional franchise, lease or special privilege to any other applicant in its discretion for the same Public Rights-of-Way described herein. The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Agreement.

b. **Authorized Municipal Solid Waste Facility.**

Franchisee shall deposit all Solid Waste only at an Authorized Municipal Solid Waste Facility in accordance with the City Code, as may be amended from time to time.

c. **Other Services.**

By granting this Agreement, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

d. No Priority.

This Agreement does not establish any priority for the use of the Public Rights-of-Way by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

e. City's Use of Public Rights-of-Way.

The Franchisee acknowledges that by this Agreement it obtains no rights to use or further use of the Public Rights-of-Way other than those expressly granted in this Agreement. The City reserves the right to use the surface or subsurface or airspace above the Public Rights-of-Way covered by this Agreement for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Rights-of-Way. Further the City expressly reserves the right to install, repair, or reconstruct the Public Rights-of-Way used or occupied by Franchisee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, including but not limited to, drainage and utility facilities and structures.

The Franchisee acknowledges and accepts at its own risk, that the City may make use in the future of the Public Rights-of-Way as described above or as otherwise permitted by law, in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Rights-of-Way for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation or further remedy from the City unless compensation is available to all users of the Public Rights-of-Way which are affected in a similar manner.

f. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee or close or otherwise restrict the use of Public Rights-of-Way in the event of a public emergency or calamity as determined in the City's sole discretion. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee.

g. Compliance with Law and Standards of Operation.

The parties shall be subject to and comply with the Constitutions of the United States of America and the State of Texas, all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Agreement does not relieve the Franchisee of, and the Franchisee shall comply with, any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Agreement shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person, entity or individual. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

SECTION IV. SERVICE REQUIREMENTS

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all Solid Waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, expressly excluding services for which the City is the exclusive hauler as defined in Chapter 9.04 of the City Code. The Franchisee shall, at its own expense, furnish personnel and equipment to collect Solid Waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner, maintain a valid, current Hauler Permit issued by the City of El Paso, and shall comply with all requirements of the City Code, including but not limited to Chapter 9.04 of the City Code.

b. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Rights-of-Way and other facilities that are damaged as a result of the negligence, willful misconduct, or intentional acts of the Franchisee during the Franchisee's operations pursuant to this Agreement.

c. The Franchisee will comply with all rules, regulations, laws and agreements pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction.

d. Waste Containers

1. Graffiti.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the Container, as defined in Chapter 9.04 of the City Code or as amended from time to time, free from graffiti. Franchisee's Containers may display the name, address and/or phone number of

the Franchisee, identification numbering or lettering assigned by the Franchisee, and any warnings, notices or instructions posted by Franchisee. If Franchisee's customers do not remove graffiti from the Franchisee's Containers, then Franchisee shall remove the graffiti and may bill its customer for the cost or replace the Container at the customer's expense.

If, after five days notice from the Director, the Franchisee or its customer has not removed the graffiti or replaced the Containers, then the City may cover or remove the graffiti or the Container.

2. Over-Capacity.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the area around the Container clean and free of rubbish, litter, Solid Waste, garbage, recyclables, or other unsightly material, regardless of the cause of the placement of the rubbish, litter, Solid Waste, garbage or recyclables around the Container. Franchisee shall monitor its customer's use of their Containers and ensure that the customer is not overfilling the Container beyond the acceptable capacity of the Container.

If the City observes that the lid of a Container is not securely closed as a result of overfilling the Container, or rubbish, Solid Waste, garbage, recyclables or unsightly material of any kind has accumulated or is being stored outside the Container, or is visible above the top level of the Container, then the City may: (1) notify the Franchisee or the customer of the violation and require immediate removal of the rubbish, Solid Waste, garbage, recyclables or unsightly materials; or (2) may remove the rubbish, Solid Waste, garbage, recyclables or unsightly materials and bill the Franchisee for its actual expense in cleaning the site around the Container.

If the City observes and records three or more instances of a violation of this section or violations of the City's ordinances by the Franchisee's customer, then it shall notify the Franchisee and the Franchisee shall require the customer to contract for additional Solid Waste services, additional Containers or a larger Container sufficient to satisfy its Solid Waste and recyclables needs, or take other steps to ensure compliance with the City's ordinances. Compliance with the provisions of this section by a Franchisee customer shall not waive the City's right to seek all remedies available under the law or this Agreement whether against the Franchisee or the Franchisee's customer.

3. Franchisee shall affix a label to each Container supplied to its customers that reads "NO SCAVENGING/KEEP LIDS CLOSED." For roll-off Containers which are not equipped with lids, only "NO SCAVENGING" shall be required on the label. Label may be in the form of a decal or paint; letters shall be capitalized and either black or white in color, whichever more contrasts the paint color of the Container. The label may consist of either one or two lines, and should be clearly visible from a distance of 20 feet.

SECTION V. INDEMNITY AND INSURANCE

a. INDEMNIFICATION OF CITY.

1. THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS, CONTRACTORS AND SUBCONTRACTORS (HEREINAFTER REFERRED TO COLLECTIVELY AS “INDEMNITEES”), FROM AND AGAINST:

(A) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OR FOR HARM SUFFERED OR ALLEGED TO HAVE BEEN SUFFERED BY ANY PERSON OR PERSONS (INCLUDING THIRD PARTIES, WHETHER INDIVIDUALS OR ENTITIES), THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE AGREEMENT, (ii) BY ANY ACT OR OMISSION CONSTITUTING NEGLIGENCE, GROSS NEGLIGENCE OR OTHER FAULT OF FRANCHISEE, ITS OFFICERS, DIRECTORS, PARTNERS, OWNERS OR OTHER PRINCIPALS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, OR FOR WHICH THE FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS (ALL COLLECTIVELY “FRANCHISEE PERSONS”), OR (iii) FOR WHICH THE FRANCHISEE OR FRANCHISEE PERSONS MAY BE STRICTLY LIABLE, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; AND

(B) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, FEES, PENALTIES OR OTHER ASSESSMENTS, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES THAT MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR SUFFERED BY ANY INDEMNITEES ARISING FROM OR RELATED TO ANY VIOLATION BY FRANCHISEE OR ANY FRANCHISEE PERSON OF ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE, OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE OR ANY FRANCHISEE PERSON, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER

WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION, INCLUDING ANY AND ALL COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT AGAINST THE CITY OR ANY OTHER INDEMNITEE RELATED TO ANY SUCH CLAIM.

2. FRANCHISEE'S OBLIGATION TO INDEMNIFY INCLUDES INDEMNIFICATION FOR ANY ATTORNEY'S FEES, COSTS OF COURT OR EXPENSES OF ANY THIRD PARTY ASSESSED AGAINST THE CITY OR ANY OTHER INDEMNITEE; AND ANY ATTORNEY'S FEES, COSTS AND EXPENSES OF DEFENSE OR SETTLEMENT OR ATTEMPTED SETTLEMENT (INCLUDING BUT NOT LIMITED TO INFORMAL SETTLEMENT DISCUSSIONS, MEDIATION, ARBITRATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS) BY THE CITY OR ANY OTHER INDEMNITEES.

3. FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO ALL CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH FOR WHICH ONE OR MORE INDEMNITEES MAY BE CONTRIBUTORILY LIABLE, PROVIDED, HOWEVER, THAT ANY INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW; AND PROVIDED, FURTHER, THAT THIS APPLICATION OF PROPORTIONATE RESPONSIBILITY IS NOT A WAIVER OF ANY GOVERNMENTAL IMMUNITY FOR SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS LAW, AND FURTHER DOES NOT CONSTITUTE A WAIVER OF ANY OTHER DEFENSES AVAILABLE TO EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW.

4. FRANCHISEE'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY JUDGMENT OF LIABILITY AGAINST THE CITY RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

5. THIS SUBSECTION DOES NOT, AND SHALL NOT, BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO THE CITY OR ANY INDEMNITEE UNDER TEXAS OR FEDERAL LAW, INCLUDING ANY INDIVIDUAL ABSOLUTE OR QUALIFIED IMMUNITY. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE OTHER INDEMNITEES AND THE FRANCHISEE, AND ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. FRANCHISEE'S ASSUMPTION OF RISK.

1. FRANCHISEE UNDERTAKES AND ASSUMES ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CONTROLLED PROPERTY, INCLUDING THE PUBLIC RIGHTS-OF-WAY.

2. FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND INDEMNITEES FROM AND AGAINST ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, AGREEMENT OR REGULATION.

c. Survival. **THE INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS SECTION V. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY ACTION, CLAIM, LAWSUIT OR OTHER PROCEEDING, OR JUDGMENT ARISING FROM EVENTS OCCURING DURING THE TERM OF THIS AGREEMENT.**

d. Defense of City and other Indemnitees.

In the event any action or proceeding shall be brought against any Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, and at the Franchisee's sole cost and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld. The Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's and other Indemnitees' written consent. Further, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified herein without the prior written consent of the Franchisee.

e. Expenses of Defense; Participation by Indemnitees.

The Indemnitees shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section V. Nothing herein shall prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in their defense, provided that the participation has been requested or required by the Franchisee in conducting the defense of the action, suit, or other proceeding. These covered expenses include reasonable attorney's fees and expenses, out-of-pocket expenses reasonably and necessarily incurred, the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed or incurred by the Indemnitees in connection with such suits, actions or proceedings. Covered expenses shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by the Franchisee.

f. Insurance Required.

Not later than the Effective Date, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Attachment “1”, attached to and made a part of this Agreement. The insurance shall be written by a company(ies) approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The City shall be named a beneficiary and co-insured of such policy(ies). Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee.

THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the City Council approves this Agreement, then this Agreement shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of current continuous insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on at least an annual basis, no later than the anniversary date of this Agreement; and the Director shall have the right to request evidence of current insurance at any time. If the Franchisee fails to maintain insurance as required by this subsection, then the Franchisee shall forfeit any rights to contribution as defined in subsection V.a.3 above, and Franchisee shall be solely liable *in toto* for any judgment, award, claim or demand arising from the Franchisee’s operation of a Solid Waste Collection Service, whether the City or any other Indemnitee is or may be contributorily liable under applicable law or not.

g. Adjustments to Insurance Requirements.

The Director reserves the right to review the insurance requirements stated herein during the term of this Agreement and to recommend to the City Council reasonable adjustments in the insurance requirements prior to any anniversary renewal of the insurance when deemed necessary or prudent by the City. Any adjustments recommended and approved by the City Council may be based upon changes in statutory law, applicable court decisions, the claims history of the industry as well as of the Franchisee, or a commercially reasonable determination by the City that existing coverage is inadequate for the risks associated with the services to be provided hereunder. When any insurance coverage limits are changed, the Franchisee shall pay any resulting increase in cost due to the changes. If Franchisee does not agree to an increase in coverage recommended by the City and approved by Council, the City may opt to pay the difference in premium that would be required for such increased coverage; but if the City declines to do so, the City shall have the right to terminate this Agreement as of the end of the current insurance term, or at the next contract year anniversary, whichever is sooner.

h. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability

for indemnity, damages and accidents as set forth in the Agreement. The bankruptcy, insolvency, receivership or denial of liability by any insurer of Franchisee shall not excuse the Franchisee from the responsibility for indemnity, liability of, or damages payable by the Franchisee as provided in this Agreement.

SECTION VI. FEES, PAYMENTS AND COMPENSATION.

a. Consideration.

Council finds and determines that Franchisee has incurred, or will incur, significant costs to upgrade its facilities as costs associated with performance under this Franchise Agreement. Council finds that such expenditures as well as the promises contained in this Franchise Agreement are satisfactory consideration to support this Agreement.

b. Additional Consideration.

Upon notice from the City, Franchisee shall provide Solid Waste removal, collection, and transport, services to the City following natural disasters or Acts of God. The term “Acts of God” as used herein, shall include, but not be limited to, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability. Franchisee understands that it is not guaranteed to receive compensation for these services. Council and the Franchisee agree that this obligation to provide emergency services without a guarantee of compensation constitutes part of the consideration offered by the Franchisee to support this Franchise Agreement.

c. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due or owed under this Agreement or of any other obligation of the Franchisee.

SECTION VII. TERM, TERMINATION AND PERFORMANCE EVALUATION

a. Term and Extensions.

This Agreement shall be effective as of the Effective Date, and, unless it is terminated earlier pursuant to its terms, shall continue in effect until December 31, 2026, with the possibility for one two-year extension as mutually agreed to by the City and the Franchisee. Franchisee shall give ninety (90) days written notice to the City prior to the expiration of the term to request an extension. The City in its sole discretion may decide to approve or decline the extension, or request an amendment of this Agreement prior to such extension.

b. Termination.

1. Right to Terminate

This Agreement may be terminated by either party, for cause or convenience, by providing ninety (90) days’ written notice to the non-terminating party. Notwithstanding the foregoing, the City may terminate this Agreement if the City determines in its sole discretion termination is necessary to secure the efficiency of public service at a reasonable rate, to assure the Public Rights-of-Way are maintained

in good order throughout the term of this Agreement, or termination is in the public interest when Franchisee is utilizing the Public Rights-of-Way in a manner the City deems is inconsistent with the public use of the City's Public Rights-of-Way without providing prior notice to the Franchisee. If the City chooses to act pursuant to this authority it shall notify the Franchisee of its decision within three days of the termination of this Agreement.

2. Rights Upon Termination.

Subject to applicable law, or as specifically provided for otherwise in this Agreement, this Agreement and all rights, permissions, and privileges of the parties defined in this Agreement shall automatically cease upon the termination of this Agreement, unless such rights are extended by mutual agreement of the parties, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

In the event the Franchisee continues use of the Public Rights-of-Way after the expiration or termination of this Agreement the City may utilize any means available in law or in equity to prevent violations of the EL PASO CITY CODE or this Agreement. Franchisee shall be responsible for all attorney's fees and court costs incurred as a result of any action taken by the City pursuant to this paragraph.

c. Performance Evaluation.

In order to: (i) assure that the Franchisee is complying with the terms of this Agreement, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation during the term of the Agreement in accordance with the following process:

1. At least sixty (60) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(ii) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within thirty (30) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, a minimum, the following areas:

- (i) documentation that all of Franchisee's vehicles used in accordance with this agreement have been properly inspected for compliance with safety and air emission standards in the vehicles' state of registration, and documentation related to local government requirements for the permitting of vehicles for the hauling of Solid Waste;
- (ii) any other topic deemed material or relevant by the City for its enforcement of this Agreement.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information collected from the Effective Date, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than twenty-four (24) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than twenty (20) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

SECTION VIII. TRANSFERS OF OWNERSHIP AND CONTROL

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates identified herein, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, this Agreement or the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Assignee: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee and its Affiliates shall request approval from Council in writing and shall provide the Council with the Assignee's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

2. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs. If the Franchisee cannot provide at least sixty (60) days notice before a transfer solely for

security purposes, then Franchisee must notify the Director in writing of such a transfer at the earliest possible date after becoming aware of such transfer.

3. The Franchisee may not transfer or assign this Agreement to an Affiliate not identified herein, without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee shall request approval from Council in writing and shall provide the Council with the Affiliate's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

b. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Attachment "2", attached to and made a part of this Agreement, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Agreement.

SECTION IX. DEFAULT

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Agreement shall constitute an Event of Default by the Franchisee under this Agreement:

1. The failure or refusal by the Franchisee to pay consideration when due as prescribed by this Agreement.

2. The Franchisee's material violation of or failure to comply with any provision or condition of chapter 9.04 of the City Code relating to Solid Waste collection service or any other applicable provision or condition of the City Code.

3. The suspension or revocation of the Franchisee's Hauler Permit.

4. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Agreement, or the Franchisee's failure or refusal to perform any obligation contained in this Agreement.

5. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real property taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

6. The entry of any judgment against the Franchisee by which another party becomes entitled to possession of any of the Franchisee's Solid Waste Collection Service's assets, and for which transfer of these assets requires prior consent of the

Council, and such judgment is not stayed pending rehearing or appeal following entry of the judgment for a period of forty-five (45) or more days.

7. The dissolution of the Franchisee.

8. The Franchisee's filing of a voluntary petition in bankruptcy; the filing of an involuntary petition in bankruptcy against the Franchisee; an adjudication finding the Franchisee insolvent; the Franchisee's obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of the Franchisee, or any of Franchisee's property or this Agreement or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Agreement.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Agreement.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Agreement.

12. The Franchisee's failure or refusal to comply with a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section X. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section X, unless the Director, the City Manager, or the Council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section X.

SECTION X. REMEDIES

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section IX., the Director shall report the occurrence of default to the City Manager and the Council. The Council shall be entitled in its sole discretion to exercise any or all of the following remedies, which shall be cumulative:

1. Exercise its rights to liquidated damages as described in subsection c. of this Section X.
2. Commence an action at law against the Franchisee for monetary damages.
3. Commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable, or other equitable relief.
4. Revoke the Franchise granted under this Agreement.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Agreement. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Agreement shall be automatically terminated and deemed null and void and shall have no further force or effect, and the provisions that are contractual in nature which are also included as a part of this Agreement are hereby automatically terminated, other than provisions that expressly are continued after termination or which impose obligations or rights of a kind that are intended and appropriate to be continued beyond termination, such as but not limited to Franchisee's obligations to defend and indemnify.

Upon revocation, the City shall retain any portion of the consideration and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered or decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. The Council reserves the right, in its sole discretion, to seek liquidated damages or to pursue other remedies as provided in this Section X, or allowed in law or equity in addition to revocation.

c. Liquidated Damages.

In addition to the other remedies provided for in this Section X., other remedies provided in this Agreement and remedies available at law or in equity, in the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Agreement, the Franchisee shall pay Two Hundred Dollars (\$200.00) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted. This subsection X.c. does not apply to the failure or refusal by the Franchisee to pay the Franchise Fee or other consideration when it becomes due (Event of

Default, subsection IX.a.1.) or the failure or the refusal to pay or cause to be paid any of the City's governmentally imposed taxes (Event of Default, subsection IX.a.4).

d. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section X. shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control to have prevented or avoided, the Council may pursue any or all of the remedies provided in Section X. or otherwise at law or in equity. The remedies of the City created under this Agreement shall be cumulative of other remedies under the Agreement, at law or in equity to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Agreement shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default.

e. Curable Violations.

The Franchisee shall not be found in violation of this Agreement or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee; provided, that the Franchisee has made reasonably diligent efforts to have prevented or avoided the violation, or the violation occurs as a result of circumstances beyond Franchisee's control or its ability to have prevented or avoided, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship, or election of actions based on, or for the purpose of realizing economic benefit or advantage; nor by the negligence or misfeasance or malfeasance of its directors, officers, principals, employees, agents, representatives, contractors or subcontractors.

SECTION XI. RECORDKEEPING AND AUDIT

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations in the Authorized Area under and in connection with this Agreement in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates within the scope of this Agreement during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Agreement. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law. To the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this

Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Reports.

If the Franchisee is a publicly traded company, the Franchisee shall file with the City by the end of each calendar year a copy of its certified financial statements filed with the Security and Exchange Commission, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City for inspection upon request.

d. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Agreement. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION XII. MISCELLANEOUS

a. Entire Agreement.

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Agreement. This Agreement can only be modified by an Agreement amendment approved by Council.

b. Notices.

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by any of the means described in subsection XII.d. of this Agreement. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to:

City of El Paso, Environmental Services Department
Attention: Director
7968 San Paulo
El Paso, Texas 79907

And:

City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

If to the Franchisee:

ANVACO Corporation
Attn: Carolina Juarez, President
1460 Amstater Circle
El Paso, Texas 79936

Either the City or the Franchisee may change its address or personnel for the receipt of notices at any time by giving notice of the change to the other party as provided in this subsection XII.b. Any notice given by either the City or the Franchisee must be signed by an authorized representative.

c. Notice of Claim.

This Agreement is subject to the provisions of Section 1.5 of the El Paso City Charter, as amended, relating to requirements for filing a notice of a claim against the City. Section 1.5 of the El Paso City Charter, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Franchisee shall comply with the requirements of Section 1.5 as a precondition of any claim against the City relating to or arising out of this Agreement.

d. Delivery of Notices.

Notices required to be given under this Agreement may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.
2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.
3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.
4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement

transmission as a recipient shall request) and with a hard copy on the same date or the next day mailed to all by first class mail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Agreement or the services or facilities of the Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Agreement, acknowledges that it has not been induced to accept this Agreement by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Agreement. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Agreement.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Agreement.

k. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by the EL PASO CITY CODE, and any other applicable laws and regulations. If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, such provision shall be modified to the

minimum extent necessary to make such provision valid and enforceable and neither the remainder hereof nor the application of such provision to other persons, entities, or circumstances or other instruments shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law. To the extent that any party's performance under this contract becomes impossible or illegal as a result of future and unknown regulations not contemplated by the parties, and the parties are not able to modify the terms of this Agreement as contemplated above, then the parties shall be excused from further performance under those portions of this Agreement, and such offending portions shall be severed and excluded from this Agreement.

l. City Retained Powers.

In addition to all rights provided in this Agreement, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City Agreements which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Agreement which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Agreement and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Agreement.

n. Time is of the Essence.

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Agreement.

o. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term "force majeure" shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Agreement, Franchisee shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

p. Recognition of Rights.

The Franchisee agrees that by adopting this Agreement, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Agreement in whole or in part upon the Franchisee.

q. Police Powers.

1. In accepting this Agreement, the Franchisee acknowledges that its rights under this Agreement are subject to the police power of the City to adopt and enforce general Agreements necessary to the health, safety, and welfare of the public. Except as otherwise agreed to by the parties or exempted by a City ordinance, Franchisee shall comply with all applicable general laws and Agreements enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Agreement as convenient and necessary to promote the public's interest.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

r. No Presumption of Renewal

This Agreement and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

s. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the El Paso City Charter. Any request by the Franchisee for an amendment to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

t. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

u. This Agreement may be amended, revised or modified only by a written instrument, executed by the parties hereto.

v. The headings, captions and arrangements contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. If the context required, words used in the singular shall be read as including the plural and vice versa, and pronouns of any gender shall include all genders. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, paragraph, subparagraph, section or article.

w. This Agreement is executed for the sole benefit of parties hereto and is not for the benefit of any third party. No other party will have rights under this Agreement.

x. Authorization. Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective entity.

y. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

z. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

aa. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an attachment or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of El Paso, EL PASO CITY CODE, and the ordinance granting this Agreement and all exhibits thereto.

bb. No discrimination. Franchisee, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of this contract, or be otherwise subjected to discrimination in the execution of this contract.

2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in or denied the benefits of said services, or otherwise be subjected to discrimination.

3. If applicable, Franchisee shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. If applicable, Franchisee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

4. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

List of Attachments:

Attachment “1” – Insurance Requirements

Attachment “2” – Schedule of Ownership

STATE OF TEXAS)
)
COUNTY OF EL PASO)

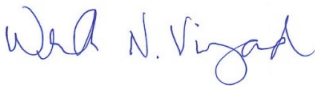
SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and ANVACO Corporation.

THE CITY OF EL PASO:

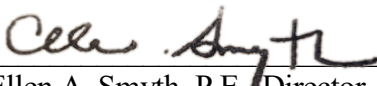
Tomás González
City Manager

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E. Director
Department of Environmental Services

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and ANVACO Corporation.

ANVACO CORPORATION:
By: *Carolina Juarez*
Carolina Juarez, President

ACKNOWLEDGMENT

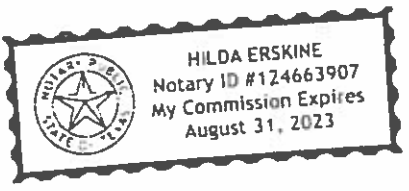
STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Carolina Juarez, as, President of ANVACO Corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as the act of ANVACO Corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 5th day of January 2022.

Hilda Erskine
Notary Public
State of Texas

SEAL



ATTACHMENT "1"

INSURANCE REQUIREMENTS

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE:

For the duration of this Agreement and any extension hereof, Franchisee shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

2. WORKERS' COMPENSATION

For the duration of this Agreement and any extension hereof, Franchisee shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law:

\$500,000.00

3. AUTOMOBILE LIABILITY INSURANCE

Minimum \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.

ATTACHMENT “2”

SCHEDULE OF OWNERSHIP

Franchisee Name: ANVACO Corporation
Legal Entity: ANVACO Corporation

Identity of Owners: Carolina Juarez (100%) _____
(Identify each partner, member, shareholder, or other owner. For each owner identified identify the individual ownership interest, to include total number of shares owned.) _____



File #: 22-38, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting a renewal of non-exclusive franchise to Demcon Disposal Management, LLC, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBGOAL:

SUBJECT:

An ordinance granting a renewal of non-exclusive franchise to Demcon Disposal Management, LLC, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in section 9.04.630 of the El Paso city code.

BACKGROUND / DISCUSSION:

A franchise is required for solid waste collection haulers that are permitted by the Environmental Services Department. This agreement between the franchisee and City identifies standards to be maintained for the operation of solid waste collection services.

PRIOR COUNCIL ACTION:

Non-exclusive franchises for solid waste collection services are routinely approved by Council.

AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Environmental Services Department
SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Ellen A. Smyth

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWAL OF NON-EXCLUSIVE FRANCHISE TO DEMCON DISPOSAL MANAGEMENT, LLC, TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by ordinance passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the State of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, the attached franchise agreement is a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City of El Paso requires in City Code Section 9.04, that all haulers of municipal solid waste arc required to enter into a franchise agreement with the City; and

WHEREAS, DEMCON DISPOSAL MANAGEMENT, LLC is engaged in the business of collection and transportation of solid waste within the City and has requested a franchise to use the City's rights-of-way; and,

WHEREAS, DEMCON DISPOSAL MANAGEMENT, LLC has agreed to the terms of the Solid Waste Franchise Agreement with the City of El Paso, granting DEMCON DISPOSAL MANAGEMENT, LLC a non-exclusive franchise to operate and maintain a solid waste collection service using the City's rights-of-way; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance arc in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

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

1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

2. The City Manager is authorized to sign a renewal of non-exclusive Solid Waste Franchise Agreement by and between the City of El Paso DEMCON DISPOSAL MANAGEMENT, LLC for the franchisee to operate and maintain a Solid Waste Collection Service, in, over, along and across the Public

ORDINANCE NO. _____

16-1005-1376.017 | 1139527 | DEMCON DISPOSAL MANAGEMENT, LLC | WNV

Rights-of-Way in the Authorized Area, to end on December 31, 2026, as set forth and defined in the document labeled Exhibit "A", attached and incorporated by reference for all purposes.

3. All ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

4. The City Manager or authorized agent is authorized to extend this agreement for an additional five years at the end of the date of the contract.

5. This ordinance shall take effect on January 1, 2022.

PASSED AND APPROVED this ____ day of ____, 2022.

CITY OF EL PASO:

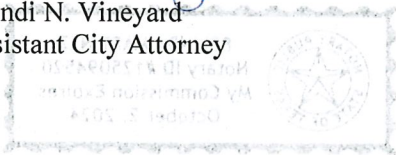
Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Wendi N. Vineyard
Wendi N. Vineyard
Assistant City Attorney



APPROVED AS TO CONTENT:

Ellen A. Smyth
Ellen A. Smyth, P.E. Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

ORDINANCE NO. _____

16-1005-1376.017 | 1139527 | DEMCON DISPOSAL MANAGEMENT, LLC | WNV

ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 29 day of December, 2021.

DEMCON DISPOSAL MANAGEMENT, LLC

[Handwritten signature]

By: Daniel Robles, President

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 29 day of December, 2021, by Daniel Robles.

[Handwritten signature]

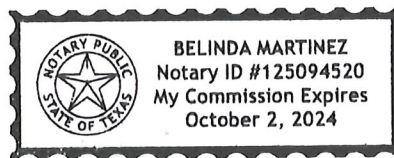
Notary Public, State of Texas

Notary's Printed or Typed Name:

Belinda Martinez

My Commission Expires:

October 2, 2024



ORDINANCE NO. _____

EXHIBIT "A"

**SOLID WASTE
FRANCHISE AGREEMENT**

BY AND BETWEEN

CITY OF EL PASO, TEXAS

AND

DEMCON DISPOSAL MANAGEMENT, LLC

EFFECTIVE DATE: January 1, 2022

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SECTION II.	Definitions
SECTION III.	Granting of Franchise
SECTION IV.	Service Requirements
SECTION V.	Indemnity and Insurance
SECTION VI.	Fees, Payments and Compensation.
SECTION VII.	Term, Termination and Performance Evaluation
SECTION VIII.	Transfers of Ownership and Control
SECTION IX.	Default
SECTION X.	Remedies
SECTION XI.	Recordkeeping and audit
SECTION XII.	Miscellaneous

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

THIS Solid Waste Franchise Agreement (“Agreement”) is entered into this ____ day of _____, 2022, by and between the CITY OF EL PASO, a Texas home rule municipality, hereinafter referred to as the "CITY", and DEMCON DISPOSAL MANAGEMENT, LLC, hereinafter referred to as “Franchisee”.

RECITALS

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by Agreement passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the state of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, this franchise agreement is a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City desires to exercise the authority provided to it by ordinance, charter and state law to grant a franchise for the collection, transportation, hauling and disposal of Solid Waste as further defined herein, within the corporate limits of the City and under the terms of this Agreement as set out below; and,

WHEREAS, Franchisee desires to obtain a franchise to provide for the collection, transportation, hauling and disposal of Solid Waste from the City of El Paso, and agrees to comply with the terms and conditions of this Agreement; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Agreement are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

WITNESSETH:

SECTION I. PREAMBLE

That the declarations contained in the preamble to this Agreement are material and incorporated herein as a part of this Agreement as though they were fully set forth in this Agreement in their entirety.

SECTION II. DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word “shall” is mandatory and not merely directory. The word “may” is not mandatory and is merely permissive. The word “day” means a calendar day and not a business day. Words defined elsewhere in this Agreement shall be accorded that meaning throughout this Agreement. Words not defined shall be given their common and ordinary meaning.

- a. **Affiliate** and **Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.
- b. **Agreement** shall mean this document.
- c. **Authorized Area** means the entire area within the corporate limits of the City of El Paso, including any territory annexed into the City limits after the Effective Date of this Agreement.
- d. **City** means the City of El Paso, a home rule municipal corporation, a political subdivision of the State of Texas.
- e. **City Charter** means the City’s organic law, equivalent to a constitution, which defines the City’s existence and prescribes the powers, duties, and organization of the City’s governmental structure.
- f. **City Code** shall mean the ordinances of the City codified into the EL PASO CITY CODE, as amended from time to time.
- g. **City Manager** shall mean the City Manager or the City Manager’s designated representative.
- h. **Container** shall mean any receptacle for waste as defined by Title 9.04 to include Dumpsters, Containers, Carts, Roll-Offs and Compactors.

i. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

j. **Council** shall mean the governing body of the City of El Paso. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. Unless otherwise stated in this Agreement or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Agreement and to the Franchisee's exercise of the rights and privileges conferred in this Agreement.

k. **Director** means the Director of the Environmental Services Department of the City, or any successor department, or any Director as designated by the City Manager, or the Director's designated representative.

l. **Effective Date** means January 1, 2022.

m. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Rights-of-Way under this Agreement, and all of the incidental rights and obligations as described by this Agreement.

n. **Franchisee** shall mean DEMCON DISPOSAL MANAGEMENT, LLC hereinafter referred to as "Franchisee", the grantee of rights under this Agreement; or the successor, transferee, or assignee of this Agreement, including the officers, employees, agents, contractors, and subcontractors.

o. **Junk Removal Service** shall mean the collection and transportation of solid waste generated from a Property Clean-up Event by a Self-Transporter or Permitted Hauler, as defined within Chapter 9.04 of the El Paso City Code, when the waste is placed directly into a vehicle or trailer attached to a vehicle, or when a container placed at a property is removed within seven days.

p. **Property Clean-up Event** shall mean the removal of Solid Waste from the interior of a building or premises of a property for the purpose of abating a nuisance, resolving a violation of the El Paso City Code, or removing unsanitary or slightly debris or waste, when the duration of the event does not exceed seven days.

q. **Public Rights-of-Way** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated and accepted by the City as a public right-of-way. "Public Rights-of-Way" shall not include property of the City which is not a

dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated or accepted by the City as a public right-of-way.

r. **Solid Waste Collection Service** shall mean the collection and transportation of Solid Waste, not including a Junk Removal Service, as that term is defined herein within the Authorized Area, from a dumpster, roll-off container, or other container larger than two cubic yards in volume, or from a container less than two cubic yards in volume when providing service to more than four customers, for processing or disposal at an Authorized Municipal Solid Waste Facility as defined in Chapter 9.04 of the El Paso City Code or as may be subsequently amended from time to time.

s. **Solid Waste** shall mean that term as defined in Title 30 of the Texas Administrative Code § 330.3, or as may subsequently be amended from time to time, excluding Excluded Waste as defined in section 9.04.020 of the City Code, as may subsequently be amended from time to time. Solid Waste does not include any municipal solid waste and program recyclable materials generated at residential properties in which the City is the exclusive hauler as set forth in chapter 9.04 (Solid Waste Management) of the City Code.

SECTION III. GRANTING OF FRANCHISE

Subject to all the terms and conditions contained in this Agreement, the Constitution of the United States of America or of the State of Texas, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal or state law, the City hereby grants the Franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Rights-of-Way in the Authorized Area. This grant is subject to the following additional conditions:

a. **Non-Exclusive.**

Nothing herein contained shall be construed as granting an exclusive use or right to the Franchisee to the Public Rights-of-Way, and the City may grant an additional franchise, lease or special privilege to any other applicant in its discretion for the same Public Rights-of-Way described herein. The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Agreement.

b. **Authorized Municipal Solid Waste Facility.**

Franchisee shall deposit all Solid Waste only at an Authorized Municipal Solid Waste Facility in accordance with the City Code, as may be amended from time to time.

c. **Other Services.**

By granting this Agreement, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

d. No Priority.

This Agreement does not establish any priority for the use of the Public Rights-of-Way by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

e. City's Use of Public Rights-of-Way.

The Franchisee acknowledges that by this Agreement it obtains no rights to use or further use of the Public Rights-of-Way other than those expressly granted in this Agreement. The City reserves the right to use the surface or subsurface or airspace above the Public Rights-of-Way covered by this Agreement for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Rights-of-Way. Further the City expressly reserves the right to install, repair, or reconstruct the Public Rights-of-Way used or occupied by Franchisee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, including but not limited to, drainage and utility facilities and structures.

The Franchisee acknowledges and accepts at its own risk, that the City may make use in the future of the Public Rights-of-Way as described above or as otherwise permitted by law, in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Rights-of-Way for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation or further remedy from the City unless compensation is available to all users of the Public Rights-of-Way which are affected in a similar manner.

f. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee or close or otherwise restrict the use of Public Rights-of-Way in the event of a public emergency or calamity as determined in the City's sole discretion. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee.

g. Compliance with Law and Standards of Operation.

The parties shall be subject to and comply with the Constitutions of the United States of America and the State of Texas, all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Agreement does not relieve the Franchisee of, and the Franchisee shall comply with, any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Agreement shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person, entity or individual. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

SECTION IV. SERVICE REQUIREMENTS

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all Solid Waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, expressly excluding services for which the City is the exclusive hauler as defined in Chapter 9.04 of the City Code. The Franchisee shall, at its own expense, furnish personnel and equipment to collect Solid Waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner, maintain a valid, current Hauler Permit issued by the City of El Paso, and shall comply with all requirements of the City Code, including but not limited to Chapter 9.04 of the City Code.

b. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Rights-of-Way and other facilities that are damaged as a result of the negligence, willful misconduct, or intentional acts of the Franchisee during the Franchisee's operations pursuant to this Agreement.

c. The Franchisee will comply with all rules, regulations, laws and agreements pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction.

d. Waste Containers

1. Graffiti.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the Container, as defined in Chapter 9.04 of the City Code or as amended from time to time, free from graffiti. Franchisee's Containers may display the name, address and/or phone number of

the Franchisee, identification numbering or lettering assigned by the Franchisee, and any warnings, notices or instructions posted by Franchisee. If Franchisee's customers do not remove graffiti from the Franchisee's Containers, then Franchisee shall remove the graffiti and may bill its customer for the cost or replace the Container at the customer's expense.

If, after five days notice from the Director, the Franchisee or its customer has not removed the graffiti or replaced the Containers, then the City may cover or remove the graffiti or the Container.

2. Over-Capacity.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the area around the Container clean and free of rubbish, litter, Solid Waste, garbage, recyclables, or other unsightly material, regardless of the cause of the placement of the rubbish, litter, Solid Waste, garbage or recyclables around the Container. Franchisee shall monitor its customer's use of their Containers and ensure that the customer is not overfilling the Container beyond the acceptable capacity of the Container.

If the City observes that the lid of a Container is not securely closed as a result of overfilling the Container, or rubbish, Solid Waste, garbage, recyclables or unsightly material of any kind has accumulated or is being stored outside the Container, or is visible above the top level of the Container, then the City may: (1) notify the Franchisee or the customer of the violation and require immediate removal of the rubbish, Solid Waste, garbage, recyclables or unsightly materials; or (2) may remove the rubbish, Solid Waste, garbage, recyclables or unsightly materials and bill the Franchisee for its actual expense in cleaning the site around the Container.

If the City observes and records three or more instances of a violation of this section or violations of the City's ordinances by the Franchisee's customer, then it shall notify the Franchisee and the Franchisee shall require the customer to contract for additional Solid Waste services, additional Containers or a larger Container sufficient to satisfy its Solid Waste and recyclables needs, or take other steps to ensure compliance with the City's ordinances. Compliance with the provisions of this section by a Franchisee customer shall not waive the City's right to seek all remedies available under the law or this Agreement whether against the Franchisee or the Franchisee's customer.

3.

Franchisee shall affix a label to each Container supplied to its customers that reads "NO SCAVENGING/KEEP LIDS CLOSED." For roll-off Containers which are not equipped with lids, only "NO SCAVENGING" shall be required on the label. Label may be in the form of a decal or paint; letters shall be capitalized and either black or white in color, whichever more contrasts the paint color of the Container. The label may consist of either one or two lines, and should be clearly visible from a distance of 20 feet.

SECTION V. INDEMNITY AND INSURANCE

a. INDEMNIFICATION OF CITY.

1. THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS, CONTRACTORS AND SUBCONTRACTORS (HEREINAFTER REFERRED TO COLLECTIVELY AS “INDEMNITEES”), FROM AND AGAINST:

(A) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OR FOR HARM SUFFERED OR ALLEGED TO HAVE BEEN SUFFERED BY ANY PERSON OR PERSONS (INCLUDING THIRD PARTIES, WHETHER INDIVIDUALS OR ENTITIES), THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE AGREEMENT, (ii) BY ANY ACT OR OMISSION CONSTITUTING NEGLIGENCE, GROSS NEGLIGENCE OR OTHER FAULT OF FRANCHISEE, ITS OFFICERS, DIRECTORS, PARTNERS, OWNERS OR OTHER PRINCIPALS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, OR FOR WHICH THE FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS (ALL COLLECTIVELY “FRANCHISEE PERSONS”), OR (iii) FOR WHICH THE FRANCHISEE OR FRANCHISEE PERSONS MAY BE STRICTLY LIABLE, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; AND

(B) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, FEES, PENALTIES OR OTHER ASSESSMENTS, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES THAT MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR SUFFERED BY ANY INDEMNITEES ARISING FROM OR RELATED TO ANY VIOLATION BY FRANCHISEE OR ANY FRANCHISEE PERSON OF ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE, OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE OR ANY FRANCHISEE PERSON, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER

WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION, INCLUDING ANY AND ALL COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT AGAINST THE CITY OR ANY OTHER INDEMNITEE RELATED TO ANY SUCH CLAIM.

2. FRANCHISEE'S OBLIGATION TO INDEMNIFY INCLUDES INDEMNIFICATION FOR ANY ATTORNEY'S FEES, COSTS OF COURT OR EXPENSES OF ANY THIRD PARTY ASSESSED AGAINST THE CITY OR ANY OTHER INDEMNITEE; AND ANY ATTORNEY'S FEES, COSTS AND EXPENSES OF DEFENSE OR SETTLEMENT OR ATTEMPTED SETTLEMENT (INCLUDING BUT NOT LIMITED TO INFORMAL SETTLEMENT DISCUSSIONS, MEDIATION, ARBITRATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS) BY THE CITY OR ANY OTHER INDEMNITEES.

3. FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO ALL CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH FOR WHICH ONE OR MORE INDEMNITEES MAY BE CONTRIBUTORILY LIABLE, PROVIDED, HOWEVER, THAT ANY INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW; AND PROVIDED, FURTHER, THAT THIS APPLICATION OF PROPORTIONATE RESPONSIBILITY IS NOT A WAIVER OF ANY GOVERNMENTAL IMMUNITY FOR SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS LAW, AND FURTHER DOES NOT CONSTITUTE A WAIVER OF ANY OTHER DEFENSES AVAILABLE TO EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW.

4. FRANCHISEE'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY JUDGMENT OF LIABILITY AGAINST THE CITY RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

5. THIS SUBSECTION V.A. DOES NOT, AND SHALL NOT, BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO THE CITY OR ANY INDEMNITEE UNDER TEXAS OR FEDERAL LAW, INCLUDING ANY INDIVIDUAL ABSOLUTE OR QUALIFIED IMMUNITY. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE OTHER INDEMNITEES AND THE FRANCHISEE, AND ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. FRANCHISEE'S ASSUMPTION OF RISK.

1. FRANCHISEE UNDERTAKES AND ASSUMES ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CONTROLLED PROPERTY, INCLUDING THE PUBLIC RIGHTS-OF-WAY.

2. FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND INDEMNITEES FROM AND AGAINST ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, AGREEMENT OR REGULATION.

c. Survival. **THE INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS SECTION V. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY ACTION, CLAIM, LAWSUIT OR OTHER PROCEEDING, OR JUDGMENT ARISING FROM EVENTS OCCURING DURING THE TERM OF THIS AGREEMENT.**

d. Defense of City and other Indemnitees.

In the event any action or proceeding shall be brought against any Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, and at the Franchisee's sole cost and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld. The Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's and other Indemnitees' written consent. Further, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified herein without the prior written consent of the Franchisee.

e. Expenses of Defense; Participation by Indemnitees.

The Indemnitees shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section V. Nothing herein shall prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in their defense, provided that the participation has been requested or required by the Franchisee in conducting the defense of the action, suit, or other proceeding. These covered expenses include reasonable attorney's fees and expenses, out-of-pocket expenses reasonably and necessarily incurred, the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed or incurred by the Indemnitees in connection with such suits, actions or proceedings. Covered expenses shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by the Franchisee.

f. Insurance Required.

Not later than the Effective Date, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Attachment "1", attached to and made a part of this Agreement. The insurance shall be written by a company(ies) approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The City shall be named a beneficiary and co-insured of such policy(ies). Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee.

THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the City Council approves this Agreement, then this Agreement shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of current continuous insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on at least an annual basis, no later than the anniversary date of this Agreement; and the Director shall have the right to request evidence of current insurance at any time. If the Franchisee fails to maintain insurance as required by this subsection, then the Franchisee shall forfeit any rights to contribution as defined in subsection V.a.3 above, and Franchisee shall be solely liable *in toto* for any judgment, award, claim or demand arising from the Franchisee's operation of a Solid Waste Collection Service, whether the City or any other Indemnitee is or may be contributorily liable under applicable law or not.

g. Adjustments to Insurance Requirements.

The Director reserves the right to review the insurance requirements stated herein during the term of this Agreement and to recommend to the City Council reasonable adjustments in the insurance requirements prior to any anniversary renewal of the insurance when deemed necessary or prudent by the City. Any adjustments recommended and approved by the City Council may be based upon changes in statutory law, applicable court decisions, the claims history of the industry as well as of the Franchisee, or a commercially reasonable determination by the City that existing coverage is inadequate for the risks associated with the services to be provided hereunder. When any insurance coverage limits are changed, the Franchisee shall pay any resulting increase in cost due to the changes. If Franchisee does not agree to an increase in coverage recommended by the City and approved by Council, the City may opt to pay the difference in premium that would be required for such increased coverage; but if the City declines to do so, the City shall have the right to terminate this Agreement as of the end of the current insurance term, or at the next contract year anniversary, whichever is sooner.

h. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability

for indemnity, damages and accidents as set forth in the Agreement. The bankruptcy, insolvency, receivership or denial of liability by any insurer of Franchisee shall not excuse the Franchisee from the responsibility for indemnity, liability of, or damages payable by the Franchisee as provided in this Agreement.

SECTION VI. FEES, PAYMENTS AND COMPENSATION.

a. Consideration.

Council finds and determines that Franchisee has incurred, or will incur, significant costs to upgrade its facilities as costs associated with performance under this Franchise Agreement. Council finds that such expenditures as well as the promises contained in this Franchise Agreement are satisfactory consideration to support this Agreement.

b. Additional Consideration.

Upon notice from the City, Franchisee shall provide Solid Waste removal, collection, and transport, services to the City following natural disasters or Acts of God. The term "Acts of God" as used herein, shall include, but not be limited to, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability. Franchisee understands that it is not guaranteed to receive compensation for these services. Council and the Franchisee agree that this obligation to provide emergency services without a guarantee of compensation constitutes part of the consideration offered by the Franchisee to support this Franchise Agreement.

c. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due or owed under this Agreement or of any other obligation of the Franchisee.

SECTION VII. TERM, TERMINATION AND PERFORMANCE EVALUATION

a. Term and Extensions.

This Agreement shall be effective as of the Effective Date, and, unless it is terminated earlier pursuant to its terms, shall continue in effect until December 31, 2026, with the possibility for one two-year extension as mutually agreed to by the City and the Franchisee. Franchisee shall give ninety (90) days written notice to the City prior to the expiration of the term to request an extension. The City in its sole discretion may decide to approve or decline the extension, or request an amendment of this Agreement prior to such extension.

b. Termination.

1. Right to Terminate

This Agreement may be terminated by either party, for cause or convenience, by providing ninety (90) days' written notice to the non-terminating party. Notwithstanding the foregoing, the City may terminate this Agreement if the City determines in its sole discretion termination is necessary to secure the efficiency of public service at a reasonable rate, to assure the Public Rights-of-Way are maintained

in good order throughout the term of this Agreement, or termination is in the public interest when Franchisee is utilizing the Public Rights-of-Way in a manner the City deems is inconsistent with the public use of the City's Public Rights-of-Way without providing prior notice to the Franchisee. If the City chooses to act pursuant to this authority it shall notify the Franchisee of its decision within three days of the termination of this Agreement.

2. Rights Upon Termination.

Subject to applicable law, or as specifically provided for otherwise in this Agreement, this Agreement and all rights, permissions, and privileges of the parties defined in this Agreement shall automatically cease upon the termination of this Agreement, unless such rights are extended by mutual agreement of the parties, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

In the event the Franchisee continues use of the Public Rights-of-Way after the expiration or termination of this Agreement the City may utilize any means available in law or in equity to prevent violations of the EL PASO CITY CODE or this Agreement. Franchisee shall be responsible for all attorney's fees and court costs incurred as a result of any action taken by the City pursuant to this paragraph.

c. Performance Evaluation.

In order to: (i) assure that the Franchisee is complying with the terms of this Agreement, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation during the term of the Agreement in accordance with the following process:

1. At least sixty (60) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(ii) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within thirty (30) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, a minimum, the following areas:

- (i) documentation that all of Franchisee's vehicles used in accordance with this agreement have been properly inspected for compliance with safety and air emission standards in the vehicles' state of registration, and documentation related to local government requirements for the permitting of vehicles for the hauling of Solid Waste;
- (ii) any other topic deemed material or relevant by the City for its enforcement of this Agreement.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information collected from the Effective Date, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than twenty-four (24) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than twenty (20) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

SECTION VIII. TRANSFERS OF OWNERSHIP AND CONTROL

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates identified herein, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, this Agreement or the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Assignee: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee and its Affiliates shall request approval from Council in writing and shall provide the Council with the Assignee's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

2. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs. If the Franchisee cannot provide at least sixty (60) days notice before a transfer solely for

security purposes, then Franchisee must notify the Director in writing of such a transfer at the earliest possible date after becoming aware of such transfer.

3. The Franchisee may not transfer or assign this Agreement to an Affiliate not identified herein, without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee shall request approval from Council in writing and shall provide the Council with the Affiliate's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

b. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Attachment "2", attached to and made a part of this Agreement, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Agreement.

SECTION IX. DEFAULT

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Agreement shall constitute an Event of Default by the Franchisee under this Agreement:

1. The failure or refusal by the Franchisee to pay consideration when due as prescribed by this Agreement.
2. The Franchisee's material violation of or failure to comply with any provision or condition of chapter 9.04 of the City Code relating to Solid Waste collection service or any other applicable provision or condition of the City Code.
3. The suspension or revocation of the Franchisee's Hauler Permit.
4. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Agreement, or the Franchisee's failure or refusal to perform any obligation contained in this Agreement.
5. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real property taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.
6. The entry of any judgment against the Franchisee by which another party becomes entitled to possession of any of the Franchisee's Solid Waste Collection Service's assets, and for which transfer of these assets requires prior consent of the

Council, and such judgment is not stayed pending rehearing or appeal following entry of the judgment for a period of forty-five (45) or more days.

7. The dissolution of the Franchisee.

8. The Franchisee's filing of a voluntary petition in bankruptcy; the filing of an involuntary petition in bankruptcy against the Franchisee; an adjudication finding the Franchisee insolvent; the Franchisee's obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of the Franchisee, or any of Franchisee's property or this Agreement or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Agreement.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Agreement.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Agreement.

12. The Franchisee's failure or refusal to comply with a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section X. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section X, unless the Director, the City Manager, or the Council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section X.

SECTION X. REMEDIES

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section IX., the Director shall report the occurrence of default to the City Manager and the Council. The Council shall be entitled in its sole discretion to exercise any or all of the following remedies, which shall be cumulative:

1. Exercise its rights to liquidated damages as described in subsection c. of this Section X.
2. Commence an action at law against the Franchisee for monetary damages.
3. Commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable, or other equitable relief.
4. Revoke the Franchise granted under this Agreement.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Agreement. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Agreement shall be automatically terminated and deemed null and void and shall have no further force or effect, and the provisions that are contractual in nature which are also included as a part of this Agreement are hereby automatically terminated, other than provisions that expressly are continued after termination or which impose obligations or rights of a kind that are intended and appropriate to be continued beyond termination, such as but not limited to Franchisee's obligations to defend and indemnify.

Upon revocation, the City shall retain any portion of the consideration and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered or decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. The Council reserves the right, in its sole discretion, to seek liquidated damages or to pursue other remedies as provided in this Section X, or allowed in law or equity in addition to revocation.

c. Liquidated Damages.

In addition to the other remedies provided for in this Section X., other remedies provided in this Agreement and remedies available at law or in equity, in the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Agreement, the Franchisee shall pay Two Hundred Dollars (\$200.00) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted. This subsection X.c. does not apply to the failure or refusal by the Franchisee to pay the Franchise Fee or other consideration when it becomes due (Event of

Default, subsection IX.a.1.) or the failure or the refusal to pay or cause to be paid any of the City's governmentally imposed taxes (Event of Default, subsection IX.a.4).

d. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section X. shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control to have prevented or avoided, the Council may pursue any or all of the remedies provided in Section X. or otherwise at law or in equity. The remedies of the City created under this Agreement shall be cumulative of other remedies under the Agreement, at law or in equity to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Agreement shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default.

e. Curable Violations.

The Franchisee shall not be found in violation of this Agreement or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee; provided, that the Franchisee has made reasonably diligent efforts to have prevented or avoided the violation, or the violation occurs as a result of circumstances beyond Franchisee's control or its ability to have prevented or avoided, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship, or election of actions based on, or for the purpose of realizing economic benefit or advantage; nor by the negligence or misfeasance or malfeasance of its directors, officers, principals, employees, agents, representatives, contractors or subcontractors.

SECTION XI. RECORDKEEPING AND AUDIT

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations in the Authorized Area under and in connection with this Agreement in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates within the scope of this Agreement during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Agreement. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law. To the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this

Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Reports.

If the Franchisee is a publicly traded company, the Franchisee shall file with the City by the end of each calendar year a copy of its certified financial statements filed with the Security and Exchange Commission, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City for inspection upon request.

d. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Agreement. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION XII. MISCELLANEOUS

a. Entire Agreement.

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Agreement. This Agreement can only be modified by an Agreement amendment approved by Council.

b. Notices.

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by any of the means described in subsection XII.d. of this Agreement. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to:

City of El Paso, Environmental Services Department
 Attention: Director
 7968 San Paulo
 El Paso, Texas 79907

And:

City Attorney
 P.O. Box 1890
 El Paso, Texas 79950-1890

If to the Franchisee:

DEMCON DISPOSAL MANAGEMENT, LLC
 Attn: Daniel Robles
 P.O. Box 26307
 El Paso, Texas 79926

Either the City or the Franchisee may change its address or personnel for the receipt of notices at any time by giving notice of the change to the other party as provided in this subsection XII.b. Any notice given by either the City or the Franchisee must be signed by an authorized representative.

c. Notice of Claim.

This Agreement is subject to the provisions of Section 1.5 of the El Paso City Charter, as amended, relating to requirements for filing a notice of a claim against the City. Section 1.5 of the El Paso City Charter, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Franchisee shall comply with the requirements of Section 1.5 as a precondition of any claim against the City relating to or arising out of this Agreement.

d. Delivery of Notices.

Notices required to be given under this Agreement may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.
2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.
3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.
4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement transmission as a recipient shall request) and with a hard copy on the same date or the

next day mailed to all by first class mail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Agreement or the services or facilities of the Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Agreement, acknowledges that it has not been induced to accept this Agreement by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Agreement. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Agreement.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Agreement.

k. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by the EL PASO CITY CODE, and any other applicable laws and regulations. If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable and neither the remainder

hereof nor the application of such provision to other persons, entities, or circumstances or other instruments shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law. To the extent that any party's performance under this contract becomes impossible or illegal as a result of future and unknown regulations not contemplated by the parties, and the parties are not able to modify the terms of this Agreement as contemplated above, then the parties shall be excused from further performance under those portions of this Agreement, and such offending portions shall be severed and excluded from this Agreement.

l. City Retained Powers.

In addition to all rights provided in this Agreement, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City Agreements which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Agreement which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Agreement and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Agreement.

n. Time is of the Essence.

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Agreement.

o. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term "force majeure" shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Agreement, Franchisee shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

p. Recognition of Rights.

The Franchisee agrees that by adopting this Agreement, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Agreement in whole or in part upon the Franchisee.

q. Police Powers.

1. In accepting this Agreement, the Franchisee acknowledges that its rights under this Agreement are subject to the police power of the City to adopt and enforce general Agreements necessary to the health, safety, and welfare of the public. Except as otherwise agreed to by the parties or exempted by a City ordinance, Franchisee shall comply with all applicable general laws and Agreements enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Agreement as convenient and necessary to promote the public's interest.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

r. No Presumption of Renewal

This Agreement and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

s. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the El Paso City Charter. Any request by the Franchisee for an amendment to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

t. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

u. This Agreement may be amended, revised or modified only by a written instrument, executed by the parties hereto.

v. The headings, captions and arrangements contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. If the context required, words used in the singular shall be read as including the plural and vice versa, and pronouns of any gender shall include all genders. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, paragraph, subparagraph, section or article.

w. This Agreement is executed for the sole benefit of parties hereto and is not for the benefit of any third party. No other party will have rights under this Agreement.

x. Authorization. Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective entity.

y. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

z. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

aa. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an attachment or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of El Paso, EL PASO CITY CODE, and the ordinance granting this Agreement and all exhibits thereto.

bb. No discrimination. Franchisee, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of this contract, or be otherwise subjected to discrimination in the execution of this contract.

2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in or denied the benefits of said services, or otherwise be subjected to discrimination.

3. If applicable, Franchisee shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. If applicable, Franchisee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

4. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

List of Attachments:

Attachment "1" – Insurance Requirements

Attachment "2" – Schedule of Ownership

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and DEMCON DISPOSAL MANAGEMENT, LLC.

THE CITY OF EL PASO:

Tomás González
City Manager

APPROVED AS TO FORM:

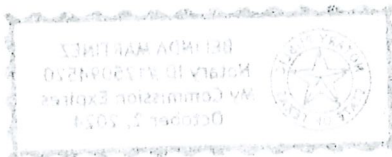
Wendi N. Vineyard

Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:

Ellen A. Smyth

Ellen A. Smyth, P.E., Director
Department of Environmental Services



STATE OF TEXAS)
)
COUNTY OF EL PASO) **SOLID WASTE FRANCHISE AGREEMENT**

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and DEMCON DISPOSAL MANAGEMENT, LLC.

DEMCON DISPOSAL MANAGEMENT, LLC:

By: [Signature]
Daniel Robles
President

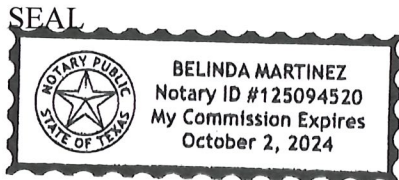
ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Jesus Adrian Munoz, as Owner of DEMCON DISPOSAL MANAGEMENT, LLC , known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Adela M. Torres, and that he/she executed the same as the act of DEMCON DISPOSAL MANAGEMENT, LLC for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 29 day of December, 2022. 2021

[Signature]
Notary Public
State of Texas



ATTACHMENT "1"

INSURANCE REQUIREMENTS

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE:

For the duration of this Agreement and any extension hereof, Franchisee shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

2. WORKERS' COMPENSATION

For the duration of this Agreement and any extension hereof, Franchisee shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law:

\$500,000.00

3. AUTOMOBILE LIABILITY INSURANCE

Minimum \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.

ATTACHMENT "2"

SCHEDULE OF OWNERSHIP

Franchisee Name: DEMCON DISPOSAL MANAGEMENT, LLC
Legal Entity: DEMCON DISPOSAL MANAGEMENT, LLC

Identity of Owners: Daniel Robles (100%)
(Identify each partner, member, shareholder, or other owner. For each owner identified identify the individual ownership interest, to include total number of shares owned.)



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-39, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting a renewal of non-exclusive franchise to El Paso Disposal, LP, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBGOAL:

SUBJECT:

An ordinance granting a renewal of non-exclusive franchise to El Paso Disposal, LP, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in section 9.04.630 of the El Paso city code.

BACKGROUND / DISCUSSION:

A franchise is required for solid waste collection haulers that are permitted by the Environmental Services Department. This agreement between the franchisee and City identifies standards to be maintained for the operation of solid waste collection services.

PRIOR COUNCIL ACTION:

Non-exclusive franchises for solid waste collection services are routinely approved by Council.

AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Environmental Services Department

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWAL OF NON-EXCLUSIVE FRANCHISE TO EL PASO DISPOSAL, LP, TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by ordinance passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the State of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, the attached franchise agreement is a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City of El Paso requires in City Code Section 9.04, that all haulers of municipal solid waste are required to enter into a franchise agreement with the City; and

WHEREAS, EL PASO DISPOSAL, LP is engaged in the business of collection and transportation of solid waste within the City and has requested a franchise to use the City's rights-of-way; and,

WHEREAS, EL PASO DISPOSAL, LP has agreed to the terms of the Solid Waste Franchise Agreement with the City of El Paso, granting EL PASO DISPOSAL, LP a non-exclusive franchise to operate and maintain a solid waste collection service using the City's rights-of-way; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

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

1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

2. The City Manager is authorized to sign a renewal of non-exclusive Solid Waste Franchise Agreement by and between the City of El Paso EL PASO DISPOSAL, LP for the franchisee to operate and maintain a Solid Waste Collection Service, in, over, along and across the Public Rights-of-Way in the Authorized Area, to end on December 31, 2026, as set forth and defined in the document labeled Exhibit "A", attached and incorporated by reference for all purposes.

3. All ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

4. The City Manager or authorized agent is authorized to extend this agreement for an additional five years at the end of the date of the contract.

5. This ordinance shall take effect on January 1, 2022.

PASSED AND APPROVED this ____ day of ____, 2022.


CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this ____ day of _____, 2021.

EL PASO DISPOSAL, LP

By: Worthing Jackman, CEO & President

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 202__, by Worthing Jackman.

Notary Public, State of Texas
Notary's Printed or Typed Name:

My Commission Expires:

EXHIBIT “A”

**SOLID WASTE
FRANCHISE AGREEMENT**

**BY AND BETWEEN
CITY OF EL PASO, TEXAS
AND
EL PASO DISPOSAL, LP**

EFFECTIVE DATE: January 1, 2022

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STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

THIS Solid Waste Franchise Agreement (“Agreement”) is entered into this ____ day of _____, 2022, by and between the CITY OF EL PASO, a Texas home rule municipality, hereinafter referred to as the "CITY", and EL PASO DISPOSAL, LP, hereinafter referred to as “Franchisee”.

RECITALS

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by Agreement passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the state of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, this franchise agreement is a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City desires to exercise the authority provided to it by ordinance, charter and state law to grant a franchise for the collection, transportation, hauling and disposal of Solid Waste as further defined herein, within the corporate limits of the City and under the terms of this Agreement as set out below; and,

WHEREAS, Franchisee desires to obtain a franchise to provide for the collection, transportation, hauling and disposal of Solid Waste from the City of El Paso, and agrees to comply with the terms and conditions of this Agreement; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Agreement are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

WITNESSETH:

SECTION I. PREAMBLE

That the declarations contained in the preamble to this Agreement are material and incorporated herein as a part of this Agreement as though they were fully set forth in this Agreement in their entirety.

SECTION II. DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word “shall” is mandatory and not merely directory. The word “may” is not mandatory and is merely permissive. The word “day” means a calendar day and not a business day. Words defined elsewhere in this Agreement shall be accorded that meaning throughout this Agreement. Words not defined shall be given their common and ordinary meaning.

a. **Affiliate** and **Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.

b. **Agreement** shall mean this document.

c. **Authorized Area** means the entire area within the corporate limits of the City of El Paso, including any territory annexed into the City limits after the Effective Date of this Agreement.

d. **City** means the City of El Paso, a home rule municipal corporation, a political subdivision of the State of Texas.

e. **City Charter** means the City’s organic law, equivalent to a constitution, which defines the City’s existence and prescribes the powers, duties, and organization of the City’s governmental structure.

f. **City Code** shall mean the ordinances of the City codified into the EL PASO CITY CODE, as amended from time to time.

g. **City Manager** shall mean the City Manager or the City Manager’s designated representative.

h. **Container** shall mean any receptacle for waste as defined by Title 9.04 to include Dumpsters, Containers, Carts, Roll-Offs and Compactors.

i. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

j. **Council** shall mean the governing body of the City of El Paso. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. Unless otherwise stated in this Agreement or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Agreement and to the Franchisee's exercise of the rights and privileges conferred in this Agreement.

k. **Director** means the Director of the Environmental Services Department of the City, or any successor department, or any Director as designated by the City Manager, or the Director's designated representative.

l. **Effective Date** means January 1, 2022.

m. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Rights-of-Way under this Agreement, and all of the incidental rights and obligations as described by this Agreement.

n. **Franchisee** shall mean EL PASO DISPOSAL, LP hereinafter referred to as "Franchisee", the grantee of rights under this Agreement; or the successor, transferee, or assignee of this Agreement, including the officers, employees, agents, contractors, and subcontractors.

o. **Junk Removal Service** shall mean the collection and transportation of solid waste generated from a Property Clean-up Event by a Self-Transporter or Permitted Hauler, as defined within Chapter 9.04 of the El Paso City Code, when the waste is placed directly into a vehicle or trailer attached to a vehicle, or when a container placed at a property is removed within seven days.

p. **Property Clean-up Event** shall mean the removal of Solid Waste from the interior of a building or premises of a property for the purpose of abating a nuisance, resolving a violation of the El Paso City Code, or removing unsanitary or slightly debris or waste, when the duration of the event does not exceed seven days.

q. **Public Rights-of-Way** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated and accepted by the City as a public right-of-way. "Public Rights-of-Way" shall not include property of the City which is not a

dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated or accepted by the City as a public right-of-way.

r. **Solid Waste Collection Service** shall mean the collection and transportation of Solid Waste, not including a Junk Removal Service, as that term is defined herein within the Authorized Area, from a dumpster, roll-off container, or other container larger than two cubic yards in volume, or from a container less than two cubic yards in volume when providing service to more than four customers, for processing or disposal at an Authorized Municipal Solid Waste Facility as defined in Chapter 9.04 of the El Paso City Code or as may be subsequently amended from time to time.

s. **Solid Waste** shall mean that term as defined in Title 30 of the Texas Administrative Code § 330.3, or as may subsequently be amended from time to time, excluding Excluded Waste as defined in section 9.04.020 of the City Code, as may subsequently be amended from time to time. Solid Waste does not include any municipal solid waste and program recyclable materials generated at residential properties in which the City is the exclusive hauler as set forth in chapter 9.04 (Solid Waste Management) of the City Code.

SECTION III. GRANTING OF FRANCHISE

Subject to all the terms and conditions contained in this Agreement, the Constitution of the United States of America or of the State of Texas, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal or state law, the City hereby grants the Franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Rights-of-Way in the Authorized Area. This grant is subject to the following additional conditions:

a. **Non-Exclusive.**

Nothing herein contained shall be construed as granting an exclusive use or right to the Franchisee to the Public Rights-of-Way, and the City may grant an additional franchise, lease or special privilege to any other applicant in its discretion for the same Public Rights-of-Way described herein. The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Agreement.

b. **Authorized Municipal Solid Waste Facility.**

Franchisee shall deposit all Solid Waste only at an Authorized Municipal Solid Waste Facility in accordance with the City Code, as may be amended from time to time.

c. **Other Services.**

By granting this Agreement, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

d. No Priority.

This Agreement does not establish any priority for the use of the Public Rights-of-Way by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

e. City's Use of Public Rights-of-Way.

The Franchisee acknowledges that by this Agreement it obtains no rights to use or further use of the Public Rights-of-Way other than those expressly granted in this Agreement. The City reserves the right to use the surface or subsurface or airspace above the Public Rights-of-Way covered by this Agreement for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Rights-of-Way. Further the City expressly reserves the right to install, repair, or reconstruct the Public Rights-of-Way used or occupied by Franchisee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, including but not limited to, drainage and utility facilities and structures.

The Franchisee acknowledges and accepts at its own risk, that the City may make use in the future of the Public Rights-of-Way as described above or as otherwise permitted by law, in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Rights-of-Way for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation or further remedy from the City unless compensation is available to all users of the Public Rights-of-Way which are affected in a similar manner.

f. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee or close or otherwise restrict the use of Public Rights-of-Way in the event of a public emergency or calamity as determined in the City's sole discretion. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee.

g. Compliance with Law and Standards of Operation.

The parties shall be subject to and comply with the Constitutions of the United States of America and the State of Texas, all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Agreement does not relieve the Franchisee of, and the Franchisee shall comply with, any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Agreement shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person, entity or individual. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

SECTION IV. SERVICE REQUIREMENTS

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all Solid Waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, expressly excluding services for which the City is the exclusive hauler as defined in Chapter 9.04 of the City Code. The Franchisee shall, at its own expense, furnish personnel and equipment to collect Solid Waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner, maintain a valid, current Hauler Permit issued by the City of El Paso, and shall comply with all requirements of the City Code, including but not limited to Chapter 9.04 of the City Code.

b. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Rights-of-Way and other facilities that are damaged as a result of the negligence, willful misconduct, or intentional acts of the Franchisee during the Franchisee's operations pursuant to this Agreement.

c. The Franchisee will comply with all rules, regulations, laws and agreements pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction.

d. Waste Containers

1. Graffiti.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the Container, as defined in Chapter 9.04 of the City Code or as amended from time to time, free from graffiti. Franchisee's Containers may display the name, address and/or phone number of

the Franchisee, identification numbering or lettering assigned by the Franchisee, and any warnings, notices or instructions posted by Franchisee. If Franchisee's customers do not remove graffiti from the Franchisee's Containers, then Franchisee shall remove the graffiti and may bill its customer for the cost or replace the Container at the customer's expense.

If, after five days notice from the Director, the Franchisee or its customer has not removed the graffiti or replaced the Containers, then the City may cover or remove the graffiti or the Container.

2. Over-Capacity.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the area around the Container clean and free of rubbish, litter, Solid Waste, garbage, recyclables, or other unsightly material, regardless of the cause of the placement of the rubbish, litter, Solid Waste, garbage or recyclables around the Container. Franchisee shall monitor its customer's use of their Containers and ensure that the customer is not overfilling the Container beyond the acceptable capacity of the Container.

If the City observes that the lid of a Container is not securely closed as a result of overfilling the Container, or rubbish, Solid Waste, garbage, recyclables or unsightly material of any kind has accumulated or is being stored outside the Container, or is visible above the top level of the Container, then the City may: (1) notify the Franchisee or the customer of the violation and require immediate removal of the rubbish, Solid Waste, garbage, recyclables or unsightly materials; or (2) may remove the rubbish, Solid Waste, garbage, recyclables or unsightly materials and bill the Franchisee for its actual expense in cleaning the site around the Container.

If the City observes and records three or more instances of a violation of this section or violations of the City's ordinances by the Franchisee's customer, then it shall notify the Franchisee and the Franchisee shall require the customer to contract for additional Solid Waste services, additional Containers or a larger Container sufficient to satisfy its Solid Waste and recyclables needs, or take other steps to ensure compliance with the City's ordinances. Compliance with the provisions of this section by a Franchisee customer shall not waive the City's right to seek all remedies available under the law or this Agreement whether against the Franchisee or the Franchisee's customer.

3. Franchisee shall affix a label to each Container supplied to its customers that reads "NO SCAVENGING/KEEP LIDS CLOSED." For roll-off Containers which are not equipped with lids, only "NO SCAVENGING" shall be required on the label. Label may be in the form of a decal or paint; letters shall be capitalized and either black or white in color, whichever more contrasts the paint color of the Container. The label may consist of either one or two lines, and should be clearly visible from a distance of 20 feet.

SECTION V. INDEMNITY AND INSURANCE

a. INDEMNIFICATION OF CITY.

1. THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS, CONTRACTORS AND SUBCONTRACTORS (HEREINAFTER REFERRED TO COLLECTIVELY AS “INDEMNITEES”), FROM AND AGAINST:

(A) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OR FOR HARM SUFFERED OR ALLEGED TO HAVE BEEN SUFFERED BY ANY PERSON OR PERSONS (INCLUDING THIRD PARTIES, WHETHER INDIVIDUALS OR ENTITIES), THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE AGREEMENT, (ii) BY ANY ACT OR OMISSION CONSTITUTING NEGLIGENCE, GROSS NEGLIGENCE OR OTHER FAULT OF FRANCHISEE, ITS OFFICERS, DIRECTORS, PARTNERS, OWNERS OR OTHER PRINCIPALS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, OR FOR WHICH THE FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS (ALL COLLECTIVELY “FRANCHISEE PERSONS”), OR (iii) FOR WHICH THE FRANCHISEE OR FRANCHISEE PERSONS MAY BE STRICTLY LIABLE, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; AND

(B) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, FEES, PENALTIES OR OTHER ASSESSMENTS, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES THAT MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR SUFFERED BY ANY INDEMNITEES ARISING FROM OR RELATED TO ANY VIOLATION BY FRANCHISEE OR ANY FRANCHISEE PERSON OF ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE, OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE OR ANY FRANCHISEE PERSON, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER

WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION, INCLUDING ANY AND ALL COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT AGAINST THE CITY OR ANY OTHER INDEMNITEE RELATED TO ANY SUCH CLAIM.

2. FRANCHISEE'S OBLIGATION TO INDEMNIFY INCLUDES INDEMNIFICATION FOR ANY ATTORNEY'S FEES, COSTS OF COURT OR EXPENSES OF ANY THIRD PARTY ASSESSED AGAINST THE CITY OR ANY OTHER INDEMNITEE; AND ANY ATTORNEY'S FEES, COSTS AND EXPENSES OF DEFENSE OR SETTLEMENT OR ATTEMPTED SETTLEMENT (INCLUDING BUT NOT LIMITED TO INFORMAL SETTLEMENT DISCUSSIONS, MEDIATION, ARBITRATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS) BY THE CITY OR ANY OTHER INDEMNITEES.

3. FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO ALL CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH FOR WHICH ONE OR MORE INDEMNITEES MAY BE CONTRIBUTORILY LIABLE, PROVIDED, HOWEVER, THAT ANY INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW; AND PROVIDED, FURTHER, THAT THIS APPLICATION OF PROPORTIONATE RESPONSIBILITY IS NOT A WAIVER OF ANY GOVERNMENTAL IMMUNITY FOR SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS LAW, AND FURTHER DOES NOT CONSTITUTE A WAIVER OF ANY OTHER DEFENSES AVAILABLE TO EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW.

4. FRANCHISEE'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY JUDGMENT OF LIABILITY AGAINST THE CITY RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

5. THIS SUBSECTION V.A. DOES NOT, AND SHALL NOT, BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO THE CITY OR ANY INDEMNITEE UNDER TEXAS OR FEDERAL LAW, INCLUDING ANY INDIVIDUAL ABSOLUTE OR QUALIFIED IMMUNITY. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE OTHER INDEMNITEES AND THE FRANCHISEE, AND ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. FRANCHISEE'S ASSUMPTION OF RISK.

1. FRANCHISEE UNDERTAKES AND ASSUMES ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CONTROLLED PROPERTY, INCLUDING THE PUBLIC RIGHTS-OF-WAY.

2. FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND INDEMNITEES FROM AND AGAINST ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, AGREEMENT OR REGULATION.

c. Survival. **THE INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS SECTION V. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY ACTION, CLAIM, LAWSUIT OR OTHER PROCEEDING, OR JUDGMENT ARISING FROM EVENTS OCCURING DURING THE TERM OF THIS AGREEMENT.**

d. Defense of City and other Indemnitees.

In the event any action or proceeding shall be brought against any Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, and at the Franchisee's sole cost and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld. The Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's and other Indemnitees' written consent. Further, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified herein without the prior written consent of the Franchisee.

e. Expenses of Defense; Participation by Indemnitees.

The Indemnitees shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section V. Nothing herein shall prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in their defense, provided that the participation has been requested or required by the Franchisee in conducting the defense of the action, suit, or other proceeding. These covered expenses include reasonable attorney's fees and expenses, out-of-pocket expenses reasonably and necessarily incurred, the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed or incurred by the Indemnitees in connection with such suits, actions or proceedings. Covered expenses shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by the Franchisee.

f. Insurance Required.

Not later than the Effective Date, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Attachment “1”, attached to and made a part of this Agreement. The insurance shall be written by a company(ies) approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The City shall be named a beneficiary and co-insured of such policy(ies). Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee.

THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the City Council approves this Agreement, then this Agreement shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of current continuous insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on at least an annual basis, no later than the anniversary date of this Agreement; and the Director shall have the right to request evidence of current insurance at any time. If the Franchisee fails to maintain insurance as required by this subsection, then the Franchisee shall forfeit any rights to contribution as defined in subsection V.a.3 above, and Franchisee shall be solely liable *in toto* for any judgment, award, claim or demand arising from the Franchisee’s operation of a Solid Waste Collection Service, whether the City or any other Indemnitee is or may be contributorily liable under applicable law or not.

g. Adjustments to Insurance Requirements.

The Director reserves the right to review the insurance requirements stated herein during the term of this Agreement and to recommend to the City Council reasonable adjustments in the insurance requirements prior to any anniversary renewal of the insurance when deemed necessary or prudent by the City. Any adjustments recommended and approved by the City Council may be based upon changes in statutory law, applicable court decisions, the claims history of the industry as well as of the Franchisee, or a commercially reasonable determination by the City that existing coverage is inadequate for the risks associated with the services to be provided hereunder. When any insurance coverage limits are changed, the Franchisee shall pay any resulting increase in cost due to the changes. If Franchisee does not agree to an increase in coverage recommended by the City and approved by Council, the City may opt to pay the difference in premium that would be required for such increased coverage; but if the City declines to do so, the City shall have the right to terminate this Agreement as of the end of the current insurance term, or at the next contract year anniversary, whichever is sooner.

h. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability

for indemnity, damages and accidents as set forth in the Agreement. The bankruptcy, insolvency, receivership or denial of liability by any insurer of Franchisee shall not excuse the Franchisee from the responsibility for indemnity, liability of, or damages payable by the Franchisee as provided in this Agreement.

SECTION VI. FEES, PAYMENTS AND COMPENSATION.

a. Consideration.

Council finds and determines that Franchisee has incurred, or will incur, significant costs to upgrade its facilities as costs associated with performance under this Franchise Agreement. Council finds that such expenditures as well as the promises contained in this Franchise Agreement are satisfactory consideration to support this Agreement.

b. Additional Consideration.

Upon notice from the City, Franchisee shall provide Solid Waste removal, collection, and transport, services to the City following natural disasters or Acts of God. The term “Acts of God” as used herein, shall include, but not be limited to, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability. Franchisee understands that it is not guaranteed to receive compensation for these services. Council and the Franchisee agree that this obligation to provide emergency services without a guarantee of compensation constitutes part of the consideration offered by the Franchisee to support this Franchise Agreement.

c. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due or owed under this Agreement or of any other obligation of the Franchisee.

SECTION VII. TERM, TERMINATION AND PERFORMANCE EVALUATION

a. Term and Extensions.

This Agreement shall be effective as of the Effective Date, and, unless it is terminated earlier pursuant to its terms, shall continue in effect until December 31, 2026, with the possibility for one two-year extension as mutually agreed to by the City and the Franchisee. Franchisee shall give ninety (90) days written notice to the City prior to the expiration of the term to request an extension. The City in its sole discretion may decide to approve or decline the extension, or request an amendment of this Agreement prior to such extension.

b. Termination.

1. Right to Terminate

This Agreement may be terminated by either party, for cause or convenience, by providing ninety (90) days’ written notice to the non-terminating party. Notwithstanding the foregoing, the City may terminate this Agreement if the City determines in its sole discretion termination is necessary to secure the efficiency of public service at a reasonable rate, to assure the Public Rights-of-Way are maintained

in good order throughout the term of this Agreement, or termination is in the public interest when Franchisee is utilizing the Public Rights-of-Way in a manner the City deems is inconsistent with the public use of the City's Public Rights-of-Way without providing prior notice to the Franchisee. If the City chooses to act pursuant to this authority it shall notify the Franchisee of its decision within three days of the termination of this Agreement.

2. Rights Upon Termination.

Subject to applicable law, or as specifically provided for otherwise in this Agreement, this Agreement and all rights, permissions, and privileges of the parties defined in this Agreement shall automatically cease upon the termination of this Agreement, unless such rights are extended by mutual agreement of the parties, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

In the event the Franchisee continues use of the Public Rights-of-Way after the expiration or termination of this Agreement the City may utilize any means available in law or in equity to prevent violations of the EL PASO CITY CODE or this Agreement. Franchisee shall be responsible for all attorney's fees and court costs incurred as a result of any action taken by the City pursuant to this paragraph.

c. Performance Evaluation.

In order to: (i) assure that the Franchisee is complying with the terms of this Agreement, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation during the term of the Agreement in accordance with the following process:

1. At least sixty (60) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(ii) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within thirty (30) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, a minimum, the following areas:

- (i) documentation that all of Franchisee's vehicles used in accordance with this agreement have been properly inspected for compliance with safety and air emission standards in the vehicles' state of registration, and documentation related to local government requirements for the permitting of vehicles for the hauling of Solid Waste;
- (ii) any other topic deemed material or relevant by the City for its enforcement of this Agreement.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information collected from the Effective Date, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than twenty-four (24) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than twenty (20) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

SECTION VIII. TRANSFERS OF OWNERSHIP AND CONTROL

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates identified herein, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, this Agreement or the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Assignee: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee and its Affiliates shall request approval from Council in writing and shall provide the Council with the Assignee's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

2. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs. If the Franchisee cannot provide at least sixty (60) days notice before a transfer solely for

security purposes, then Franchisee must notify the Director in writing of such a transfer at the earliest possible date after becoming aware of such transfer.

3. The Franchisee may not transfer or assign this Agreement to an Affiliate not identified herein, without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee shall request approval from Council in writing and shall provide the Council with the Affiliate's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

b. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Attachment "2", attached to and made a part of this Agreement, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Agreement.

SECTION IX. DEFAULT

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Agreement shall constitute an Event of Default by the Franchisee under this Agreement:

1. The failure or refusal by the Franchisee to pay consideration when due as prescribed by this Agreement.

2. The Franchisee's material violation of or failure to comply with any provision or condition of chapter 9.04 of the City Code relating to Solid Waste collection service or any other applicable provision or condition of the City Code.

3. The suspension or revocation of the Franchisee's Hauler Permit.

4. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Agreement, or the Franchisee's failure or refusal to perform any obligation contained in this Agreement.

5. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real property taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

6. The entry of any judgment against the Franchisee by which another party becomes entitled to possession of any of the Franchisee's Solid Waste Collection Service's assets, and for which transfer of these assets requires prior consent of the

Council, and such judgment is not stayed pending rehearing or appeal following entry of the judgment for a period of forty-five (45) or more days.

7. The dissolution of the Franchisee.

8. The Franchisee's filing of a voluntary petition in bankruptcy; the filing of an involuntary petition in bankruptcy against the Franchisee; an adjudication finding the Franchisee insolvent; the Franchisee's obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of the Franchisee, or any of Franchisee's property or this Agreement or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Agreement.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Agreement.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Agreement.

12. The Franchisee's failure or refusal to comply with a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section X. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section X, unless the Director, the City Manager, or the Council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section X.

SECTION X. REMEDIES

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section IX., the Director shall report the occurrence of default to the City Manager and the Council. The Council shall be entitled in its sole discretion to exercise any or all of the following remedies, which shall be cumulative:

1. Exercise its rights to liquidated damages as described in subsection c. of this Section X.
2. Commence an action at law against the Franchisee for monetary damages.
3. Commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable, or other equitable relief.
4. Revoke the Franchise granted under this Agreement.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Agreement. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Agreement shall be automatically terminated and deemed null and void and shall have no further force or effect, and the provisions that are contractual in nature which are also included as a part of this Agreement are hereby automatically terminated, other than provisions that expressly are continued after termination or which impose obligations or rights of a kind that are intended and appropriate to be continued beyond termination, such as but not limited to Franchisee's obligations to defend and indemnify.

Upon revocation, the City shall retain any portion of the consideration and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered or decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. The Council reserves the right, in its sole discretion, to seek liquidated damages or to pursue other remedies as provided in this Section X, or allowed in law or equity in addition to revocation.

c. Liquidated Damages.

In addition to the other remedies provided for in this Section X., other remedies provided in this Agreement and remedies available at law or in equity, in the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Agreement, the Franchisee shall pay Two Hundred Dollars (\$200.00) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted. This subsection X.c. does not apply to the failure or refusal by the Franchisee to pay the Franchise Fee or other consideration when it becomes due (Event of

Default, subsection IX.a.1.) or the failure or the refusal to pay or cause to be paid any of the City's governmentally imposed taxes (Event of Default, subsection IX.a.4).

d. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section X. shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control to have prevented or avoided, the Council may pursue any or all of the remedies provided in Section X. or otherwise at law or in equity. The remedies of the City created under this Agreement shall be cumulative of other remedies under the Agreement, at law or in equity to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Agreement shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default.

e. Curable Violations.

The Franchisee shall not be found in violation of this Agreement or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee; provided, that the Franchisee has made reasonably diligent efforts to have prevented or avoided the violation, or the violation occurs as a result of circumstances beyond Franchisee's control or its ability to have prevented or avoided, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship, or election of actions based on, or for the purpose of realizing economic benefit or advantage; nor by the negligence or misfeasance or malfeasance of its directors, officers, principals, employees, agents, representatives, contractors or subcontractors.

SECTION XI. RECORDKEEPING AND AUDIT

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations in the Authorized Area under and in connection with this Agreement in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates within the scope of this Agreement during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Agreement. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law. To the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this

Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Reports.

If the Franchisee is a publicly traded company, the Franchisee shall file with the City by the end of each calendar year a copy of its certified financial statements filed with the Security and Exchange Commission, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City for inspection upon request.

d. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Agreement. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION XII. MISCELLANEOUS

a. Entire Agreement.

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Agreement. This Agreement can only be modified by an Agreement amendment approved by Council.

b. Notices.

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by any of the means described in subsection XII.d. of this Agreement. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to:

City of El Paso, Environmental Services Department
Attention: Director
7968 San Paulo
El Paso, Texas 79907

And:

City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

If to the Franchisee:

EL PASO DISPOSAL, LP
Attn: Worthing Jackman
3 Waterway Square Pl
The Woodlands, Texas 77380-3488

Either the City or the Franchisee may change its address or personnel for the receipt of notices at any time by giving notice of the change to the other party as provided in this subsection XII.b. Any notice given by either the City or the Franchisee must be signed by an authorized representative.

c. Notice of Claim.

This Agreement is subject to the provisions of Section 1.5 of the El Paso City Charter, as amended, relating to requirements for filing a notice of a claim against the City. Section 1.5 of the El Paso City Charter, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Franchisee shall comply with the requirements of Section 1.5 as a precondition of any claim against the City relating to or arising out of this Agreement.

d. Delivery of Notices.

Notices required to be given under this Agreement may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.
2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.
3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.
4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement transmission as a recipient shall request) and with a hard copy on the same date or the

next day mailed to all by first class mail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Agreement or the services or facilities of the Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Agreement, acknowledges that it has not been induced to accept this Agreement by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Agreement. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Agreement.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Agreement.

k. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by the EL PASO CITY CODE, and any other applicable laws and regulations. If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable and neither the remainder

hereof nor the application of such provision to other persons, entities, or circumstances or other instruments shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law. To the extent that any party's performance under this contract becomes impossible or illegal as a result of future and unknown regulations not contemplated by the parties, and the parties are not able to modify the terms of this Agreement as contemplated above, then the parties shall be excused from further performance under those portions of this Agreement, and such offending portions shall be severed and excluded from this Agreement.

l. City Retained Powers.

In addition to all rights provided in this Agreement, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City Agreements which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Agreement which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Agreement and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Agreement.

n. Time is of the Essence.

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Agreement.

o. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term "force majeure" shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Agreement, Franchisee shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

p. Recognition of Rights.

The Franchisee agrees that by adopting this Agreement, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Agreement in whole or in part upon the Franchisee.

q. Police Powers.

1. In accepting this Agreement, the Franchisee acknowledges that its rights under this Agreement are subject to the police power of the City to adopt and enforce general Agreements necessary to the health, safety, and welfare of the public. Except as otherwise agreed to by the parties or exempted by a City ordinance, Franchisee shall comply with all applicable general laws and Agreements enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Agreement as convenient and necessary to promote the public's interest.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

r. No Presumption of Renewal

This Agreement and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

s. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the El Paso City Charter. Any request by the Franchisee for an amendment to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

t. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

u. This Agreement may be amended, revised or modified only by a written instrument, executed by the parties hereto.

v. The headings, captions and arrangements contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. If the context required, words used in the singular shall be read as including the plural and vice versa, and pronouns of any gender shall include all genders. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, paragraph, subparagraph, section or article.

w. This Agreement is executed for the sole benefit of parties hereto and is not for the benefit of any third party. No other party will have rights under this Agreement.

x. Authorization. Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective entity.

y. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

z. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

aa. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an attachment or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of El Paso, EL PASO CITY CODE, and the ordinance granting this Agreement and all exhibits thereto.

bb. No discrimination. Franchisee, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of this contract, or be otherwise subjected to discrimination in the execution of this contract.

2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in or denied the benefits of said services, or otherwise be subjected to discrimination.

3. If applicable, Franchisee shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. If applicable, Franchisee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

4. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

List of Attachments:

Attachment “1” – Insurance Requirements

Attachment “2” – Schedule of Ownership

STATE OF TEXAS)
)
COUNTY OF EL PASO)

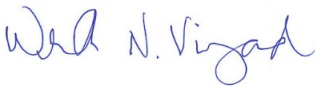
SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and EL PASO DISPOSAL, LP.

THE CITY OF EL PASO:


Tomás González
City Manager

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

STATE OF TEXAS)
)
COUNTY OF EL PASO) **SOLID WASTE FRANCHISE AGREEMENT**

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and EL PASO DISPOSAL, LP.

EL PASO DISPOSAL, LP:

By: _____
Worthing Jackman,
CEO & President

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Jesus Adrian Munoz, as Owner of EL PASO DISPOSAL, LP , known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Adela M. Torres, and that he/she executed the same as the act of EL PASO DISPOSAL, LP for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ___ day of _____, 2022.

Notary Public
State of _____

SEAL

ATTACHMENT "1"

INSURANCE REQUIREMENTS

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE:

For the duration of this Agreement and any extension hereof, Franchisee shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

2. WORKERS' COMPENSATION

For the duration of this Agreement and any extension hereof, Franchisee shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law:

\$500,000.00

3. AUTOMOBILE LIABILITY INSURANCE

Minimum \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.

ATTACHMENT “2”

SCHEDULE OF OWNERSHIP

Franchisee Name: EL PASO DISPOSAL, LP
Legal Entity: EL PASO DISPOSAL, LP

Identity of Owners: Waste Connections Management Services, Inc. (99.5%)
(Identify each partner, member, shareholder, or other owner. For each owner identified identify the individual ownership interest, to include total number of shares owned.) Waste Connections of Texas, LLC (.5%)



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-40, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting a renewal of non-exclusive franchise to El Paso Sanitation Systems, Inc, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBGOAL:

SUBJECT:

An ordinance granting a renewal of non-exclusive franchise to El Paso Sanitation Systems, Inc, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in section 9.04.630 of the El Paso city code.

BACKGROUND / DISCUSSION:

A franchise is required for solid waste collection haulers that are permitted by the Environmental Services Department. This agreement between the franchisee and City identifies standards to be maintained for the operation of solid waste collection services.

PRIOR COUNCIL ACTION:

Non-exclusive franchises for solid waste collection services are routinely approved by Council.

AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Environmental Services Department

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWAL OF NON-EXCLUSIVE FRANCHISE TO EL PASO SANITATION SYSTEMS, INC , TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by ordinance passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the State of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, the attached franchise agreement is a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City of El Paso requires in City Code Section 9.04, that all haulers of municipal solid waste are required to enter into a franchise agreement with the City; and

WHEREAS, EL PASO SANITATION SYSTEMS, INC is engaged in the business of collection and transportation of solid waste within the City and has requested a franchise to use the City's rights-of-way; and,

WHEREAS, EL PASO SANITATION SYSTEMS, INC has agreed to the terms of the Solid Waste Franchise Agreement with the City of El Paso, granting EL PASO SANITATION SYSTEMS, INC a non-exclusive franchise to operate and maintain a solid waste collection service using the City's rights-of-way; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

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

1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.
2. The City Manager is authorized to sign a renewal of non-exclusive Solid Waste Franchise Agreement by and between the City of El Paso EL PASO SANITATION SYSTEMS, INC for the franchisee to operate and maintain a Solid Waste Collection Service, in, over, along and across the Public

Rights-of-Way in the Authorized Area, to end on December 31, 2026, as set forth and defined in the document labeled Exhibit "A", attached and incorporated by reference for all purposes.

3. All ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

4. The City Manager or authorized agent is authorized to extend this agreement for an additional five years at the end of the date of the contract.

5. This ordinance shall take effect on January 1, 2022.

PASSED AND APPROVED this ____ day of ____, 2022.

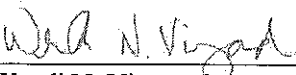
CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

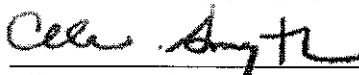
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E. Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 4 day of JANUARY, 2022, 2022

EL PASO SANITATION SYSTEMS, INC

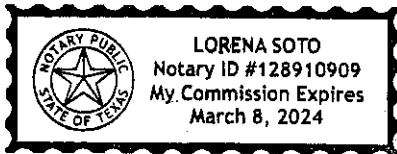
Monica Brown

By: Monica Brown, President

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 4th day of January, 2022 by Monica Brown.



Lorena Soto

Notary Public, State of Texas

Notary's Printed or Typed Name:

Lorena Soto

My Commission Expires:

March 8, 2024

EXHIBIT "A"

**SOLID WASTE
FRANCHISE AGREEMENT**

BY AND BETWEEN

CITY OF EL PASO, TEXAS

AND

EL PASO SANITATION SYSTEMS, INC

EFFECTIVE DATE: January 1, 2022

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SECTION VII.	Term, Termination and Performance Evaluation
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SECTION IX.	Default
SECTION X.	Remedies
SECTION XI.	Recordkeeping and audit
SECTION XII.	Miscellaneous

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

THIS Solid Waste Franchise Agreement (“Agreement”) effective January 1, 2022 is entered into this ____ day of _____, 2022, by and between the CITY OF EL PASO, a Texas home rule municipality, hereinafter referred to as the "CITY", and EL PASO SANITATION SYSTEMS, INC, hereinafter referred to as “Franchisee”.

RECITALS

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by Agreement passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the state of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, this franchise agreement is a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City desires to exercise the authority provided to it by ordinance, charter and state law to grant a franchise for the collection, transportation, hauling and disposal of Solid Waste as further defined herein, within the corporate limits of the City and under the terms of this Agreement as set out below; and,

WHEREAS, Franchisee desires to obtain a franchise to provide for the collection, transportation, hauling and disposal of Solid Waste from the City of El Paso, and agrees to comply with the terms and conditions of this Agreement; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Agreement are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

WITNESSETH:

SECTION I. PREAMBLE

That the declarations contained in the preamble to this Agreement are material and incorporated herein as a part of this Agreement as though they were fully set forth in this Agreement in their entirety.

SECTION II. DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word "shall" is mandatory and not merely directory. The word "may" is not mandatory and is merely permissive. The word "day" means a calendar day and not a business day. Words defined elsewhere in this Agreement shall be accorded that meaning throughout this Agreement. Words not defined shall be given their common and ordinary meaning.

a. **Affiliate** and **Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.

b. **Agreement** shall mean this document.

c. **Authorized Area** means the entire area within the corporate limits of the City of El Paso, including any territory annexed into the City limits after the Effective Date of this Agreement.

d. **City** means the City of El Paso, a home rule municipal corporation, a political subdivision of the State of Texas.

e. **City Charter** means the City's organic law, equivalent to a constitution, which defines the City's existence and prescribes the powers, duties, and organization of the City's governmental structure.

f. **City Code** shall mean the ordinances of the City codified into the EL PASO CITY CODE, as amended from time to time.

g. **City Manager** shall mean the City Manager or the City Manager's designated representative.

h. **Container** shall mean any receptacle for waste as defined by Title 9.04 to include Dumpsters, Containers, Carts, Roll-Offs and Compactors.

i. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

j. **Council** shall mean the governing body of the City of El Paso. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. Unless otherwise stated in this Agreement or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Agreement and to the Franchisee's exercise of the rights and privileges conferred in this Agreement.

k. **Director** means the Director of the Environmental Services Department of the City, or any successor department, or any Director as designated by the City Manager, or the Director's designated representative.

l. **Effective Date** means January 1, 2022.

m. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Rights-of-Way under this Agreement, and all of the incidental rights and obligations as described by this Agreement.

n. **Franchisee** shall mean EL PASO SANITATION SYSTEMS, INC hereinafter referred to as "Franchisee", the grantee of rights under this Agreement; or the successor, transferee, or assignee of this Agreement, including the officers, employees, agents, contractors, and subcontractors.

o. **Junk Removal Service** shall mean the collection and transportation of solid waste generated from a Property Clean-up Event by a Self-Transporter or Permitted Hauler, as defined within Chapter 9.04 of the El Paso City Code, when the waste is placed directly into a vehicle or trailer attached to a vehicle, or when a container placed at a property is removed within seven days.

p. **Property Clean-up Event** shall mean the removal of Solid Waste from the interior of a building or premises of a property for the purpose of abating a nuisance, resolving a violation of the El Paso City Code, or removing unsanitary or slightly debris or waste, when the duration of the event does not exceed seven days.

q. **Public Rights-of-Way** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated and accepted by the City as a public right-of-way. "Public Rights-of-Way" shall not include property of the City which is not a

dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated or accepted by the City as a public right-of-way.

r. **Solid Waste Collection Service** shall mean the collection and transportation of Solid Waste, not including a Junk Removal Service, as that term is defined herein within the Authorized Area, from a dumpster, roll-off container, or other container larger than two cubic yards in volume, or from a container less than two cubic yards in volume when providing service to more than four customers, for processing or disposal at an Authorized Municipal Solid Waste Facility as defined in Chapter 9.04 of the El Paso City Code or as may be subsequently amended from time to time.

s. **Solid Waste** shall mean that term as defined in Title 30 of the Texas Administrative Code § 330.3, or as may subsequently be amended from time to time, excluding Excluded Waste as defined in section 9.04.020 of the City Code, as may subsequently be amended from time to time. Solid Waste does not include any municipal solid waste and program recyclable materials generated at residential properties in which the City is the exclusive hauler as set forth in chapter 9.04 (Solid Waste Management) of the City Code.

SECTION III. GRANTING OF FRANCHISE

Subject to all the terms and conditions contained in this Agreement, the Constitution of the United States of America or of the State of Texas, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal or state law, the City hereby grants the Franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Rights-of-Way in the Authorized Area. This grant is subject to the following additional conditions:

a. **Non-Exclusive.**

Nothing herein contained shall be construed as granting an exclusive use or right to the Franchisee to the Public Rights-of-Way, and the City may grant an additional franchise, lease or special privilege to any other applicant in its discretion for the same Public Rights-of-Way described herein. The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Agreement.

b. **Authorized Municipal Solid Waste Facility.**

Franchisee shall deposit all Solid Waste only at an Authorized Municipal Solid Waste Facility in accordance with the City Code, as may be amended from time to time.

c. **Other Services.**

By granting this Agreement, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

d. No Priority.

This Agreement does not establish any priority for the use of the Public Rights-of-Way by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

e. City's Use of Public Rights-of-Way.

The Franchisee acknowledges that by this Agreement it obtains no rights to use or further use of the Public Rights-of-Way other than those expressly granted in this Agreement. The City reserves the right to use the surface or subsurface or airspace above the Public Rights-of-Way covered by this Agreement for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Rights-of-Way. Further the City expressly reserves the right to install, repair, or reconstruct the Public Rights-of-Way used or occupied by Franchisee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, including but not limited to, drainage and utility facilities and structures.

The Franchisee acknowledges and accepts at its own risk, that the City may make use in the future of the Public Rights-of-Way as described above or as otherwise permitted by law, in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Rights-of-Way for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation or further remedy from the City unless compensation is available to all users of the Public Rights-of-Way which are affected in a similar manner.

f. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee or close or otherwise restrict the use of Public Rights-of-Way in the event of a public emergency or calamity as determined in the City's sole discretion. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee.

g. Compliance with Law and Standards of Operation.

The parties shall be subject to and comply with the Constitutions of the United States of America and the State of Texas, all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Agreement does not relieve the Franchisee of, and the Franchisee shall comply with, any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Agreement shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person, entity or individual. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

SECTION IV. SERVICE REQUIREMENTS

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all Solid Waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, expressly excluding services for which the City is the exclusive hauler as defined in Chapter 9.04 of the City Code. The Franchisee shall, at its own expense, furnish personnel and equipment to collect Solid Waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner, maintain a valid, current Hauler Permit issued by the City of El Paso, and shall comply with all requirements of the City Code, including but not limited to Chapter 9.04 of the City Code.

b. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Rights-of-Way and other facilities that are damaged as a result of the negligence, willful misconduct, or intentional acts of the Franchisee during the Franchisee's operations pursuant to this Agreement.

c. The Franchisee will comply with all rules, regulations, laws and agreements pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction.

d. Waste Containers

1. Graffiti.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the Container, as defined in Chapter 9.04 of the City Code or as amended from time to time, free from graffiti. Franchisee's Containers may display the name, address and/or phone number of

the Franchisee, identification numbering or lettering assigned by the Franchisee, and any warnings, notices or instructions posted by Franchisee. If Franchisee's customers do not remove graffiti from the Franchisee's Containers, then Franchisee shall remove the graffiti and may bill its customer for the cost or replace the Container at the customer's expense.

If, after five days notice from the Director, the Franchisee or its customer has not removed the graffiti or replaced the Containers, then the City may cover or remove the graffiti or the Container.

2. Over-Capacity.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the area around the Container clean and free of rubbish, litter, Solid Waste, garbage, recyclables, or other unsightly material, regardless of the cause of the placement of the rubbish, litter, Solid Waste, garbage or recyclables around the Container. Franchisee shall monitor its customer's use of their Containers and ensure that the customer is not overfilling the Container beyond the acceptable capacity of the Container.

If the City observes that the lid of a Container is not securely closed as a result of overfilling the Container, or rubbish, Solid Waste, garbage, recyclables or unsightly material of any kind has accumulated or is being stored outside the Container, or is visible above the top level of the Container, then the City may: (1) notify the Franchisee or the customer of the violation and require immediate removal of the rubbish, Solid Waste, garbage, recyclables or unsightly materials; or (2) may remove the rubbish, Solid Waste, garbage, recyclables or unsightly materials and bill the Franchisee for its actual expense in cleaning the site around the Container.

If the City observes and records three or more instances of a violation of this section or violations of the City's ordinances by the Franchisee's customer, then it shall notify the Franchisee and the Franchisee shall require the customer to contract for additional Solid Waste services, additional Containers or a larger Container sufficient to satisfy its Solid Waste and recyclables needs, or take other steps to ensure compliance with the City's ordinances. Compliance with the provisions of this section by a Franchisee customer shall not waive the City's right to seek all remedies available under the law or this Agreement whether against the Franchisee or the Franchisee's customer.

3. Franchisee shall affix a label to each Container supplied to its customers that reads "NO SCAVENGING/KEEP LIDS CLOSED." For roll-off Containers which are not equipped with lids, only "NO SCAVENGING" shall be required on the label. Label may be in the form of a decal or paint; letters shall be capitalized and either black or white in color, whichever more contrasts the paint color of the Container. The label may consist of either one or two lines, and should be clearly visible from a distance of 20 feet.

SECTION V. INDEMNITY AND INSURANCE

a. INDEMNIFICATION OF CITY.

1. THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS, CONTRACTORS AND SUBCONTRACTORS (HEREINAFTER REFERRED TO COLLECTIVELY AS “INDEMNITEES”), FROM AND AGAINST:

(A) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OR FOR HARM SUFFERED OR ALLEGED TO HAVE BEEN SUFFERED BY ANY PERSON OR PERSONS (INCLUDING THIRD PARTIES, WHETHER INDIVIDUALS OR ENTITIES), THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE AGREEMENT, (ii) BY ANY ACT OR OMISSION CONSTITUTING NEGLIGENCE, GROSS NEGLIGENCE OR OTHER FAULT OF FRANCHISEE, ITS OFFICERS, DIRECTORS, PARTNERS, OWNERS OR OTHER PRINCIPALS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, OR FOR WHICH THE FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS (ALL COLLECTIVELY “FRANCHISEE PERSONS”), OR (iii) FOR WHICH THE FRANCHISEE OR FRANCHISEE PERSONS MAY BE STRICTLY LIABLE, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; AND

(B) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, FEES, PENALTIES OR OTHER ASSESSMENTS, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES THAT MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR SUFFERED BY ANY INDEMNITEES ARISING FROM OR RELATED TO ANY VIOLATION BY FRANCHISEE OR ANY FRANCHISEE PERSON OF ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE, OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE OR ANY FRANCHISEE PERSON, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER

WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION, INCLUDING ANY AND ALL COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT AGAINST THE CITY OR ANY OTHER INDEMNITEE RELATED TO ANY SUCH CLAIM.

2. FRANCHISEE'S OBLIGATION TO INDEMNIFY INCLUDES INDEMNIFICATION FOR ANY ATTORNEY'S FEES, COSTS OF COURT OR EXPENSES OF ANY THIRD PARTY ASSESSED AGAINST THE CITY OR ANY OTHER INDEMNITEE; AND ANY ATTORNEY'S FEES, COSTS AND EXPENSES OF DEFENSE OR SETTLEMENT OR ATTEMPTED SETTLEMENT (INCLUDING BUT NOT LIMITED TO INFORMAL SETTLEMENT DISCUSSIONS, MEDIATION, ARBITRATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS) BY THE CITY OR ANY OTHER INDEMNITEES.

3. FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO ALL CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH FOR WHICH ONE OR MORE INDEMNITEES MAY BE CONTRIBUTORILY LIABLE, PROVIDED, HOWEVER, THAT ANY INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW; AND PROVIDED, FURTHER, THAT THIS APPLICATION OF PROPORTIONATE RESPONSIBILITY IS NOT A WAIVER OF ANY GOVERNMENTAL IMMUNITY FOR SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS LAW, AND FURTHER DOES NOT CONSTITUTE A WAIVER OF ANY OTHER DEFENSES AVAILABLE TO EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW.

4. FRANCHISEE'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY JUDGMENT OF LIABILITY AGAINST THE CITY RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

5. THIS SUBSECTION V.A. DOES NOT, AND SHALL NOT, BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO THE CITY OR ANY INDEMNITEE UNDER TEXAS OR FEDERAL LAW, INCLUDING ANY INDIVIDUAL ABSOLUTE OR QUALIFIED IMMUNITY. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE OTHER INDEMNITEES AND THE FRANCHISEE, AND ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. FRANCHISEE'S ASSUMPTION OF RISK.

1. FRANCHISEE UNDERTAKES AND ASSUMES ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CONTROLLED PROPERTY, INCLUDING THE PUBLIC RIGHTS-OF-WAY.

2. FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND INDEMNITEES FROM AND AGAINST ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, AGREEMENT OR REGULATION.

c. Survival. **THE INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS SECTION V. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY ACTION, CLAIM, LAWSUIT OR OTHER PROCEEDING, OR JUDGMENT ARISING FROM EVENTS OCCURING DURING THE TERM OF THIS AGREEMENT.**

d. Defense of City and other Indemnitees.

In the event any action or proceeding shall be brought against any Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, and at the Franchisee's sole cost and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld. The Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's and other Indemnitees' written consent. Further, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified herein without the prior written consent of the Franchisee.

e. Expenses of Defense; Participation by Indemnitees.

The Indemnitees shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section V. Nothing herein shall prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in their defense, provided that the participation has been requested or required by the Franchisee in conducting the defense of the action, suit, or other proceeding. These covered expenses include reasonable attorney's fees and expenses, out-of-pocket expenses reasonably and necessarily incurred, the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed or incurred by the Indemnitees in connection with such suits, actions or proceedings. Covered expenses shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by the Franchisee.

f. Insurance Required.

Not later than the Effective Date, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Attachment "1", attached to and made a part of this Agreement. The insurance shall be written by a company(ies) approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The City shall be named a beneficiary and co-insured of such policy(ies). Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee.

THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the City Council approves this Agreement, then this Agreement shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of current continuous insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on at least an annual basis, no later than the anniversary date of this Agreement; and the Director shall have the right to request evidence of current insurance at any time. If the Franchisee fails to maintain insurance as required by this subsection, then the Franchisee shall forfeit any rights to contribution as defined in subsection V.a.3 above, and Franchisee shall be solely liable *in toto* for any judgment, award, claim or demand arising from the Franchisee's operation of a Solid Waste Collection Service, whether the City or any other Indemnitee is or may be contributorily liable under applicable law or not.

g. Adjustments to Insurance Requirements.

The Director reserves the right to review the insurance requirements stated herein during the term of this Agreement and to recommend to the City Council reasonable adjustments in the insurance requirements prior to any anniversary renewal of the insurance when deemed necessary or prudent by the City. Any adjustments recommended and approved by the City Council may be based upon changes in statutory law, applicable court decisions, the claims history of the industry as well as of the Franchisee, or a commercially reasonable determination by the City that existing coverage is inadequate for the risks associated with the services to be provided hereunder. When any insurance coverage limits are changed, the Franchisee shall pay any resulting increase in cost due to the changes. If Franchisee does not agree to an increase in coverage recommended by the City and approved by Council, the City may opt to pay the difference in premium that would be required for such increased coverage; but if the City declines to do so, the City shall have the right to terminate this Agreement as of the end of the current insurance term, or at the next contract year anniversary, whichever is sooner.

h. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability

for indemnity, damages and accidents as set forth in the Agreement. The bankruptcy, insolvency, receivership or denial of liability by any insurer of Franchisee shall not excuse the Franchisee from the responsibility for indemnity, liability of, or damages payable by the Franchisee as provided in this Agreement.

SECTION VI. FEES, PAYMENTS AND COMPENSATION.

a. Consideration.

Council finds and determines that Franchisee has incurred, or will incur, significant costs to upgrade its facilities as costs associated with performance under this Franchise Agreement. Council finds that such expenditures as well as the promises contained in this Franchise Agreement are satisfactory consideration to support this Agreement.

b. Additional Consideration.

Upon notice from the City, Franchisee shall provide Solid Waste removal, collection, and transport, services to the City following natural disasters or Acts of God. The term “Acts of God” as used herein, shall include, but not be limited to, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability. Franchisee understands that it is not guaranteed to receive compensation for these services. Council and the Franchisee agree that this obligation to provide emergency services without a guarantee of compensation constitutes part of the consideration offered by the Franchisee to support this Franchise Agreement.

c. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due or owed under this Agreement or of any other obligation of the Franchisee.

SECTION VII. TERM, TERMINATION AND PERFORMANCE EVALUATION

a. Term and Extensions.

This Agreement shall be effective as of the Effective Date, and, unless it is terminated earlier pursuant to its terms, shall continue in effect until December 31, 2026, with the possibility for one two-year extension as mutually agreed to by the City and the Franchisee. Franchisee shall give ninety (90) days written notice to the City prior to the expiration of the term to request an extension. The City in its sole discretion may decide to approve or decline the extension, or request an amendment of this Agreement prior to such extension.

b. Termination.

1. Right to Terminate

This Agreement may be terminated by either party, for cause or convenience, by providing ninety (90) days’ written notice to the non-terminating party. Notwithstanding the foregoing, the City may terminate this Agreement if the City determines in its sole discretion termination is necessary to secure the efficiency of public service at a reasonable rate, to assure the Public Rights-of-Way are maintained

in good order throughout the term of this Agreement, or termination is in the public interest when Franchisee is utilizing the Public Rights-of-Way in a manner the City deems is inconsistent with the public use of the City's Public Rights-of-Way without providing prior notice to the Franchisee. If the City chooses to act pursuant to this authority it shall notify the Franchisee of its decision within three days of the termination of this Agreement.

2. Rights Upon Termination.

Subject to applicable law, or as specifically provided for otherwise in this Agreement, this Agreement and all rights, permissions, and privileges of the parties defined in this Agreement shall automatically cease upon the termination of this Agreement, unless such rights are extended by mutual agreement of the parties, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

In the event the Franchisee continues use of the Public Rights-of-Way after the expiration or termination of this Agreement the City may utilize any means available in law or in equity to prevent violations of the EL PASO CITY CODE or this Agreement. Franchisee shall be responsible for all attorney's fees and court costs incurred as a result of any action taken by the City pursuant to this paragraph.

c. Performance Evaluation.

In order to: (i) assure that the Franchisee is complying with the terms of this Agreement, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation during the term of the Agreement in accordance with the following process:

1. At least sixty (60) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(ii) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within thirty (30) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, a minimum, the following areas:

- (i) documentation that all of Franchisee's vehicles used in accordance with this agreement have been properly inspected for compliance with safety and air emission standards in the vehicles' state of registration, and documentation related to local government requirements for the permitting of vehicles for the hauling of Solid Waste;
- (ii) any other topic deemed material or relevant by the City for its enforcement of this Agreement.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information collected from the Effective Date, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than twenty-four (24) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than twenty (20) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

SECTION VIII. TRANSFERS OF OWNERSHIP AND CONTROL

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates identified herein, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, this Agreement or the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Assignee: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee and its Affiliates shall request approval from Council in writing and shall provide the Council with the Assignee's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

2. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs. If the Franchisee cannot provide at least sixty (60) days notice before a transfer solely for

security purposes, then Franchisee must notify the Director in writing of such a transfer at the earliest possible date after becoming aware of such transfer.

3. The Franchisee may not transfer or assign this Agreement to an Affiliate not identified herein, without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee shall request approval from Council in writing and shall provide the Council with the Affiliate's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

b. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Attachment "2", attached to and made a part of this Agreement, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Agreement.

SECTION IX. DEFAULT

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Agreement shall constitute an Event of Default by the Franchisee under this Agreement:

1. The failure or refusal by the Franchisee to pay consideration when due as prescribed by this Agreement.
2. The Franchisee's material violation of or failure to comply with any provision or condition of chapter 9.04 of the City Code relating to Solid Waste collection service or any other applicable provision or condition of the City Code.
3. The suspension or revocation of the Franchisee's Hauler Permit.
4. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Agreement, or the Franchisee's failure or refusal to perform any obligation contained in this Agreement.
5. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real property taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.
6. The entry of any judgment against the Franchisee by which another party becomes entitled to possession of any of the Franchisee's Solid Waste Collection Service's assets, and for which transfer of these assets requires prior consent of the

Council, and such judgment is not stayed pending rehearing or appeal following entry of the judgment for a period of forty-five (45) or more days.

7. The dissolution of the Franchisee.

8. The Franchisee's filing of a voluntary petition in bankruptcy; the filing of an involuntary petition in bankruptcy against the Franchisee; an adjudication finding the Franchisee insolvent; the Franchisee's obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of the Franchisee, or any of Franchisee's property or this Agreement or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Agreement.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Agreement.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Agreement.

12. The Franchisee's failure or refusal to comply with a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section X. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section X, unless the Director, the City Manager, or the Council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section X.

SECTION X. REMEDIES

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section IX., the Director shall report the occurrence of default to the City Manager and the Council. The Council shall be entitled in its sole discretion to exercise any or all of the following remedies, which shall be cumulative:

1. Exercise its rights to liquidated damages as described in subsection c. of this Section X.
2. Commence an action at law against the Franchisee for monetary damages.
3. Commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable, or other equitable relief.
4. Revoke the Franchise granted under this Agreement.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Agreement. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Agreement shall be automatically terminated and deemed null and void and shall have no further force or effect, and the provisions that are contractual in nature which are also included as a part of this Agreement are hereby automatically terminated, other than provisions that expressly are continued after termination or which impose obligations or rights of a kind that are intended and appropriate to be continued beyond termination, such as but not limited to Franchisee's obligations to defend and indemnify.

Upon revocation, the City shall retain any portion of the consideration and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered or decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. The Council reserves the right, in its sole discretion, to seek liquidated damages or to pursue other remedies as provided in this Section X, or allowed in law or equity in addition to revocation.

c. Liquidated Damages.

In addition to the other remedies provided for in this Section X., other remedies provided in this Agreement and remedies available at law or in equity, in the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Agreement, the Franchisee shall pay Two Hundred Dollars (\$200.00) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted. This subsection X.c. does not apply to the failure or refusal by the Franchisee to pay the Franchise Fee or other consideration when it becomes due (Event of

Default, subsection IX.a.1.) or the failure or the refusal to pay or cause to be paid any of the City's governmentally imposed taxes (Event of Default, subsection IX.a.4).

d. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section X. shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control to have prevented or avoided, the Council may pursue any or all of the remedies provided in Section X. or otherwise at law or in equity. The remedies of the City created under this Agreement shall be cumulative of other remedies under the Agreement, at law or in equity to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Agreement shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default.

e. Curable Violations.

The Franchisee shall not be found in violation of this Agreement or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee; provided, that the Franchisee has made reasonably diligent efforts to have prevented or avoided the violation, or the violation occurs as a result of circumstances beyond Franchisee's control or its ability to have prevented or avoided, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship, or election of actions based on, or for the purpose of realizing economic benefit or advantage; nor by the negligence or misfeasance or malfeasance of its directors, officers, principals, employees, agents, representatives, contractors or subcontractors.

SECTION XI. RECORDKEEPING AND AUDIT

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations in the Authorized Area under and in connection with this Agreement in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates within the scope of this Agreement during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Agreement. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law. To the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this

Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Reports.

If the Franchisee is a publicly traded company, the Franchisee shall file with the City by the end of each calendar year a copy of its certified financial statements filed with the Security and Exchange Commission, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City for inspection upon request.

d. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Agreement. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION XII. MISCELLANEOUS

a. Entire Agreement.

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Agreement. This Agreement can only be modified by an Agreement amendment approved by Council.

b. Notices.

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by any of the means described in subsection XII.d. of this Agreement. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to:

City of El Paso, Environmental Services Department
Attention: Director
7968 San Paulo
El Paso, Texas 79907

And:

City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

If to the Franchisee:

EL PASO SANITATION SYSTEMS, INC
Attn: Monica Brown
5853 Welch Ave.
El Paso, Texas 79905

Either the City or the Franchisee may change its address or personnel for the receipt of notices at any time by giving notice of the change to the other party as provided in this subsection XII.b. Any notice given by either the City or the Franchisee must be signed by an authorized representative.

c. Notice of Claim.

This Agreement is subject to the provisions of Section 1.5 of the El Paso City Charter, as amended, relating to requirements for filing a notice of a claim against the City. Section 1.5 of the El Paso City Charter, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Franchisee shall comply with the requirements of Section 1.5 as a precondition of any claim against the City relating to or arising out of this Agreement.

d. Delivery of Notices.

Notices required to be given under this Agreement may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.
2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.
3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.
4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement transmission as a recipient shall request) and with a hard copy on the same date or the

next day mailed to all by first class mail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Agreement or the services or facilities of the Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Agreement, acknowledges that it has not been induced to accept this Agreement by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Agreement. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Agreement.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Agreement.

k. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by the EL PASO CITY CODE, and any other applicable laws and regulations. If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable and neither the remainder

hereof nor the application of such provision to other persons, entities, or circumstances or other instruments shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law. To the extent that any party's performance under this contract becomes impossible or illegal as a result of future and unknown regulations not contemplated by the parties, and the parties are not able to modify the terms of this Agreement as contemplated above, then the parties shall be excused from further performance under those portions of this Agreement, and such offending portions shall be severed and excluded from this Agreement.

l. City Retained Powers.

In addition to all rights provided in this Agreement, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City Agreements which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Agreement which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Agreement and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Agreement.

n. Time is of the Essence.

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Agreement.

o. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term "force majeure" shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Agreement, Franchisee shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

p. Recognition of Rights.

The Franchisee agrees that by adopting this Agreement, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Agreement in whole or in part upon the Franchisee.

q. Police Powers.

1. In accepting this Agreement, the Franchisee acknowledges that its rights under this Agreement are subject to the police power of the City to adopt and enforce general Agreements necessary to the health, safety, and welfare of the public. Except as otherwise agreed to by the parties or exempted by a City ordinance, Franchisee shall comply with all applicable general laws and Agreements enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Agreement as convenient and necessary to promote the public's interest.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

r. No Presumption of Renewal

This Agreement and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

s. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the El Paso City Charter. Any request by the Franchisee for an amendment to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

t. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

u. This Agreement may be amended, revised or modified only by a written instrument, executed by the parties hereto.

v. The headings, captions and arrangements contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. If the context required, words used in the singular shall be read as including the plural and vice versa, and pronouns of any gender shall include all genders. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, paragraph, subparagraph, section or article.

w. This Agreement is executed for the sole benefit of parties hereto and is not for the benefit of any third party. No other party will have rights under this Agreement.

x. Authorization. Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective entity.

y. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

z. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

aa. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an attachment or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of El Paso, EL PASO CITY CODE, and the ordinance granting this Agreement and all exhibits thereto.

bb. No discrimination. Franchisee, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of this contract, or be otherwise subjected to discrimination in the execution of this contract.

2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in or denied the benefits of said services, or otherwise be subjected to discrimination.

3. If applicable, Franchisee shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. If applicable, Franchisee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

4. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

List of Attachments:

Attachment "1" – Insurance Requirements

Attachment "2" – Schedule of Ownership

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and EL PASO SANITATION SYSTEMS, INC .

THE CITY OF EL PASO:

Tomás González
City Manager

APPROVED AS TO FORM:

Wendi N. Vineyard

Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:

Ellen A. Smyth

Ellen A. Smyth, P.E., Director
Department of Environmental Services

ATTACHMENT "1"

INSURANCE REQUIREMENTS

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE:

For the duration of this Agreement and any extension hereof, Franchisee shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

2. WORKERS' COMPENSATION

For the duration of this Agreement and any extension hereof, Franchisee shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law:

\$500,000.00

3. AUTOMOBILE LIABILITY INSURANCE

Minimum \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.

ATTACHMENT "2"

SCHEDULE OF OWNERSHIP

Franchisee Name: EL PASO SANITATION SYSTEMS, INC
Legal Entity: EL PASO SANITATION SYSTEMS, INC

Identity of Owners:
(Identify each partner, member, shareholder, or other owner. For each owner identified identify the individual ownership interest, to include total number of shares owned.)

Monica Brown (54%)

Employee Stock Owner PUN (46%)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/4/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER: EI Paso, TX-Commercial Ins Brokers-Hub International Insurance Services
CONTACT NAME:
PHONE (A/C, No, Ext): (915) 206-6023
FAX (A/C, No): (866) 399-3972
INSURER(S) AFFORDING COVERAGE: INSURER A: Mountain States Indemnity Company, INSURER B: Donegal Mutual Insurance Company

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability, Automobile Liability, and Umbrella Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Certificate holder is named as additional insured as required by written contract, respects to the General Liability and Auto Liability. Thirty (30) day notice of cancellation applies.

CERTIFICATE HOLDER: City of El Paso, 7968 San Paulo Dr, El Paso, TX 79907
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: Ken Foster



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/04/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER Mount Franklin Insurance Agency, LLC 122 Thorn Ave El Paso, TX 79932	CONTACT NAME: Jessica De Anda PHONE (A/C, No, Ext): 915-599-2900 FAX (A/C, No): 915-921-5550 E-MAIL ADDRESS: JessicaD@Mtfranklin.com
	INSURER(S) AFFORDING COVERAGE
INSURED T&T STAFF MANAGEMENT, INC 511 EXECUTIVE CENTER BLVD EL PASO, TX 79902	INSURER A : Navigators Specialty NAIC # 36056
	INSURER B : Texas Mutual Insurance Company NAIC # 22945
	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES **CERTIFICATE NUMBER: 80244884-16285060** **REVISION NUMBER: 67**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD / WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		HO21EXC732229IC	06/13/2021	06/13/2022	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A	TSF0001180671	06/13/2021	06/13/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Coverage is extended to El Paso Sanitation Systems, Inc. DBA Sarabia's Portable Jons, 5853 Welch Ave, El Paso, TX 79905, for employees co-employed between T&T Staff Management, Inc. and El Paso Sanitation Systems, Inc DBA Sarabia's Portable Jons.

CERTIFICATE HOLDER City of El Paso 7968 San Paulo Dr EL PASO, TX 79907	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  (JMD)
---	--



File #: 22-41, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting a renewal of non-exclusive franchise to GCC of America, Inc., to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBGOAL:

SUBJECT:

An ordinance granting a renewal of non-exclusive franchise to GCC of America, Inc., to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in section 9.04.630 of the El Paso city code.

BACKGROUND / DISCUSSION:

A franchise is required for solid waste collection haulers that are permitted by the Environmental Services Department. This agreement between the franchisee and City identifies standards to be maintained for the operation of solid waste collection services.

PRIOR COUNCIL ACTION:

Non-exclusive franchises for solid waste collection services are routinely approved by Council.

AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Environmental Services Department

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWAL OF NON-EXCLUSIVE FRANCHISE TO GCC OF AMERICA, INC., TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by ordinance passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the State of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, the attached franchise agreement is a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City of El Paso requires in City Code Section 9.04, that all haulers of municipal solid waste are required to enter into a franchise agreement with the City; and

WHEREAS, GCC OF AMERICA, INC. is engaged in the business of collection and transportation of solid waste within the City and has requested a franchise to use the City's rights-of-way; and,

WHEREAS, GCC OF AMERICA, INC. has agreed to the terms of the Solid Waste Franchise Agreement with the City of El Paso, granting GCC OF AMERICA, INC. a non-exclusive franchise to operate and maintain a solid waste collection service using the City's rights-of-way; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

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

1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.
2. The City Manager is authorized to sign a renewal of non-exclusive Solid Waste Franchise Agreement by and between the City of El Paso GCC OF AMERICA, INC. for the franchisee to operate and maintain a Solid Waste Collection Service, in, over, along and across the Public Rights-of-Way in the Authorized Area, to end on December 31, 2026, as set forth and defined in the document labeled Exhibit "A", attached and incorporated by reference for all purposes.

3. All ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

4. The City Manager or authorized agent is authorized to extend this agreement for an additional five years at the end of the date of the contract.

5. This ordinance shall take effect on January 1, 2022.

PASSED AND APPROVED this ____ day of ____, 2022.

CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Wendi N. Vineyard
Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:

Ellen A. Smyth
Ellen A. Smyth, P.E. Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

ORDINANCE NO. _____
16-1005-1376.017 | 1139750 | GCC OF AMERICA, INC. WNV

ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 6th day of January, 2022

GCC OF AMERICA, INC.

Mathew McElroy
By: Mathew McElroy, General Manager

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 6th day of January, 2022 by Mathew McElroy.

Lourdes Morales
Notary Public, State of Texas
Notary's Printed or Typed Name:

LOURDES MORALES

My Commission Expires:
October 04, 2023

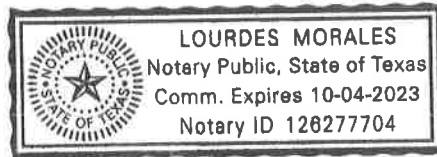


EXHIBIT "A"

**SOLID WASTE
FRANCHISE AGREEMENT**

**BY AND BETWEEN
CITY OF EL PASO, TEXAS
AND
GCC OF AMERICA, INC.**

EFFECTIVE DATE: January 1, 2022

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SECTION IV.	Service Requirements
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SECTION VII.	Term, Termination and Performance Evaluation
SECTION VIII.	Transfers of Ownership and Control
SECTION IX.	Default
SECTION X.	Remedies
SECTION XI.	Recordkeeping and audit
SECTION XII.	Miscellaneous

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

THIS Solid Waste Franchise Agreement (“Agreement”) is entered into this ____ day of _____, 2022, by and between the CITY OF EL PASO, a Texas home rule municipality, hereinafter referred to as the "CITY", and GCC OF AMERICA, INC., hereinafter referred to as “Franchisee”.

RECITALS

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by Agreement passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the state of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, this franchise agreement is a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City desires to exercise the authority provided to it by ordinance, charter and state law to grant a franchise for the collection, transportation, hauling and disposal of Solid Waste as further defined herein, within the corporate limits of the City and under the terms of this Agreement as set out below; and,

WHEREAS, Franchisee desires to obtain a franchise to provide for the collection, transportation, hauling and disposal of Solid Waste from the City of El Paso, and agrees to comply with the terms and conditions of this Agreement; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Agreement are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

WITNESSETH:

SECTION I. PREAMBLE

That the declarations contained in the preamble to this Agreement are material and incorporated herein as a part of this Agreement as though they were fully set forth in this Agreement in their entirety.

SECTION II. DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word “shall” is mandatory and not merely directory. The word “may” is not mandatory and is merely permissive. The word “day” means a calendar day and not a business day. Words defined elsewhere in this Agreement shall be accorded that meaning throughout this Agreement. Words not defined shall be given their common and ordinary meaning.

a. **Affiliate** and **Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.

b. **Agreement** shall mean this document.

c. **Authorized Area** means the entire area within the corporate limits of the City of El Paso, including any territory annexed into the City limits after the Effective Date of this Agreement.

d. **City** means the City of El Paso, a home rule municipal corporation, a political subdivision of the State of Texas.

e. **City Charter** means the City’s organic law, equivalent to a constitution, which defines the City’s existence and prescribes the powers, duties, and organization of the City’s governmental structure.

f. **City Code** shall mean the ordinances of the City codified into the EL PASO CITY CODE, as amended from time to time.

g. **City Manager** shall mean the City Manager or the City Manager’s designated representative.

h. **Container** shall mean any receptacle for waste as defined by Title 9.04 to include Dumpsters, Containers, Carts, Roll-Offs and Compactors.

i. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

j. **Council** shall mean the governing body of the City of El Paso. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. Unless otherwise stated in this Agreement or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Agreement and to the Franchisee's exercise of the rights and privileges conferred in this Agreement.

k. **Director** means the Director of the Environmental Services Department of the City, or any successor department, or any Director as designated by the City Manager, or the Director's designated representative.

l. **Effective Date** means January 1, 2022.

m. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Rights-of-Way under this Agreement, and all of the incidental rights and obligations as described by this Agreement.

n. **Franchisee** shall mean GCC OF AMERICA, INC. hereinafter referred to as "Franchisee", the grantee of rights under this Agreement; or the successor, transferee, or assignee of this Agreement, including the officers, employees, agents, contractors, and subcontractors.

o. **Junk Removal Service** shall mean the collection and transportation of solid waste generated from a Property Clean-up Event by a Self-Transporter or Permitted Hauler, as defined within Chapter 9.04 of the El Paso City Code, when the waste is placed directly into a vehicle or trailer attached to a vehicle, or when a container placed at a property is removed within seven days.

p. **Property Clean-up Event** shall mean the removal of Solid Waste from the interior of a building or premises of a property for the purpose of abating a nuisance, resolving a violation of the El Paso City Code, or removing unsanitary or slightly debris or waste, when the duration of the event does not exceed seven days.

q. **Public Rights-of-Way** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated and accepted by the City as a public right-of-way. "Public Rights-of-Way" shall not include property of the City which is not a

dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated or accepted by the City as a public right-of-way.

r. Solid Waste Collection Service shall mean the collection and transportation of Solid Waste, not including a Junk Removal Service, as that term is defined herein within the Authorized Area, from a dumpster, roll-off container, or other container larger than two cubic yards in volume, or from a container less than two cubic yards in volume when providing service to more than four customers, for processing or disposal at an Authorized Municipal Solid Waste Facility as defined in Chapter 9.04 of the El Paso City Code or as may be subsequently amended from time to time.

s. Solid Waste shall mean that term as defined in Title 30 of the Texas Administrative Code § 330.3, or as may subsequently be amended from time to time, excluding Excluded Waste as defined in section 9.04.020 of the City Code, as may subsequently be amended from time to time. Solid Waste does not include any municipal solid waste and program recyclable materials generated at residential properties in which the City is the exclusive hauler as set forth in chapter 9.04 (Solid Waste Management) of the City Code.

SECTION III. GRANTING OF FRANCHISE

Subject to all the terms and conditions contained in this Agreement, the Constitution of the United States of America or of the State of Texas, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal or state law, the City hereby grants the Franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Rights-of-Way in the Authorized Area. This grant is subject to the following additional conditions:

a. Non-Exclusive.

Nothing herein contained shall be construed as granting an exclusive use or right to the Franchisee to the Public Rights-of-Way, and the City may grant an additional franchise, lease or special privilege to any other applicant in its discretion for the same Public Rights-of-Way described herein. The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Agreement.

b. Authorized Municipal Solid Waste Facility.

Franchisee shall deposit all Solid Waste only at an Authorized Municipal Solid Waste Facility in accordance with the City Code, as may be amended from time to time.

c. Other Services.

By granting this Agreement, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

d. No Priority.

This Agreement does not establish any priority for the use of the Public Rights-of-Way by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

e. City's Use of Public Rights-of-Way.

The Franchisee acknowledges that by this Agreement it obtains no rights to use or further use of the Public Rights-of-Way other than those expressly granted in this Agreement. The City reserves the right to use the surface or subsurface or airspace above the Public Rights-of-Way covered by this Agreement for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Rights-of-Way. Further the City expressly reserves the right to install, repair, or reconstruct the Public Rights-of-Way used or occupied by Franchisee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, including but not limited to, drainage and utility facilities and structures.

The Franchisee acknowledges and accepts at its own risk, that the City may make use in the future of the Public Rights-of-Way as described above or as otherwise permitted by law, in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Rights-of-Way for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation or further remedy from the City unless compensation is available to all users of the Public Rights-of-Way which are affected in a similar manner.

f. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee or close or otherwise restrict the use of Public Rights-of-Way in the event of a public emergency or calamity as determined in the City's sole discretion. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee.

g. Compliance with Law and Standards of Operation.

The parties shall be subject to and comply with the Constitutions of the United States of America and the State of Texas, all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Agreement does not relieve the Franchisee of, and the Franchisee shall comply with, any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Agreement shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person, entity or individual. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

SECTION IV. SERVICE REQUIREMENTS

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all Solid Waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, expressly excluding services for which the City is the exclusive hauler as defined in Chapter 9.04 of the City Code. The Franchisee shall, at its own expense, furnish personnel and equipment to collect Solid Waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner, maintain a valid, current Hauler Permit issued by the City of El Paso, and shall comply with all requirements of the City Code, including but not limited to Chapter 9.04 of the City Code.

b. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Rights-of-Way and other facilities that are damaged as a result of the negligence, willful misconduct, or intentional acts of the Franchisee during the Franchisee's operations pursuant to this Agreement.

c. The Franchisee will comply with all rules, regulations, laws and agreements pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction.

d. Waste Containers

1. Graffiti.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the Container, as defined in Chapter 9.04 of the City Code or as amended from time to time, free from graffiti. Franchisee's Containers may display the name, address and/or phone number of

the Franchisee, identification numbering or lettering assigned by the Franchisee, and any warnings, notices or instructions posted by Franchisee. If Franchisee's customers do not remove graffiti from the Franchisee's Containers, then Franchisee shall remove the graffiti and may bill its customer for the cost or replace the Container at the customer's expense.

If, after five days notice from the Director, the Franchisee or its customer has not removed the graffiti or replaced the Containers, then the City may cover or remove the graffiti or the Container.

2. Over-Capacity.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the area around the Container clean and free of rubbish, litter, Solid Waste, garbage, recyclables, or other unsightly material, regardless of the cause of the placement of the rubbish, litter, Solid Waste, garbage or recyclables around the Container. Franchisee shall monitor its customer's use of their Containers and ensure that the customer is not overfilling the Container beyond the acceptable capacity of the Container.

If the City observes that the lid of a Container is not securely closed as a result of overfilling the Container, or rubbish, Solid Waste, garbage, recyclables or unsightly material of any kind has accumulated or is being stored outside the Container, or is visible above the top level of the Container, then the City may: (1) notify the Franchisee or the customer of the violation and require immediate removal of the rubbish, Solid Waste, garbage, recyclables or unsightly materials; or (2) may remove the rubbish, Solid Waste, garbage, recyclables or unsightly materials and bill the Franchisee for its actual expense in cleaning the site around the Container.

If the City observes and records three or more instances of a violation of this section or violations of the City's ordinances by the Franchisee's customer, then it shall notify the Franchisee and the Franchisee shall require the customer to contract for additional Solid Waste services, additional Containers or a larger Container sufficient to satisfy its Solid Waste and recyclables needs, or take other steps to ensure compliance with the City's ordinances. Compliance with the provisions of this section by a Franchisee customer shall not waive the City's right to seek all remedies available under the law or this Agreement whether against the Franchisee or the Franchisee's customer.

3. Franchisee shall affix a label to each Container supplied to its customers that reads "NO SCAVENGING/KEEP LIDS CLOSED." For roll-off Containers which are not equipped with lids, only "NO SCAVENGING" shall be required on the label. Label may be in the form of a decal or paint; letters shall be capitalized and either black or white in color, whichever more contrasts the paint color of the Container. The label may consist of either one or two lines, and should be clearly visible from a distance of 20 feet.

SECTION V. INDEMNITY AND INSURANCE

a. INDEMNIFICATION OF CITY.

1. THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS, CONTRACTORS AND SUBCONTRACTORS (HEREINAFTER REFERRED TO COLLECTIVELY AS “INDEMNITEES”), FROM AND AGAINST:

(A) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OR FOR HARM SUFFERED OR ALLEGED TO HAVE BEEN SUFFERED BY ANY PERSON OR PERSONS (INCLUDING THIRD PARTIES, WHETHER INDIVIDUALS OR ENTITIES), THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE AGREEMENT, (ii) BY ANY ACT OR OMISSION CONSTITUTING NEGLIGENCE, GROSS NEGLIGENCE OR OTHER FAULT OF FRANCHISEE, ITS OFFICERS, DIRECTORS, PARTNERS, OWNERS OR OTHER PRINCIPALS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, OR FOR WHICH THE FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS (ALL COLLECTIVELY “FRANCHISEE PERSONS”), OR (iii) FOR WHICH THE FRANCHISEE OR FRANCHISEE PERSONS MAY BE STRICTLY LIABLE, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; AND

(B) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, FEES, PENALTIES OR OTHER ASSESSMENTS, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES THAT MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR SUFFERED BY ANY INDEMNITEES ARISING FROM OR RELATED TO ANY VIOLATION BY FRANCHISEE OR ANY FRANCHISEE PERSON OF ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE, OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE OR ANY FRANCHISEE PERSON, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER

WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION, INCLUDING ANY AND ALL COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT AGAINST THE CITY OR ANY OTHER INDEMNITEE RELATED TO ANY SUCH CLAIM.

2. FRANCHISEE'S OBLIGATION TO INDEMNIFY INCLUDES INDEMNIFICATION FOR ANY ATTORNEY'S FEES, COSTS OF COURT OR EXPENSES OF ANY THIRD PARTY ASSESSED AGAINST THE CITY OR ANY OTHER INDEMNITEE; AND ANY ATTORNEY'S FEES, COSTS AND EXPENSES OF DEFENSE OR SETTLEMENT OR ATTEMPTED SETTLEMENT (INCLUDING BUT NOT LIMITED TO INFORMAL SETTLEMENT DISCUSSIONS, MEDIATION, ARBITRATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS) BY THE CITY OR ANY OTHER INDEMNITEES.

3. FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO ALL CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH FOR WHICH ONE OR MORE INDEMNITEES MAY BE CONTRIBUTORILY LIABLE, PROVIDED, HOWEVER, THAT ANY INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW; AND PROVIDED, FURTHER, THAT THIS APPLICATION OF PROPORTIONATE RESPONSIBILITY IS NOT A WAIVER OF ANY GOVERNMENTAL IMMUNITY FOR SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS LAW, AND FURTHER DOES NOT CONSTITUTE A WAIVER OF ANY OTHER DEFENSES AVAILABLE TO EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW.

4. FRANCHISEE'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY JUDGMENT OF LIABILITY AGAINST THE CITY RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

5. THIS SUBSECTION V.A. DOES NOT, AND SHALL NOT, BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO THE CITY OR ANY INDEMNITEE UNDER TEXAS OR FEDERAL LAW, INCLUDING ANY INDIVIDUAL ABSOLUTE OR QUALIFIED IMMUNITY. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE OTHER INDEMNITEES AND THE FRANCHISEE, AND ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. FRANCHISEE'S ASSUMPTION OF RISK.

1. FRANCHISEE UNDERTAKES AND ASSUMES ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CONTROLLED PROPERTY, INCLUDING THE PUBLIC RIGHTS-OF-WAY.

2. FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND INDEMNITEES FROM AND AGAINST ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, AGREEMENT OR REGULATION.

c. Survival. THE INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS SECTION V. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY ACTION, CLAIM, LAWSUIT OR OTHER PROCEEDING, OR JUDGMENT ARISING FROM EVENTS OCCURING DURING THE TERM OF THIS AGREEMENT.

d. Defense of City and other Indemnitees.

In the event any action or proceeding shall be brought against any Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, and at the Franchisee's sole cost and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld. The Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's and other Indemnitees' written consent. Further, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified herein without the prior written consent of the Franchisee.

e. Expenses of Defense; Participation by Indemnitees.

The Indemnitees shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section V. Nothing herein shall prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in their defense, provided that the participation has been requested or required by the Franchisee in conducting the defense of the action, suit, or other proceeding. These covered expenses include reasonable attorney's fees and expenses, out-of-pocket expenses reasonably and necessarily incurred, the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed or incurred by the Indemnitees in connection with such suits, actions or proceedings. Covered expenses shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by the Franchisee.

f. Insurance Required.

Not later than the Effective Date, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Attachment "1", attached to and made a part of this Agreement. The insurance shall be written by a company(ies) approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The City shall be named a beneficiary and co-insured of such policy(ies). Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee.

THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the City Council approves this Agreement, then this Agreement shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of current continuous insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on at least an annual basis, no later than the anniversary date of this Agreement; and the Director shall have the right to request evidence of current insurance at any time. If the Franchisee fails to maintain insurance as required by this subsection, then the Franchisee shall forfeit any rights to contribution as defined in subsection V.a.3 above, and Franchisee shall be solely liable *in toto* for any judgment, award, claim or demand arising from the Franchisee's operation of a Solid Waste Collection Service, whether the City or any other Indemnitee is or may be contributorily liable under applicable law or not.

g. Adjustments to Insurance Requirements.

The Director reserves the right to review the insurance requirements stated herein during the term of this Agreement and to recommend to the City Council reasonable adjustments in the insurance requirements prior to any anniversary renewal of the insurance when deemed necessary or prudent by the City. Any adjustments recommended and approved by the City Council may be based upon changes in statutory law, applicable court decisions, the claims history of the industry as well as of the Franchisee, or a commercially reasonable determination by the City that existing coverage is inadequate for the risks associated with the services to be provided hereunder. When any insurance coverage limits are changed, the Franchisee shall pay any resulting increase in cost due to the changes. If Franchisee does not agree to an increase in coverage recommended by the City and approved by Council, the City may opt to pay the difference in premium that would be required for such increased coverage; but if the City declines to do so, the City shall have the right to terminate this Agreement as of the end of the current insurance term, or at the next contract year anniversary, whichever is sooner.

h. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability

for indemnity, damages and accidents as set forth in the Agreement. The bankruptcy, insolvency, receivership or denial of liability by any insurer of Franchisee shall not excuse the Franchisee from the responsibility for indemnity, liability of, or damages payable by the Franchisee as provided in this Agreement.

SECTION VI. FEES, PAYMENTS AND COMPENSATION.

a. Consideration.

Council finds and determines that Franchisee has incurred, or will incur, significant costs to upgrade its facilities as costs associated with performance under this Franchise Agreement. Council finds that such expenditures as well as the promises contained in this Franchise Agreement are satisfactory consideration to support this Agreement.

b. Additional Consideration.

Upon notice from the City, Franchisee shall provide Solid Waste removal, collection, and transport, services to the City following natural disasters or Acts of God. The term “Acts of God” as used herein, shall include, but not be limited to, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability. Franchisee understands that it is not guaranteed to receive compensation for these services. Council and the Franchisee agree that this obligation to provide emergency services without a guarantee of compensation constitutes part of the consideration offered by the Franchisee to support this Franchise Agreement.

c. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due or owed under this Agreement or of any other obligation of the Franchisee.

SECTION VII. TERM, TERMINATION AND PERFORMANCE EVALUATION

a. Term and Extensions.

This Agreement shall be effective as of the Effective Date, and, unless it is terminated earlier pursuant to its terms, shall continue in effect until December 31, 2026, with the possibility for one two-year extension as mutually agreed to by the City and the Franchisee. Franchisee shall give ninety (90) days written notice to the City prior to the expiration of the term to request an extension. The City in its sole discretion may decide to approve or decline the extension, or request an amendment of this Agreement prior to such extension.

b. Termination.

1. Right to Terminate

This Agreement may be terminated by either party, for cause or convenience, by providing ninety (90) days’ written notice to the non-terminating party. Notwithstanding the foregoing, the City may terminate this Agreement if the City determines in its sole discretion termination is necessary to secure the efficiency of public service at a reasonable rate, to assure the Public Rights-of-Way are maintained

in good order throughout the term of this Agreement, or termination is in the public interest when Franchisee is utilizing the Public Rights-of-Way in a manner the City deems is inconsistent with the public use of the City's Public Rights-of-Way without providing prior notice to the Franchisee. If the City chooses to act pursuant to this authority it shall notify the Franchisee of its decision within three days of the termination of this Agreement.

2. Rights Upon Termination.

Subject to applicable law, or as specifically provided for otherwise in this Agreement, this Agreement and all rights, permissions, and privileges of the parties defined in this Agreement shall automatically cease upon the termination of this Agreement, unless such rights are extended by mutual agreement of the parties, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

In the event the Franchisee continues use of the Public Rights-of-Way after the expiration or termination of this Agreement the City may utilize any means available in law or in equity to prevent violations of the EL PASO CITY CODE or this Agreement. Franchisee shall be responsible for all attorney's fees and court costs incurred as a result of any action taken by the City pursuant to this paragraph.

c. Performance Evaluation.

In order to: (i) assure that the Franchisee is complying with the terms of this Agreement, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation during the term of the Agreement in accordance with the following process:

1. At least sixty (60) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(ii) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within thirty (30) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, a minimum, the following areas:

- (i) documentation that all of Franchisee's vehicles used in accordance with this agreement have been properly inspected for compliance with safety and air emission standards in the vehicles' state of registration, and documentation related to local government requirements for the permitting of vehicles for the hauling of Solid Waste;
- (ii) any other topic deemed material or relevant by the City for its enforcement of this Agreement.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information collected from the Effective Date, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than twenty-four (24) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than twenty (20) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

SECTION VIII. TRANSFERS OF OWNERSHIP AND CONTROL

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates identified herein, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, this Agreement or the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Assignee: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee and its Affiliates shall request approval from Council in writing and shall provide the Council with the Assignee's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

2. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs. If the Franchisee cannot provide at least sixty (60) days notice before a transfer solely for

security purposes, then Franchisee must notify the Director in writing of such a transfer at the earliest possible date after becoming aware of such transfer.

3. The Franchisee may not transfer or assign this Agreement to an Affiliate not identified herein, without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee shall request approval from Council in writing and shall provide the Council with the Affiliate's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

b. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Attachment "2", attached to and made a part of this Agreement, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Agreement.

SECTION IX. DEFAULT

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Agreement shall constitute an Event of Default by the Franchisee under this Agreement:

1. The failure or refusal by the Franchisee to pay consideration when due as prescribed by this Agreement.

2. The Franchisee's material violation of or failure to comply with any provision or condition of chapter 9.04 of the City Code relating to Solid Waste collection service or any other applicable provision or condition of the City Code.

3. The suspension or revocation of the Franchisee's Hauler Permit.

4. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Agreement, or the Franchisee's failure or refusal to perform any obligation contained in this Agreement.

5. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real property taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

6. The entry of any judgment against the Franchisee by which another party becomes entitled to possession of any of the Franchisee's Solid Waste Collection Service's assets, and for which transfer of these assets requires prior consent of the

Council, and such judgment is not stayed pending rehearing or appeal following entry of the judgment for a period of forty-five (45) or more days.

7. The dissolution of the Franchisee.

8. The Franchisee's filing of a voluntary petition in bankruptcy; the filing of an involuntary petition in bankruptcy against the Franchisee; an adjudication finding the Franchisee insolvent; the Franchisee's obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of the Franchisee, or any of Franchisee's property or this Agreement or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Agreement.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Agreement.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Agreement.

12. The Franchisee's failure or refusal to comply with a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section X. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section X, unless the Director, the City Manager, or the Council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section X.

SECTION X. REMEDIES

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section IX., the Director shall report the occurrence of default to the City Manager and the Council. The Council shall be entitled in its sole discretion to exercise any or all of the following remedies, which shall be cumulative:

1. Exercise its rights to liquidated damages as described in subsection c. of this Section X.
2. Commence an action at law against the Franchisee for monetary damages.
3. Commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable, or other equitable relief.
4. Revoke the Franchise granted under this Agreement.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Agreement. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Agreement shall be automatically terminated and deemed null and void and shall have no further force or effect, and the provisions that are contractual in nature which are also included as a part of this Agreement are hereby automatically terminated, other than provisions that expressly are continued after termination or which impose obligations or rights of a kind that are intended and appropriate to be continued beyond termination, such as but not limited to Franchisee's obligations to defend and indemnify.

Upon revocation, the City shall retain any portion of the consideration and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered or decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. The Council reserves the right, in its sole discretion, to seek liquidated damages or to pursue other remedies as provided in this Section X, or allowed in law or equity in addition to revocation.

c. Liquidated Damages.

In addition to the other remedies provided for in this Section X., other remedies provided in this Agreement and remedies available at law or in equity, in the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Agreement, the Franchisee shall pay Two Hundred Dollars (\$200.00) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted. This subsection X.c. does not apply to the failure or refusal by the Franchisee to pay the Franchise Fee or other consideration when it becomes due (Event of

Default, subsection IX.a.1.) or the failure or the refusal to pay or cause to be paid any of the City's governmentally imposed taxes (Event of Default, subsection IX.a.4).

d. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section X. shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control to have prevented or avoided, the Council may pursue any or all of the remedies provided in Section X. or otherwise at law or in equity. The remedies of the City created under this Agreement shall be cumulative of other remedies under the Agreement, at law or in equity to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Agreement shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default.

e. Curable Violations.

The Franchisee shall not be found in violation of this Agreement or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee; provided, that the Franchisee has made reasonably diligent efforts to have prevented or avoided the violation, or the violation occurs as a result of circumstances beyond Franchisee's control or its ability to have prevented or avoided, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship, or election of actions based on, or for the purpose of realizing economic benefit or advantage; nor by the negligence or misfeasance or malfeasance of its directors, officers, principals, employees, agents, representatives, contractors or subcontractors.

SECTION XI. RECORDKEEPING AND AUDIT

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations in the Authorized Area under and in connection with this Agreement in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates within the scope of this Agreement during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Agreement. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law. To the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this

Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Reports.

If the Franchisee is a publicly traded company, the Franchisee shall file with the City by the end of each calendar year a copy of its certified financial statements filed with the Security and Exchange Commission, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City for inspection upon request.

d. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Agreement. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION XII. MISCELLANEOUS

a. Entire Agreement.

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Agreement. This Agreement can only be modified by an Agreement amendment approved by Council.

b. Notices.

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by any of the means described in subsection XII.d. of this Agreement. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to:

City of El Paso, Environmental Services Department
Attention: Director
7968 San Paulo
El Paso, Texas 79907

And:

City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

If to the Franchisee:

GCC OF AMERICA, INC.
Attn: Mathew McElroy
1 McKellgion Canyon Road
El Paso, Texas 79930

Either the City or the Franchisee may change its address or personnel for the receipt of notices at any time by giving notice of the change to the other party as provided in this subsection XII.b. Any notice given by either the City or the Franchisee must be signed by an authorized representative.

c. Notice of Claim.

This Agreement is subject to the provisions of Section 1.5 of the El Paso City Charter, as amended, relating to requirements for filing a notice of a claim against the City. Section 1.5 of the El Paso City Charter, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Franchisee shall comply with the requirements of Section 1.5 as a precondition of any claim against the City relating to or arising out of this Agreement.

d. Delivery of Notices.

Notices required to be given under this Agreement may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.
2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.
3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.
4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement transmission as a recipient shall request) and with a hard copy on the same date or the

next day mailed to all by first class airmail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Agreement or the services or facilities of the Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Agreement, acknowledges that it has not been induced to accept this Agreement by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Agreement. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Agreement.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Agreement.

k. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by the EL PASO CITY CODE, and any other applicable laws and regulations. If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable and neither the remainder

hereof nor the application of such provision to other persons, entities, or circumstances or other instruments shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law. To the extent that any party's performance under this contract becomes impossible or illegal as a result of future and unknown regulations not contemplated by the parties, and the parties are not able to modify the terms of this Agreement as contemplated above, then the parties shall be excused from further performance under those portions of this Agreement, and such offending portions shall be severed and excluded from this Agreement.

l. City Retained Powers.

In addition to all rights provided in this Agreement, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City Agreements which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Agreement which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Agreement and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Agreement.

n. Time is of the Essence.

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Agreement.

o. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term "force majeure" shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Agreement, Franchisee shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

p. Recognition of Rights.

The Franchisee agrees that by adopting this Agreement, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Agreement in whole or in part upon the Franchisee.

q. Police Powers.

1. In accepting this Agreement, the Franchisee acknowledges that its rights under this Agreement are subject to the police power of the City to adopt and enforce general Agreements necessary to the health, safety, and welfare of the public. Except as otherwise agreed to by the parties or exempted by a City ordinance, Franchisee shall comply with all applicable general laws and Agreements enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Agreement as convenient and necessary to promote the public's interest.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

r. No Presumption of Renewal

This Agreement and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

s. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the El Paso City Charter. Any request by the Franchisee for an amendment to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

t. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

u. This Agreement may be amended, revised or modified only by a written instrument, executed by the parties hereto.

v. The headings, captions and arrangements contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. If the context required, words used in the singular shall be read as including the plural and vice versa, and pronouns of any gender shall include all genders. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, paragraph, subparagraph, section or article.

w. This Agreement is executed for the sole benefit of parties hereto and is not for the benefit of any third party. No other party will have rights under this Agreement.

x. Authorization. Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective entity.

y. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

z. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

aa. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an attachment or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of El Paso, EL PASO CITY CODE, and the ordinance granting this Agreement and all exhibits thereto.

bb. No discrimination. Franchisee, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of this contract, or be otherwise subjected to discrimination in the execution of this contract.

2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in or denied the benefits of said services, or otherwise be subjected to discrimination.

3. If applicable, Franchisee shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. If applicable, Franchisee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

4. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

List of Attachments:

Attachment "1" -- Insurance Requirements

Attachment "2" -- Schedule of Ownership

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and GCC OF AMERICA, INC..

THE CITY OF EL PASO:

Tomás González
City Manager

APPROVED AS TO FORM:

Wendy N. Vineyard

Wendy N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:

Ellen A. Smyth

Ellen A. Smyth, P.E. Director
Department of Environmental Services



STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and GCC OF AMERICA, INC..

GCC OF AMERICA, INC.:

By: *Mathew McElroy*
Mathew McElroy, General Manager

ACKNOWLEDGMENT

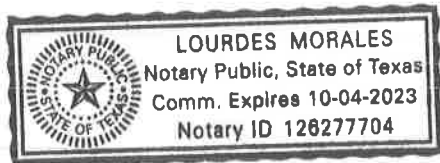
STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Jesus Adrian Munoz, as Owner of GCC OF AMERICA, INC. , known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Adela M. Torres, and that he/she executed the same as the act of GCC OF AMERICA, INC. for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 6th day of 2021,
2021.

Lourdes Morales
Notary Public
State of Texas

SEAL



ATTACHMENT "1"

INSURANCE REQUIREMENTS

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE;

For the duration of this Agreement and any extension hereof, Franchisee shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

2. WORKERS' COMPENSATION

For the duration of this Agreement and any extension hereof, Franchisee shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law:

\$500,000.00

3. AUTOMOBILE LIABILITY INSURANCE

Minimum \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.

ATTACHMENT "2"

SCHEDULE OF OWNERSHIP

Franchisee Name: GCC OF AMERICA, INC.
Legal Entity: GCC OF AMERICA, INC.

Identity of Owners: GCC of America, Inc (100%)
(Identify each partner, member, shareholder, or other owner. For each owner identified identify the individual ownership interest, to include total number of shares owned.)



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-42, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting a renewal of non-exclusive franchise to Heist Disposal, Inc., to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBGOAL:

SUBJECT:

An ordinance granting a renewal of non-exclusive franchise to Heist Disposal, Inc., to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in section 9.04.630 of the El Paso city code.

BACKGROUND / DISCUSSION:

A franchise is required for solid waste collection haulers that are permitted by the Environmental Services Department. This agreement between the franchisee and City identifies standards to be maintained for the operation of solid waste collection services.

PRIOR COUNCIL ACTION:

Non-exclusive franchises for solid waste collection services are routinely approved by Council.

AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Environmental Services Department

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWAL OF NON-EXCLUSIVE FRANCHISE TO HEIST DISPOSAL, INC., TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by ordinance passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the State of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, the attached franchise agreement is a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City of El Paso requires in City Code Section 9.04, that all haulers of municipal solid waste are required to enter into a franchise agreement with the City; and

WHEREAS, HEIST DISPOSAL, INC. is engaged in the business of collection and transportation of solid waste within the City and has requested a franchise to use the City's rights-of-way; and,

WHEREAS, HEIST DISPOSAL, INC. has agreed to the terms of the Solid Waste Franchise Agreement with the City of El Paso, granting HEIST DISPOSAL, INC. a non-exclusive franchise to operate and maintain a solid waste collection service using the City's rights-of-way; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

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

1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

2. The City Manager is authorized to sign a renewal of non-exclusive Solid Waste Franchise Agreement by and between the City of El Paso HEIST DISPOSAL, INC. for the franchisee to operate and maintain a Solid Waste Collection Service, in, over, along and across the Public Rights-of-Way in the Authorized Area, to end on December 31, 2026, as set forth and defined in the document labeled Exhibit "A", attached and incorporated by reference for all purposes.

3. All ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

4. The City Manager or authorized agent is authorized to extend this agreement for an additional five years at the end of the date of the contract.

5. This ordinance shall take effect on January 1, 2022.

PASSED AND APPROVED this ____ day of ____, 2022.


CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

EXHIBIT “A”

**SOLID WASTE
FRANCHISE AGREEMENT**

**BY AND BETWEEN
CITY OF EL PASO, TEXAS
AND
HEIST DISPOSAL, INC.**

EFFECTIVE DATE: January 1, 2022

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STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

THIS Solid Waste Franchise Agreement (“Agreement”) is entered into this ____ day of _____, 2022, by and between the CITY OF EL PASO, a Texas home rule municipality, hereinafter referred to as the "CITY", and HEIST DISPOSAL, INC., hereinafter referred to as “Franchisee”.

RECITALS

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by Agreement passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the state of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, this franchise agreement is a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City desires to exercise the authority provided to it by ordinance, charter and state law to grant a franchise for the collection, transportation, hauling and disposal of Solid Waste as further defined herein, within the corporate limits of the City and under the terms of this Agreement as set out below; and,

WHEREAS, Franchisee desires to obtain a franchise to provide for the collection, transportation, hauling and disposal of Solid Waste from the City of El Paso, and agrees to comply with the terms and conditions of this Agreement; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Agreement are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

WITNESSETH:

SECTION I. PREAMBLE

That the declarations contained in the preamble to this Agreement are material and incorporated herein as a part of this Agreement as though they were fully set forth in this Agreement in their entirety.

SECTION II. DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word “shall” is mandatory and not merely directory. The word “may” is not mandatory and is merely permissive. The word “day” means a calendar day and not a business day. Words defined elsewhere in this Agreement shall be accorded that meaning throughout this Agreement. Words not defined shall be given their common and ordinary meaning.

a. **Affiliate** and **Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.

b. **Agreement** shall mean this document.

c. **Authorized Area** means the entire area within the corporate limits of the City of El Paso, including any territory annexed into the City limits after the Effective Date of this Agreement.

d. **City** means the City of El Paso, a home rule municipal corporation, a political subdivision of the State of Texas.

e. **City Charter** means the City’s organic law, equivalent to a constitution, which defines the City’s existence and prescribes the powers, duties, and organization of the City’s governmental structure.

f. **City Code** shall mean the ordinances of the City codified into the EL PASO CITY CODE, as amended from time to time.

g. **City Manager** shall mean the City Manager or the City Manager’s designated representative.

h. **Container** shall mean any receptacle for waste as defined by Title 9.04 to include Dumpsters, Containers, Carts, Roll-Offs and Compactors.

i. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

j. **Council** shall mean the governing body of the City of El Paso. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. Unless otherwise stated in this Agreement or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Agreement and to the Franchisee's exercise of the rights and privileges conferred in this Agreement.

k. **Director** means the Director of the Environmental Services Department of the City, or any successor department, or any Director as designated by the City Manager, or the Director's designated representative.

l. **Effective Date** means January 1, 2022.

m. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Rights-of-Way under this Agreement, and all of the incidental rights and obligations as described by this Agreement.

n. **Franchisee** shall mean HEIST DISPOSAL, INC. hereinafter referred to as "Franchisee", the grantee of rights under this Agreement; or the successor, transferee, or assignee of this Agreement, including the officers, employees, agents, contractors, and subcontractors.

o. **Junk Removal Service** shall mean the collection and transportation of solid waste generated from a Property Clean-up Event by a Self-Transporter or Permitted Hauler, as defined within Chapter 9.04 of the El Paso City Code, when the waste is placed directly into a vehicle or trailer attached to a vehicle, or when a container placed at a property is removed within seven days.

p. **Property Clean-up Event** shall mean the removal of Solid Waste from the interior of a building or premises of a property for the purpose of abating a nuisance, resolving a violation of the El Paso City Code, or removing unsanitary or slightly debris or waste, when the duration of the event does not exceed seven days.

q. **Public Rights-of-Way** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated and accepted by the City as a public right-of-way. "Public Rights-of-Way" shall not include property of the City which is not a

dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated or accepted by the City as a public right-of-way.

r. **Solid Waste Collection Service** shall mean the collection and transportation of Solid Waste, not including a Junk Removal Service, as that term is defined herein within the Authorized Area, from a dumpster, roll-off container, or other container larger than two cubic yards in volume, or from a container less than two cubic yards in volume when providing service to more than four customers, for processing or disposal at an Authorized Municipal Solid Waste Facility as defined in Chapter 9.04 of the El Paso City Code or as may be subsequently amended from time to time.

s. **Solid Waste** shall mean that term as defined in Title 30 of the Texas Administrative Code § 330.3, or as may subsequently be amended from time to time, excluding Excluded Waste as defined in section 9.04.020 of the City Code, as may subsequently be amended from time to time. Solid Waste does not include any municipal solid waste and program recyclable materials generated at residential properties in which the City is the exclusive hauler as set forth in chapter 9.04 (Solid Waste Management) of the City Code.

SECTION III. GRANTING OF FRANCHISE

Subject to all the terms and conditions contained in this Agreement, the Constitution of the United States of America or of the State of Texas, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal or state law, the City hereby grants the Franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Rights-of-Way in the Authorized Area. This grant is subject to the following additional conditions:

a. **Non-Exclusive.**

Nothing herein contained shall be construed as granting an exclusive use or right to the Franchisee to the Public Rights-of-Way, and the City may grant an additional franchise, lease or special privilege to any other applicant in its discretion for the same Public Rights-of-Way described herein. The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Agreement.

b. **Authorized Municipal Solid Waste Facility.**

Franchisee shall deposit all Solid Waste only at an Authorized Municipal Solid Waste Facility in accordance with the City Code, as may be amended from time to time.

c. **Other Services.**

By granting this Agreement, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

d. No Priority.

This Agreement does not establish any priority for the use of the Public Rights-of-Way by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

e. City's Use of Public Rights-of-Way.

The Franchisee acknowledges that by this Agreement it obtains no rights to use or further use of the Public Rights-of-Way other than those expressly granted in this Agreement. The City reserves the right to use the surface or subsurface or airspace above the Public Rights-of-Way covered by this Agreement for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Rights-of-Way. Further the City expressly reserves the right to install, repair, or reconstruct the Public Rights-of-Way used or occupied by Franchisee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, including but not limited to, drainage and utility facilities and structures.

The Franchisee acknowledges and accepts at its own risk, that the City may make use in the future of the Public Rights-of-Way as described above or as otherwise permitted by law, in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Rights-of-Way for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation or further remedy from the City unless compensation is available to all users of the Public Rights-of-Way which are affected in a similar manner.

f. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee or close or otherwise restrict the use of Public Rights-of-Way in the event of a public emergency or calamity as determined in the City's sole discretion. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee.

g. Compliance with Law and Standards of Operation.

The parties shall be subject to and comply with the Constitutions of the United States of America and the State of Texas, all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Agreement does not relieve the Franchisee of, and the Franchisee shall comply with, any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Agreement shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person, entity or individual. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

SECTION IV. SERVICE REQUIREMENTS

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all Solid Waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, expressly excluding services for which the City is the exclusive hauler as defined in Chapter 9.04 of the City Code. The Franchisee shall, at its own expense, furnish personnel and equipment to collect Solid Waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner, maintain a valid, current Hauler Permit issued by the City of El Paso, and shall comply with all requirements of the City Code, including but not limited to Chapter 9.04 of the City Code.

b. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Rights-of-Way and other facilities that are damaged as a result of the negligence, willful misconduct, or intentional acts of the Franchisee during the Franchisee's operations pursuant to this Agreement.

c. The Franchisee will comply with all rules, regulations, laws and agreements pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction.

d. Waste Containers

1. Graffiti.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the Container, as defined in Chapter 9.04 of the City Code or as amended from time to time, free from graffiti. Franchisee's Containers may display the name, address and/or phone number of

the Franchisee, identification numbering or lettering assigned by the Franchisee, and any warnings, notices or instructions posted by Franchisee. If Franchisee's customers do not remove graffiti from the Franchisee's Containers, then Franchisee shall remove the graffiti and may bill its customer for the cost or replace the Container at the customer's expense.

If, after five days notice from the Director, the Franchisee or its customer has not removed the graffiti or replaced the Containers, then the City may cover or remove the graffiti or the Container.

2. Over-Capacity.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the area around the Container clean and free of rubbish, litter, Solid Waste, garbage, recyclables, or other unsightly material, regardless of the cause of the placement of the rubbish, litter, Solid Waste, garbage or recyclables around the Container. Franchisee shall monitor its customer's use of their Containers and ensure that the customer is not overfilling the Container beyond the acceptable capacity of the Container.

If the City observes that the lid of a Container is not securely closed as a result of overfilling the Container, or rubbish, Solid Waste, garbage, recyclables or unsightly material of any kind has accumulated or is being stored outside the Container, or is visible above the top level of the Container, then the City may: (1) notify the Franchisee or the customer of the violation and require immediate removal of the rubbish, Solid Waste, garbage, recyclables or unsightly materials; or (2) may remove the rubbish, Solid Waste, garbage, recyclables or unsightly materials and bill the Franchisee for its actual expense in cleaning the site around the Container.

If the City observes and records three or more instances of a violation of this section or violations of the City's ordinances by the Franchisee's customer, then it shall notify the Franchisee and the Franchisee shall require the customer to contract for additional Solid Waste services, additional Containers or a larger Container sufficient to satisfy its Solid Waste and recyclables needs, or take other steps to ensure compliance with the City's ordinances. Compliance with the provisions of this section by a Franchisee customer shall not waive the City's right to seek all remedies available under the law or this Agreement whether against the Franchisee or the Franchisee's customer.

3. Franchisee shall affix a label to each Container supplied to its customers that reads "NO SCAVENGING/KEEP LIDS CLOSED." For roll-off Containers which are not equipped with lids, only "NO SCAVENGING" shall be required on the label. Label may be in the form of a decal or paint; letters shall be capitalized and either black or white in color, whichever more contrasts the paint color of the Container. The label may consist of either one or two lines, and should be clearly visible from a distance of 20 feet.

SECTION V. INDEMNITY AND INSURANCE

a. INDEMNIFICATION OF CITY.

1. THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS, CONTRACTORS AND SUBCONTRACTORS (HEREINAFTER REFERRED TO COLLECTIVELY AS “INDEMNITEES”), FROM AND AGAINST:

(A) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OR FOR HARM SUFFERED OR ALLEGED TO HAVE BEEN SUFFERED BY ANY PERSON OR PERSONS (INCLUDING THIRD PARTIES, WHETHER INDIVIDUALS OR ENTITIES), THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE AGREEMENT, (ii) BY ANY ACT OR OMISSION CONSTITUTING NEGLIGENCE, GROSS NEGLIGENCE OR OTHER FAULT OF FRANCHISEE, ITS OFFICERS, DIRECTORS, PARTNERS, OWNERS OR OTHER PRINCIPALS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, OR FOR WHICH THE FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS (ALL COLLECTIVELY “FRANCHISEE PERSONS”), OR (iii) FOR WHICH THE FRANCHISEE OR FRANCHISEE PERSONS MAY BE STRICTLY LIABLE, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; AND

(B) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, FEES, PENALTIES OR OTHER ASSESSMENTS, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES THAT MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR SUFFERED BY ANY INDEMNITEES ARISING FROM OR RELATED TO ANY VIOLATION BY FRANCHISEE OR ANY FRANCHISEE PERSON OF ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE, OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE OR ANY FRANCHISEE PERSON, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER

WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION, INCLUDING ANY AND ALL COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT AGAINST THE CITY OR ANY OTHER INDEMNITEE RELATED TO ANY SUCH CLAIM.

2. FRANCHISEE'S OBLIGATION TO INDEMNIFY INCLUDES INDEMNIFICATION FOR ANY ATTORNEY'S FEES, COSTS OF COURT OR EXPENSES OF ANY THIRD PARTY ASSESSED AGAINST THE CITY OR ANY OTHER INDEMNITEE; AND ANY ATTORNEY'S FEES, COSTS AND EXPENSES OF DEFENSE OR SETTLEMENT OR ATTEMPTED SETTLEMENT (INCLUDING BUT NOT LIMITED TO INFORMAL SETTLEMENT DISCUSSIONS, MEDIATION, ARBITRATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS) BY THE CITY OR ANY OTHER INDEMNITEES.

3. FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO ALL CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH FOR WHICH ONE OR MORE INDEMNITEES MAY BE CONTRIBUTORILY LIABLE, PROVIDED, HOWEVER, THAT ANY INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW; AND PROVIDED, FURTHER, THAT THIS APPLICATION OF PROPORTIONATE RESPONSIBILITY IS NOT A WAIVER OF ANY GOVERNMENTAL IMMUNITY FOR SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS LAW, AND FURTHER DOES NOT CONSTITUTE A WAIVER OF ANY OTHER DEFENSES AVAILABLE TO EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW.

4. FRANCHISEE'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY JUDGMENT OF LIABILITY AGAINST THE CITY RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

5. THIS SUBSECTION V.A. DOES NOT, AND SHALL NOT, BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO THE CITY OR ANY INDEMNITEE UNDER TEXAS OR FEDERAL LAW, INCLUDING ANY INDIVIDUAL ABSOLUTE OR QUALIFIED IMMUNITY. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE OTHER INDEMNITEES AND THE FRANCHISEE, AND ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. FRANCHISEE'S ASSUMPTION OF RISK.

1. FRANCHISEE UNDERTAKES AND ASSUMES ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CONTROLLED PROPERTY, INCLUDING THE PUBLIC RIGHTS-OF-WAY.

2. FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND INDEMNITEES FROM AND AGAINST ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, AGREEMENT OR REGULATION.

c. Survival. **THE INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS SECTION V. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY ACTION, CLAIM, LAWSUIT OR OTHER PROCEEDING, OR JUDGMENT ARISING FROM EVENTS OCCURING DURING THE TERM OF THIS AGREEMENT.**

d. Defense of City and other Indemnitees.

In the event any action or proceeding shall be brought against any Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, and at the Franchisee's sole cost and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld. The Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's and other Indemnitees' written consent. Further, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified herein without the prior written consent of the Franchisee.

e. Expenses of Defense; Participation by Indemnitees.

The Indemnitees shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section V. Nothing herein shall prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in their defense, provided that the participation has been requested or required by the Franchisee in conducting the defense of the action, suit, or other proceeding. These covered expenses include reasonable attorney's fees and expenses, out-of-pocket expenses reasonably and necessarily incurred, the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed or incurred by the Indemnitees in connection with such suits, actions or proceedings. Covered expenses shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by the Franchisee.

f. Insurance Required.

Not later than the Effective Date, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Attachment “1”, attached to and made a part of this Agreement. The insurance shall be written by a company(ies) approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The City shall be named a beneficiary and co-insured of such policy(ies). Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee.

THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the City Council approves this Agreement, then this Agreement shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of current continuous insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on at least an annual basis, no later than the anniversary date of this Agreement; and the Director shall have the right to request evidence of current insurance at any time. If the Franchisee fails to maintain insurance as required by this subsection, then the Franchisee shall forfeit any rights to contribution as defined in subsection V.a.3 above, and Franchisee shall be solely liable *in toto* for any judgment, award, claim or demand arising from the Franchisee’s operation of a Solid Waste Collection Service, whether the City or any other Indemnitee is or may be contributorily liable under applicable law or not.

g. Adjustments to Insurance Requirements.

The Director reserves the right to review the insurance requirements stated herein during the term of this Agreement and to recommend to the City Council reasonable adjustments in the insurance requirements prior to any anniversary renewal of the insurance when deemed necessary or prudent by the City. Any adjustments recommended and approved by the City Council may be based upon changes in statutory law, applicable court decisions, the claims history of the industry as well as of the Franchisee, or a commercially reasonable determination by the City that existing coverage is inadequate for the risks associated with the services to be provided hereunder. When any insurance coverage limits are changed, the Franchisee shall pay any resulting increase in cost due to the changes. If Franchisee does not agree to an increase in coverage recommended by the City and approved by Council, the City may opt to pay the difference in premium that would be required for such increased coverage; but if the City declines to do so, the City shall have the right to terminate this Agreement as of the end of the current insurance term, or at the next contract year anniversary, whichever is sooner.

h. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability

for indemnity, damages and accidents as set forth in the Agreement. The bankruptcy, insolvency, receivership or denial of liability by any insurer of Franchisee shall not excuse the Franchisee from the responsibility for indemnity, liability of, or damages payable by the Franchisee as provided in this Agreement.

SECTION VI. FEES, PAYMENTS AND COMPENSATION.

a. Consideration.

Council finds and determines that Franchisee has incurred, or will incur, significant costs to upgrade its facilities as costs associated with performance under this Franchise Agreement. Council finds that such expenditures as well as the promises contained in this Franchise Agreement are satisfactory consideration to support this Agreement.

b. Additional Consideration.

Upon notice from the City, Franchisee shall provide Solid Waste removal, collection, and transport, services to the City following natural disasters or Acts of God. The term “Acts of God” as used herein, shall include, but not be limited to, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability. Franchisee understands that it is not guaranteed to receive compensation for these services. Council and the Franchisee agree that this obligation to provide emergency services without a guarantee of compensation constitutes part of the consideration offered by the Franchisee to support this Franchise Agreement.

c. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due or owed under this Agreement or of any other obligation of the Franchisee.

SECTION VII. TERM, TERMINATION AND PERFORMANCE EVALUATION

a. Term and Extensions.

This Agreement shall be effective as of the Effective Date, and, unless it is terminated earlier pursuant to its terms, shall continue in effect until December 31, 2026, with the possibility for one two-year extension as mutually agreed to by the City and the Franchisee. Franchisee shall give ninety (90) days written notice to the City prior to the expiration of the term to request an extension. The City in its sole discretion may decide to approve or decline the extension, or request an amendment of this Agreement prior to such extension.

b. Termination.

1. Right to Terminate

This Agreement may be terminated by either party, for cause or convenience, by providing ninety (90) days’ written notice to the non-terminating party. Notwithstanding the foregoing, the City may terminate this Agreement if the City determines in its sole discretion termination is necessary to secure the efficiency of public service at a reasonable rate, to assure the Public Rights-of-Way are maintained

in good order throughout the term of this Agreement, or termination is in the public interest when Franchisee is utilizing the Public Rights-of-Way in a manner the City deems is inconsistent with the public use of the City's Public Rights-of-Way without providing prior notice to the Franchisee. If the City chooses to act pursuant to this authority it shall notify the Franchisee of its decision within three days of the termination of this Agreement.

2. Rights Upon Termination.

Subject to applicable law, or as specifically provided for otherwise in this Agreement, this Agreement and all rights, permissions, and privileges of the parties defined in this Agreement shall automatically cease upon the termination of this Agreement, unless such rights are extended by mutual agreement of the parties, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

In the event the Franchisee continues use of the Public Rights-of-Way after the expiration or termination of this Agreement the City may utilize any means available in law or in equity to prevent violations of the EL PASO CITY CODE or this Agreement. Franchisee shall be responsible for all attorney's fees and court costs incurred as a result of any action taken by the City pursuant to this paragraph.

c. Performance Evaluation.

In order to: (i) assure that the Franchisee is complying with the terms of this Agreement, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation during the term of the Agreement in accordance with the following process:

1. At least sixty (60) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(ii) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within thirty (30) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, a minimum, the following areas:

- (i) documentation that all of Franchisee's vehicles used in accordance with this agreement have been properly inspected for compliance with safety and air emission standards in the vehicles' state of registration, and documentation related to local government requirements for the permitting of vehicles for the hauling of Solid Waste;
- (ii) any other topic deemed material or relevant by the City for its enforcement of this Agreement.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information collected from the Effective Date, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than twenty-four (24) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than twenty (20) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

SECTION VIII. TRANSFERS OF OWNERSHIP AND CONTROL

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates identified herein, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, this Agreement or the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Assignee: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee and its Affiliates shall request approval from Council in writing and shall provide the Council with the Assignee's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

2. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs. If the Franchisee cannot provide at least sixty (60) days notice before a transfer solely for

security purposes, then Franchisee must notify the Director in writing of such a transfer at the earliest possible date after becoming aware of such transfer.

3. The Franchisee may not transfer or assign this Agreement to an Affiliate not identified herein, without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee shall request approval from Council in writing and shall provide the Council with the Affiliate's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

b. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Attachment "2", attached to and made a part of this Agreement, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Agreement.

SECTION IX. DEFAULT

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Agreement shall constitute an Event of Default by the Franchisee under this Agreement:

1. The failure or refusal by the Franchisee to pay consideration when due as prescribed by this Agreement.

2. The Franchisee's material violation of or failure to comply with any provision or condition of chapter 9.04 of the City Code relating to Solid Waste collection service or any other applicable provision or condition of the City Code.

3. The suspension or revocation of the Franchisee's Hauler Permit.

4. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Agreement, or the Franchisee's failure or refusal to perform any obligation contained in this Agreement.

5. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real property taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

6. The entry of any judgment against the Franchisee by which another party becomes entitled to possession of any of the Franchisee's Solid Waste Collection Service's assets, and for which transfer of these assets requires prior consent of the

Council, and such judgment is not stayed pending rehearing or appeal following entry of the judgment for a period of forty-five (45) or more days.

7. The dissolution of the Franchisee.

8. The Franchisee's filing of a voluntary petition in bankruptcy; the filing of an involuntary petition in bankruptcy against the Franchisee; an adjudication finding the Franchisee insolvent; the Franchisee's obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of the Franchisee, or any of Franchisee's property or this Agreement or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Agreement.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Agreement.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Agreement.

12. The Franchisee's failure or refusal to comply with a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section X. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section X, unless the Director, the City Manager, or the Council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section X.

SECTION X. REMEDIES

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section IX., the Director shall report the occurrence of default to the City Manager and the Council. The Council shall be entitled in its sole discretion to exercise any or all of the following remedies, which shall be cumulative:

1. Exercise its rights to liquidated damages as described in subsection c. of this Section X.
2. Commence an action at law against the Franchisee for monetary damages.
3. Commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable, or other equitable relief.
4. Revoke the Franchise granted under this Agreement.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Agreement. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Agreement shall be automatically terminated and deemed null and void and shall have no further force or effect, and the provisions that are contractual in nature which are also included as a part of this Agreement are hereby automatically terminated, other than provisions that expressly are continued after termination or which impose obligations or rights of a kind that are intended and appropriate to be continued beyond termination, such as but not limited to Franchisee's obligations to defend and indemnify.

Upon revocation, the City shall retain any portion of the consideration and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered or decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. The Council reserves the right, in its sole discretion, to seek liquidated damages or to pursue other remedies as provided in this Section X, or allowed in law or equity in addition to revocation.

c. Liquidated Damages.

In addition to the other remedies provided for in this Section X., other remedies provided in this Agreement and remedies available at law or in equity, in the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Agreement, the Franchisee shall pay Two Hundred Dollars (\$200.00) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted. This subsection X.c. does not apply to the failure or refusal by the Franchisee to pay the Franchise Fee or other consideration when it becomes due (Event of

Default, subsection IX.a.1.) or the failure or the refusal to pay or cause to be paid any of the City's governmentally imposed taxes (Event of Default, subsection IX.a.4).

d. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section X. shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control to have prevented or avoided, the Council may pursue any or all of the remedies provided in Section X. or otherwise at law or in equity. The remedies of the City created under this Agreement shall be cumulative of other remedies under the Agreement, at law or in equity to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Agreement shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default.

e. Curable Violations.

The Franchisee shall not be found in violation of this Agreement or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee; provided, that the Franchisee has made reasonably diligent efforts to have prevented or avoided the violation, or the violation occurs as a result of circumstances beyond Franchisee's control or its ability to have prevented or avoided, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship, or election of actions based on, or for the purpose of realizing economic benefit or advantage; nor by the negligence or misfeasance or malfeasance of its directors, officers, principals, employees, agents, representatives, contractors or subcontractors.

SECTION XI. RECORDKEEPING AND AUDIT

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations in the Authorized Area under and in connection with this Agreement in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates within the scope of this Agreement during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Agreement. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law. To the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this

Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Reports.

If the Franchisee is a publicly traded company, the Franchisee shall file with the City by the end of each calendar year a copy of its certified financial statements filed with the Security and Exchange Commission, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City for inspection upon request.

d. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Agreement. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION XII. MISCELLANEOUS

a. Entire Agreement.

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Agreement. This Agreement can only be modified by an Agreement amendment approved by Council.

b. Notices.

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by any of the means described in subsection XII.d. of this Agreement. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to:

City of El Paso, Environmental Services Department
Attention: Director
7968 San Paulo
El Paso, Texas 79907

And:

City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

If to the Franchisee:

HEIST DISPOSAL, INC.
Attn: Beatrice Heist
P.O. Box 370335
El Paso, Texas 79937

c. Notice of Claim.

This Agreement is subject to the provisions of Section 1.5 of the El Paso City Charter, as amended, relating to requirements for filing a notice of a claim against the City. Section 1.5 of the El Paso City Charter, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Franchisee shall comply with the requirements of Section 1.5 as a precondition of any claim against the City relating to or arising out of this Agreement.

d. Delivery of Notices.

Notices required to be given under this Agreement may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.
2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.
3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.
4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement transmission as a recipient shall request) and with a hard copy on the same date or the next day mailed to all by first class mail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Agreement or the services or facilities of the

Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Agreement, acknowledges that it has not been induced to accept this Agreement by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Agreement. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Agreement.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Agreement.

k. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by the EL PASO CITY CODE, and any other applicable laws and regulations. If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable and neither the remainder hereof nor the application of such provision to other persons, entities, or circumstances or other instruments shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law. To the extent that any party's performance under this contract becomes impossible or illegal as a result of future and unknown regulations not contemplated by the parties, and the parties are not able to modify the terms of this Agreement as contemplated above, then the

parties shall be excused from further performance under those portions of this Agreement, and such offending portions shall be severed and excluded from this Agreement.

l. City Retained Powers.

In addition to all rights provided in this Agreement, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City Agreements which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Agreement which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Agreement and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Agreement.

n. Time is of the Essence.

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Agreement.

o. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term “force majeure” shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Agreement, Franchisee shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

p. Recognition of Rights.

The Franchisee agrees that by adopting this Agreement, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Agreement in whole or in part upon the Franchisee.

q. Police Powers.

1. In accepting this Agreement, the Franchisee acknowledges that its rights under this Agreement are subject to the police power of the City to adopt and enforce general Agreements necessary to the health, safety, and welfare of the public. Except as otherwise agreed to by the parties or exempted by a City ordinance, Franchisee shall comply with all applicable general laws and Agreements enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other

present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Agreement as convenient and necessary to promote the public's interest.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

r. No Presumption of Renewal

This Agreement and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

s. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the El Paso City Charter. Any request by the Franchisee for an amendment to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

t. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

u. This Agreement may be amended, revised or modified only by a written instrument, executed by the parties hereto.

v. The headings, captions and arrangements contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. If the context required, words used in the singular shall be read as including the plural and vice versa, and pronouns of any gender shall include all genders. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, paragraph, subparagraph, section or article.

w. This Agreement is executed for the sole benefit of parties hereto and is not for the benefit of any third party. No other party will have rights under this Agreement.

x. Authorization. Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective entity.

y. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

z. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

aa. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an attachment or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of El Paso, EL PASO CITY CODE, and the ordinance granting this Agreement and all exhibits thereto.

bb. No discrimination. Franchisee, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of this contract, or be otherwise subjected to discrimination in the execution of this contract.

2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in or denied the benefits of said services, or otherwise be subjected to discrimination.

3. If applicable, Franchisee shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. If applicable, Franchisee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

4. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

List of Attachments:

Attachment “1” – Insurance Requirements

Attachment “2” – Schedule of Ownership

STATE OF TEXAS)
)
COUNTY OF EL PASO)

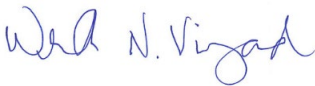
SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and HEIST DISPOSAL, INC..

THE CITY OF EL PASO:

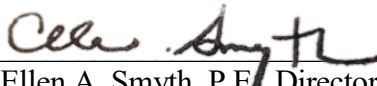
Tomás González
City Manager

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

STATE OF TEXAS)
)
COUNTY OF EL PASO) **SOLID WASTE FRANCHISE AGREEMENT**

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and HEIST DISPOSAL, INC..

HEIST DISPOSAL, INC.:

By: _____
Beatrice Heist, President

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Beatrice Heist, as President of HEIST DISPOSAL, INC. , known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Adela M. Torres, and that he/she executed the same as the act of HEIST DISPOSAL, INC. for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2022.

Notary Public
State of _____

SEAL

ATTACHMENT "1"

INSURANCE REQUIREMENTS

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE:

For the duration of this Agreement and any extension hereof, Franchisee shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

2. WORKERS' COMPENSATION

For the duration of this Agreement and any extension hereof, Franchisee shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law:

\$500,000.00

3. AUTOMOBILE LIABILITY INSURANCE

Minimum \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.

ATTACHMENT “2”

SCHEDULE OF OWNERSHIP

Franchisee Name: HEIST DISPOSAL, INC.
Legal Entity: HEIST DISPOSAL, INC.

Identity of Owners:
(Identify each partner, member, shareholder, or other owner. For each owner identified identify the individual ownership interest, to include total number of shares owned.)

Beatrice Heist, President (51%)

Charles Heist, Vice President (49%)



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-43, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting a renewal of non-exclusive franchise to JRG Disposal Service, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBGOAL:

SUBJECT:

An ordinance granting a renewal of non-exclusive franchise to JRG Disposal Service, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in section 9.04.630 of the El Paso city code.

BACKGROUND / DISCUSSION:

A franchise is required for solid waste collection haulers that are permitted by the Environmental Services Department. This agreement between the franchisee and City identifies standards to be maintained for the operation of solid waste collection services.

PRIOR COUNCIL ACTION:

Non-exclusive franchises for solid waste collection services are routinely approved by Council.

AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Environmental Services Department

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWAL OF NON-EXCLUSIVE FRANCHISE TO JRG DISPOSAL SERVICE, TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by ordinance passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the State of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, the attached franchise agreement is a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City of El Paso requires in City Code Section 9.04, that all haulers of municipal solid waste are required to enter into a franchise agreement with the City; and

WHEREAS, JRG DISPOSAL SERVICE is engaged in the business of collection and transportation of solid waste within the City and has requested a franchise to use the City's rights-of-way; and,

WHEREAS, JRG DISPOSAL SERVICE has agreed to the terms of the Solid Waste Franchise Agreement with the City of El Paso, granting JRG DISPOSAL SERVICE a non-exclusive franchise to operate and maintain a solid waste collection service using the City's rights-of-way; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

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

1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

2. The City Manager is authorized to sign a renewal of non-exclusive Solid Waste Franchise Agreement by and between the City of El Paso JRG DISPOSAL SERVICE for the franchisee to operate and maintain a Solid Waste Collection Service, in, over, along and across the Public Rights-of-Way in the Authorized Area, to end on December 31, 2026, as set forth and defined in the document labeled Exhibit "A", attached and incorporated by reference for all purposes.

3. All ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

4. The City Manager or authorized agent is authorized to extend this agreement for an additional five years at the end of the date of the contract.

5. This ordinance shall take effect on January 1, 2022.

PASSED AND APPROVED this ____ day of ____, 2022.


CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this ____ day of _____, 2021.

JRG DISPOSAL SERVICE

By: Jose R. Gonzalez, Jr., Owner

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 202__, by Jose R. Gonzalez, Jr.

Notary Public, State of Texas
Notary's Printed or Typed Name:

My Commission Expires:

EXHIBIT “A”

**SOLID WASTE
FRANCHISE AGREEMENT**

BY AND BETWEEN

CITY OF EL PASO, TEXAS

AND

JRG DISPOSAL SERVICE

EFFECTIVE DATE: January 1, 2022

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STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

THIS Solid Waste Franchise Agreement (“Agreement”) effective January 1, 2022 entered into this ____ day of _____, 2022, by and between the CITY OF EL PASO, a Texas home rule municipality, hereinafter referred to as the "CITY", and JRG DISPOSAL SERVICE, hereinafter referred to as “Franchisee”.

RECITALS

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by Agreement passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the state of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, this franchise agreement is a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City desires to exercise the authority provided to it by ordinance, charter and state law to grant a franchise for the collection, transportation, hauling and disposal of Solid Waste as further defined herein, within the corporate limits of the City and under the terms of this Agreement as set out below; and,

WHEREAS, Franchisee desires to obtain a franchise to provide for the collection, transportation, hauling and disposal of Solid Waste from the City of El Paso, and agrees to comply with the terms and conditions of this Agreement; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Agreement are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

WITNESSETH:

SECTION I. PREAMBLE

That the declarations contained in the preamble to this Agreement are material and incorporated herein as a part of this Agreement as though they were fully set forth in this Agreement in their entirety.

SECTION II. DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word “shall” is mandatory and not merely directory. The word “may” is not mandatory and is merely permissive. The word “day” means a calendar day and not a business day. Words defined elsewhere in this Agreement shall be accorded that meaning throughout this Agreement. Words not defined shall be given their common and ordinary meaning.

a. **Affiliate** and **Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.

b. **Agreement** shall mean this document.

c. **Authorized Area** means the entire area within the corporate limits of the City of El Paso, including any territory annexed into the City limits after the Effective Date of this Agreement.

d. **City** means the City of El Paso, a home rule municipal corporation, a political subdivision of the State of Texas.

e. **City Charter** means the City’s organic law, equivalent to a constitution, which defines the City’s existence and prescribes the powers, duties, and organization of the City’s governmental structure.

f. **City Code** shall mean the ordinances of the City codified into the EL PASO CITY CODE, as amended from time to time.

g. **City Manager** shall mean the City Manager or the City Manager’s designated representative.

h. **Container** shall mean any receptacle for waste as defined by Title 9.04 to include Dumpsters, Containers, Carts, Roll-Offs and Compactors.

i. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

j. **Council** shall mean the governing body of the City of El Paso. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. Unless otherwise stated in this Agreement or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Agreement and to the Franchisee's exercise of the rights and privileges conferred in this Agreement.

k. **Director** means the Director of the Environmental Services Department of the City, or any successor department, or any Director as designated by the City Manager, or the Director's designated representative.

l. **Effective Date** means January 1, 2022.

m. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Rights-of-Way under this Agreement, and all of the incidental rights and obligations as described by this Agreement.

n. **Franchisee** shall mean JRG DISPOSAL SERVICE hereinafter referred to as "Franchisee", the grantee of rights under this Agreement; or the successor, transferee, or assignee of this Agreement, including the officers, employees, agents, contractors, and subcontractors.

o. **Junk Removal Service** shall mean the collection and transportation of solid waste generated from a Property Clean-up Event by a Self-Transporter or Permitted Hauler, as defined within Chapter 9.04 of the El Paso City Code, when the waste is placed directly into a vehicle or trailer attached to a vehicle, or when a container placed at a property is removed within seven days.

p. **Property Clean-up Event** shall mean the removal of Solid Waste from the interior of a building or premises of a property for the purpose of abating a nuisance, resolving a violation of the El Paso City Code, or removing unsanitary or slightly debris or waste, when the duration of the event does not exceed seven days.

q. **Public Rights-of-Way** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated and accepted by the City as a public right-of-way. "Public Rights-of-Way" shall not include property of the City which is not a

dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated or accepted by the City as a public right-of-way.

r. **Solid Waste Collection Service** shall mean the collection and transportation of Solid Waste, not including a Junk Removal Service, as that term is defined herein within the Authorized Area, from a dumpster, roll-off container, or other container larger than two cubic yards in volume, or from a container less than two cubic yards in volume when providing service to more than four customers, for processing or disposal at an Authorized Municipal Solid Waste Facility as defined in Chapter 9.04 of the El Paso City Code or as may be subsequently amended from time to time.

s. **Solid Waste** shall mean that term as defined in Title 30 of the Texas Administrative Code § 330.3, or as may subsequently be amended from time to time, excluding Excluded Waste as defined in section 9.04.020 of the City Code, as may subsequently be amended from time to time. Solid Waste does not include any municipal solid waste and program recyclable materials generated at residential properties in which the City is the exclusive hauler as set forth in chapter 9.04 (Solid Waste Management) of the City Code.

SECTION III. GRANTING OF FRANCHISE

Subject to all the terms and conditions contained in this Agreement, the Constitution of the United States of America or of the State of Texas, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal or state law, the City hereby grants the Franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Rights-of-Way in the Authorized Area. This grant is subject to the following additional conditions:

a. **Non-Exclusive.**

Nothing herein contained shall be construed as granting an exclusive use or right to the Franchisee to the Public Rights-of-Way, and the City may grant an additional franchise, lease or special privilege to any other applicant in its discretion for the same Public Rights-of-Way described herein. The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Agreement.

b. **Authorized Municipal Solid Waste Facility.**

Franchisee shall deposit all Solid Waste only at an Authorized Municipal Solid Waste Facility in accordance with the City Code, as may be amended from time to time.

c. **Other Services.**

By granting this Agreement, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

d. No Priority.

This Agreement does not establish any priority for the use of the Public Rights-of-Way by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

e. City's Use of Public Rights-of-Way.

The Franchisee acknowledges that by this Agreement it obtains no rights to use or further use of the Public Rights-of-Way other than those expressly granted in this Agreement. The City reserves the right to use the surface or subsurface or airspace above the Public Rights-of-Way covered by this Agreement for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Rights-of-Way. Further the City expressly reserves the right to install, repair, or reconstruct the Public Rights-of-Way used or occupied by Franchisee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, including but not limited to, drainage and utility facilities and structures.

The Franchisee acknowledges and accepts at its own risk, that the City may make use in the future of the Public Rights-of-Way as described above or as otherwise permitted by law, in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Rights-of-Way for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation or further remedy from the City unless compensation is available to all users of the Public Rights-of-Way which are affected in a similar manner.

f. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee or close or otherwise restrict the use of Public Rights-of-Way in the event of a public emergency or calamity as determined in the City's sole discretion. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee.

g. Compliance with Law and Standards of Operation.

The parties shall be subject to and comply with the Constitutions of the United States of America and the State of Texas, all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Agreement does not relieve the Franchisee of, and the Franchisee shall comply with, any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Agreement shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person, entity or individual. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

SECTION IV. SERVICE REQUIREMENTS

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all Solid Waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, expressly excluding services for which the City is the exclusive hauler as defined in Chapter 9.04 of the City Code. The Franchisee shall, at its own expense, furnish personnel and equipment to collect Solid Waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner, maintain a valid, current Hauler Permit issued by the City of El Paso, and shall comply with all requirements of the City Code, including but not limited to Chapter 9.04 of the City Code.

b. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Rights-of-Way and other facilities that are damaged as a result of the negligence, willful misconduct, or intentional acts of the Franchisee during the Franchisee's operations pursuant to this Agreement.

c. The Franchisee will comply with all rules, regulations, laws and agreements pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction.

d. Waste Containers

1. Graffiti.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the Container, as defined in Chapter 9.04 of the City Code or as amended from time to time, free from graffiti. Franchisee's Containers may display the name, address and/or phone number of

the Franchisee, identification numbering or lettering assigned by the Franchisee, and any warnings, notices or instructions posted by Franchisee. If Franchisee's customers do not remove graffiti from the Franchisee's Containers, then Franchisee shall remove the graffiti and may bill its customer for the cost or replace the Container at the customer's expense.

If, after five days notice from the Director, the Franchisee or its customer has not removed the graffiti or replaced the Containers, then the City may cover or remove the graffiti or the Container.

2. Over-Capacity.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the area around the Container clean and free of rubbish, litter, Solid Waste, garbage, recyclables, or other unsightly material, regardless of the cause of the placement of the rubbish, litter, Solid Waste, garbage or recyclables around the Container. Franchisee shall monitor its customer's use of their Containers and ensure that the customer is not overfilling the Container beyond the acceptable capacity of the Container.

If the City observes that the lid of a Container is not securely closed as a result of overfilling the Container, or rubbish, Solid Waste, garbage, recyclables or unsightly material of any kind has accumulated or is being stored outside the Container, or is visible above the top level of the Container, then the City may: (1) notify the Franchisee or the customer of the violation and require immediate removal of the rubbish, Solid Waste, garbage, recyclables or unsightly materials; or (2) may remove the rubbish, Solid Waste, garbage, recyclables or unsightly materials and bill the Franchisee for its actual expense in cleaning the site around the Container.

If the City observes and records three or more instances of a violation of this section or violations of the City's ordinances by the Franchisee's customer, then it shall notify the Franchisee and the Franchisee shall require the customer to contract for additional Solid Waste services, additional Containers or a larger Container sufficient to satisfy its Solid Waste and recyclables needs, or take other steps to ensure compliance with the City's ordinances. Compliance with the provisions of this section by a Franchisee customer shall not waive the City's right to seek all remedies available under the law or this Agreement whether against the Franchisee or the Franchisee's customer.

3. Franchisee shall affix a label to each Container supplied to its customers that reads "NO SCAVENGING/KEEP LIDS CLOSED." For roll-off Containers which are not equipped with lids, only "NO SCAVENGING" shall be required on the label. Label may be in the form of a decal or paint; letters shall be capitalized and either black or white in color, whichever more contrasts the paint color of the Container. The label may consist of either one or two lines, and should be clearly visible from a distance of 20 feet.

SECTION V. INDEMNITY AND INSURANCE

a. INDEMNIFICATION OF CITY.

1. THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS, CONTRACTORS AND SUBCONTRACTORS (HEREINAFTER REFERRED TO COLLECTIVELY AS “INDEMNITEES”), FROM AND AGAINST:

(A) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OR FOR HARM SUFFERED OR ALLEGED TO HAVE BEEN SUFFERED BY ANY PERSON OR PERSONS (INCLUDING THIRD PARTIES, WHETHER INDIVIDUALS OR ENTITIES), THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE AGREEMENT, (ii) BY ANY ACT OR OMISSION CONSTITUTING NEGLIGENCE, GROSS NEGLIGENCE OR OTHER FAULT OF FRANCHISEE, ITS OFFICERS, DIRECTORS, PARTNERS, OWNERS OR OTHER PRINCIPALS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, OR FOR WHICH THE FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS (ALL COLLECTIVELY “FRANCHISEE PERSONS”), OR (iii) FOR WHICH THE FRANCHISEE OR FRANCHISEE PERSONS MAY BE STRICTLY LIABLE, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; AND

(B) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, FEES, PENALTIES OR OTHER ASSESSMENTS, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES THAT MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR SUFFERED BY ANY INDEMNITEES ARISING FROM OR RELATED TO ANY VIOLATION BY FRANCHISEE OR ANY FRANCHISEE PERSON OF ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE, OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE OR ANY FRANCHISEE PERSON, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER

WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION, INCLUDING ANY AND ALL COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT AGAINST THE CITY OR ANY OTHER INDEMNITEE RELATED TO ANY SUCH CLAIM.

2. FRANCHISEE'S OBLIGATION TO INDEMNIFY INCLUDES INDEMNIFICATION FOR ANY ATTORNEY'S FEES, COSTS OF COURT OR EXPENSES OF ANY THIRD PARTY ASSESSED AGAINST THE CITY OR ANY OTHER INDEMNITEE; AND ANY ATTORNEY'S FEES, COSTS AND EXPENSES OF DEFENSE OR SETTLEMENT OR ATTEMPTED SETTLEMENT (INCLUDING BUT NOT LIMITED TO INFORMAL SETTLEMENT DISCUSSIONS, MEDIATION, ARBITRATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS) BY THE CITY OR ANY OTHER INDEMNITEES.

3. FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO ALL CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH FOR WHICH ONE OR MORE INDEMNITEES MAY BE CONTRIBUTORILY LIABLE, PROVIDED, HOWEVER, THAT ANY INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW; AND PROVIDED, FURTHER, THAT THIS APPLICATION OF PROPORTIONATE RESPONSIBILITY IS NOT A WAIVER OF ANY GOVERNMENTAL IMMUNITY FOR SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS LAW, AND FURTHER DOES NOT CONSTITUTE A WAIVER OF ANY OTHER DEFENSES AVAILABLE TO EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW.

4. FRANCHISEE'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY JUDGMENT OF LIABILITY AGAINST THE CITY RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

5. THIS SUBSECTION V.A. DOES NOT, AND SHALL NOT, BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO THE CITY OR ANY INDEMNITEE UNDER TEXAS OR FEDERAL LAW, INCLUDING ANY INDIVIDUAL ABSOLUTE OR QUALIFIED IMMUNITY. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE OTHER INDEMNITEES AND THE FRANCHISEE, AND ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. FRANCHISEE'S ASSUMPTION OF RISK.

1. FRANCHISEE UNDERTAKES AND ASSUMES ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CONTROLLED PROPERTY, INCLUDING THE PUBLIC RIGHTS-OF-WAY.

2. FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND INDEMNITEES FROM AND AGAINST ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, AGREEMENT OR REGULATION.

c. Survival. **THE INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS SECTION V. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY ACTION, CLAIM, LAWSUIT OR OTHER PROCEEDING, OR JUDGMENT ARISING FROM EVENTS OCCURING DURING THE TERM OF THIS AGREEMENT.**

d. Defense of City and other Indemnitees.

In the event any action or proceeding shall be brought against any Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, and at the Franchisee's sole cost and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld. The Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's and other Indemnitees' written consent. Further, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified herein without the prior written consent of the Franchisee.

e. Expenses of Defense; Participation by Indemnitees.

The Indemnitees shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section V. Nothing herein shall prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in their defense, provided that the participation has been requested or required by the Franchisee in conducting the defense of the action, suit, or other proceeding. These covered expenses include reasonable attorney's fees and expenses, out-of-pocket expenses reasonably and necessarily incurred, the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed or incurred by the Indemnitees in connection with such suits, actions or proceedings. Covered expenses shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by the Franchisee.

f. Insurance Required.

Not later than the Effective Date, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Attachment “1”, attached to and made a part of this Agreement. The insurance shall be written by a company(ies) approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The City shall be named a beneficiary and co-insured of such policy(ies). Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee.

THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the City Council approves this Agreement, then this Agreement shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of current continuous insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on at least an annual basis, no later than the anniversary date of this Agreement; and the Director shall have the right to request evidence of current insurance at any time. If the Franchisee fails to maintain insurance as required by this subsection, then the Franchisee shall forfeit any rights to contribution as defined in subsection V.a.3 above, and Franchisee shall be solely liable *in toto* for any judgment, award, claim or demand arising from the Franchisee’s operation of a Solid Waste Collection Service, whether the City or any other Indemnitee is or may be contributorily liable under applicable law or not.

g. Adjustments to Insurance Requirements.

The Director reserves the right to review the insurance requirements stated herein during the term of this Agreement and to recommend to the City Council reasonable adjustments in the insurance requirements prior to any anniversary renewal of the insurance when deemed necessary or prudent by the City. Any adjustments recommended and approved by the City Council may be based upon changes in statutory law, applicable court decisions, the claims history of the industry as well as of the Franchisee, or a commercially reasonable determination by the City that existing coverage is inadequate for the risks associated with the services to be provided hereunder. When any insurance coverage limits are changed, the Franchisee shall pay any resulting increase in cost due to the changes. If Franchisee does not agree to an increase in coverage recommended by the City and approved by Council, the City may opt to pay the difference in premium that would be required for such increased coverage; but if the City declines to do so, the City shall have the right to terminate this Agreement as of the end of the current insurance term, or at the next contract year anniversary, whichever is sooner.

h. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability

for indemnity, damages and accidents as set forth in the Agreement. The bankruptcy, insolvency, receivership or denial of liability by any insurer of Franchisee shall not excuse the Franchisee from the responsibility for indemnity, liability of, or damages payable by the Franchisee as provided in this Agreement.

SECTION VI. FEES, PAYMENTS AND COMPENSATION.

a. Consideration.

Council finds and determines that Franchisee has incurred, or will incur, significant costs to upgrade its facilities as costs associated with performance under this Franchise Agreement. Council finds that such expenditures as well as the promises contained in this Franchise Agreement are satisfactory consideration to support this Agreement.

b. Additional Consideration.

Upon notice from the City, Franchisee shall provide Solid Waste removal, collection, and transport, services to the City following natural disasters or Acts of God. The term “Acts of God” as used herein, shall include, but not be limited to, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability. Franchisee understands that it is not guaranteed to receive compensation for these services. Council and the Franchisee agree that this obligation to provide emergency services without a guarantee of compensation constitutes part of the consideration offered by the Franchisee to support this Franchise Agreement.

c. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due or owed under this Agreement or of any other obligation of the Franchisee.

SECTION VII. TERM, TERMINATION AND PERFORMANCE EVALUATION

a. Term and Extensions.

This Agreement shall be effective as of the Effective Date, and, unless it is terminated earlier pursuant to its terms, shall continue in effect until December 31, 2026, with the possibility for one two-year extension as mutually agreed to by the City and the Franchisee. Franchisee shall give ninety (90) days written notice to the City prior to the expiration of the term to request an extension. The City in its sole discretion may decide to approve or decline the extension, or request an amendment of this Agreement prior to such extension.

b. Termination.

1. Right to Terminate

This Agreement may be terminated by either party, for cause or convenience, by providing ninety (90) days’ written notice to the non-terminating party. Notwithstanding the foregoing, the City may terminate this Agreement if the City determines in its sole discretion termination is necessary to secure the efficiency of public service at a reasonable rate, to assure the Public Rights-of-Way are maintained

in good order throughout the term of this Agreement, or termination is in the public interest when Franchisee is utilizing the Public Rights-of-Way in a manner the City deems is inconsistent with the public use of the City's Public Rights-of-Way without providing prior notice to the Franchisee. If the City chooses to act pursuant to this authority it shall notify the Franchisee of its decision within three days of the termination of this Agreement.

2. Rights Upon Termination.

Subject to applicable law, or as specifically provided for otherwise in this Agreement, this Agreement and all rights, permissions, and privileges of the parties defined in this Agreement shall automatically cease upon the termination of this Agreement, unless such rights are extended by mutual agreement of the parties, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

In the event the Franchisee continues use of the Public Rights-of-Way after the expiration or termination of this Agreement the City may utilize any means available in law or in equity to prevent violations of the EL PASO CITY CODE or this Agreement. Franchisee shall be responsible for all attorney's fees and court costs incurred as a result of any action taken by the City pursuant to this paragraph.

c. Performance Evaluation.

In order to: (i) assure that the Franchisee is complying with the terms of this Agreement, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation during the term of the Agreement in accordance with the following process:

1. At least sixty (60) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(ii) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within thirty (30) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, a minimum, the following areas:

- (i) documentation that all of Franchisee's vehicles used in accordance with this agreement have been properly inspected for compliance with safety and air emission standards in the vehicles' state of registration, and documentation related to local government requirements for the permitting of vehicles for the hauling of Solid Waste;
- (ii) any other topic deemed material or relevant by the City for its enforcement of this Agreement.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information collected from the Effective Date, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than twenty-four (24) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than twenty (20) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

SECTION VIII. TRANSFERS OF OWNERSHIP AND CONTROL

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates identified herein, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, this Agreement or the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Assignee: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee and its Affiliates shall request approval from Council in writing and shall provide the Council with the Assignee's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

2. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs. If the Franchisee cannot provide at least sixty (60) days notice before a transfer solely for

security purposes, then Franchisee must notify the Director in writing of such a transfer at the earliest possible date after becoming aware of such transfer.

3. The Franchisee may not transfer or assign this Agreement to an Affiliate not identified herein, without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee shall request approval from Council in writing and shall provide the Council with the Affiliate's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

b. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Attachment "2", attached to and made a part of this Agreement, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Agreement.

SECTION IX. DEFAULT

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Agreement shall constitute an Event of Default by the Franchisee under this Agreement:

1. The failure or refusal by the Franchisee to pay consideration when due as prescribed by this Agreement.

2. The Franchisee's material violation of or failure to comply with any provision or condition of chapter 9.04 of the City Code relating to Solid Waste collection service or any other applicable provision or condition of the City Code.

3. The suspension or revocation of the Franchisee's Hauler Permit.

4. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Agreement, or the Franchisee's failure or refusal to perform any obligation contained in this Agreement.

5. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real property taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

6. The entry of any judgment against the Franchisee by which another party becomes entitled to possession of any of the Franchisee's Solid Waste Collection Service's assets, and for which transfer of these assets requires prior consent of the

Council, and such judgment is not stayed pending rehearing or appeal following entry of the judgment for a period of forty-five (45) or more days.

7. The dissolution of the Franchisee.

8. The Franchisee's filing of a voluntary petition in bankruptcy; the filing of an involuntary petition in bankruptcy against the Franchisee; an adjudication finding the Franchisee insolvent; the Franchisee's obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of the Franchisee, or any of Franchisee's property or this Agreement or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Agreement.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Agreement.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Agreement.

12. The Franchisee's failure or refusal to comply with a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section X. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section X, unless the Director, the City Manager, or the Council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section X.

SECTION X. REMEDIES

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section IX., the Director shall report the occurrence of default to the City Manager and the Council. The Council shall be entitled in its sole discretion to exercise any or all of the following remedies, which shall be cumulative:

1. Exercise its rights to liquidated damages as described in subsection c. of this Section X.
2. Commence an action at law against the Franchisee for monetary damages.
3. Commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable, or other equitable relief.
4. Revoke the Franchise granted under this Agreement.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Agreement. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Agreement shall be automatically terminated and deemed null and void and shall have no further force or effect, and the provisions that are contractual in nature which are also included as a part of this Agreement are hereby automatically terminated, other than provisions that expressly are continued after termination or which impose obligations or rights of a kind that are intended and appropriate to be continued beyond termination, such as but not limited to Franchisee's obligations to defend and indemnify.

Upon revocation, the City shall retain any portion of the consideration and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered or decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. The Council reserves the right, in its sole discretion, to seek liquidated damages or to pursue other remedies as provided in this Section X, or allowed in law or equity in addition to revocation.

c. Liquidated Damages.

In addition to the other remedies provided for in this Section X., other remedies provided in this Agreement and remedies available at law or in equity, in the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Agreement, the Franchisee shall pay Two Hundred Dollars (\$200.00) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted. This subsection X.c. does not apply to the failure or refusal by the Franchisee to pay the Franchise Fee or other consideration when it becomes due (Event of

Default, subsection IX.a.1.) or the failure or the refusal to pay or cause to be paid any of the City's governmentally imposed taxes (Event of Default, subsection IX.a.4).

d. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section X. shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control to have prevented or avoided, the Council may pursue any or all of the remedies provided in Section X. or otherwise at law or in equity. The remedies of the City created under this Agreement shall be cumulative of other remedies under the Agreement, at law or in equity to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Agreement shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default.

e. Curable Violations.

The Franchisee shall not be found in violation of this Agreement or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee; provided, that the Franchisee has made reasonably diligent efforts to have prevented or avoided the violation, or the violation occurs as a result of circumstances beyond Franchisee's control or its ability to have prevented or avoided, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship, or election of actions based on, or for the purpose of realizing economic benefit or advantage; nor by the negligence or misfeasance or malfeasance of its directors, officers, principals, employees, agents, representatives, contractors or subcontractors.

SECTION XI. RECORDKEEPING AND AUDIT

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations in the Authorized Area under and in connection with this Agreement in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates within the scope of this Agreement during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Agreement. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law. To the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this

Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Reports.

If the Franchisee is a publicly traded company, the Franchisee shall file with the City by the end of each calendar year a copy of its certified financial statements filed with the Security and Exchange Commission, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City for inspection upon request.

d. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Agreement. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION XII. MISCELLANEOUS

a. Entire Agreement.

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Agreement. This Agreement can only be modified by an Agreement amendment approved by Council.

b. Notices.

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by any of the means described in subsection XII.d. of this Agreement. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to:

City of El Paso, Environmental Services Department
Attention: Director
7968 San Paulo
El Paso, Texas 79907

And:

City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

If to the Franchisee:

JRG DISPOSAL SERVICE
Attn: Jose R. Gonzalez Jr.
13451 Boots Green
El Paso, Texas 79938

c. Notice of Claim.

This Agreement is subject to the provisions of Section 1.5 of the El Paso City Charter, as amended, relating to requirements for filing a notice of a claim against the City. Section 1.5 of the El Paso City Charter, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Franchisee shall comply with the requirements of Section 1.5 as a precondition of any claim against the City relating to or arising out of this Agreement.

d. Delivery of Notices.

Notices required to be given under this Agreement may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.
2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.
3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.
4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement transmission as a recipient shall request) and with a hard copy on the same date or the next day mailed to all by first class mail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Agreement or the services or facilities of the

Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Agreement, acknowledges that it has not been induced to accept this Agreement by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Agreement. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Agreement.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Agreement.

k. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by the EL PASO CITY CODE, and any other applicable laws and regulations. If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable and neither the remainder hereof nor the application of such provision to other persons, entities, or circumstances or other instruments shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law. To the extent that any party's performance under this contract becomes impossible or illegal as a result of future and unknown regulations not contemplated by the parties, and the parties are not able to modify the terms of this Agreement as contemplated above, then the

parties shall be excused from further performance under those portions of this Agreement, and such offending portions shall be severed and excluded from this Agreement.

l. City Retained Powers.

In addition to all rights provided in this Agreement, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City Agreements which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Agreement which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Agreement and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Agreement.

n. Time is of the Essence.

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Agreement.

o. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term “force majeure” shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Agreement, Franchisee shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

p. Recognition of Rights.

The Franchisee agrees that by adopting this Agreement, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Agreement in whole or in part upon the Franchisee.

q. Police Powers.

1. In accepting this Agreement, the Franchisee acknowledges that its rights under this Agreement are subject to the police power of the City to adopt and enforce general Agreements necessary to the health, safety, and welfare of the public. Except as otherwise agreed to by the parties or exempted by a City ordinance, Franchisee shall comply with all applicable general laws and Agreements enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other

present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Agreement as convenient and necessary to promote the public's interest.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

r. No Presumption of Renewal

This Agreement and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

s. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the El Paso City Charter. Any request by the Franchisee for an amendment to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

t. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

u. This Agreement may be amended, revised or modified only by a written instrument, executed by the parties hereto.

v. The headings, captions and arrangements contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. If the context required, words used in the singular shall be read as including the plural and vice versa, and pronouns of any gender shall include all genders. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, paragraph, subparagraph, section or article.

w. This Agreement is executed for the sole benefit of parties hereto and is not for the benefit of any third party. No other party will have rights under this Agreement.

x. Authorization. Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective entity.

y. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

z. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

aa. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an attachment or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of El Paso, EL PASO CITY CODE, and the ordinance granting this Agreement and all exhibits thereto.

bb. No discrimination. Franchisee, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of this contract, or be otherwise subjected to discrimination in the execution of this contract.

2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in or denied the benefits of said services, or otherwise be subjected to discrimination.

3. If applicable, Franchisee shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. If applicable, Franchisee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

4. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

List of Attachments:

Attachment “1” – Insurance Requirements

Attachment “2” – Schedule of Ownership

STATE OF TEXAS)
)
COUNTY OF EL PASO)

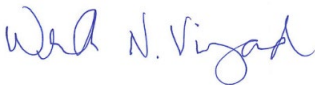
SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and JRG DISPOSAL SERVICE.

THE CITY OF EL PASO:


Tomás González
City Manager

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

STATE OF TEXAS)
)
COUNTY OF EL PASO) **SOLID WASTE FRANCHISE AGREEMENT**

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and JRG DISPOSAL SERVICE.

JRG DISPOSAL SERVICE:

By: _____
 Jose R. Gonzalez, Jr., Owner

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared John Pinkerton, as president of JRG DISPOSAL SERVICE , known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me and that he executed the same as the act of as Owner for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2022.

Notary Public
State of _____

SEAL

ATTACHMENT "1"

INSURANCE REQUIREMENTS

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE:

For the duration of this Agreement and any extension hereof, Franchisee shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

2. WORKERS' COMPENSATION

For the duration of this Agreement and any extension hereof, Franchisee shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law:

\$500,000.00

3. AUTOMOBILE LIABILITY INSURANCE

Minimum \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.

ATTACHMENT “2”

SCHEDULE OF OWNERSHIP

Franchisee Name: JRG DISPOSAL SERVICE
Legal Entity: JRG DISPOSAL SERVICE

Identity of Owners: Jose R. Gonzalez, Jr. (100%)

(Identify each partner, member, shareholder, or other owner. For each owner identified identify the individual ownership interest, to include total number of shares owned.)



File #: 22-44, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting a renewal of non-exclusive franchise to Loretto Investment Corporation, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19 2022
PUBLIC HEARING DATE: February 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBGOAL:

SUBJECT:

An ordinance granting a renewal of non-exclusive franchise to Loretto Investment Corporation, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in section 9.04.630 of the El Paso city code.

BACKGROUND / DISCUSSION:

A franchise is required for solid waste collection haulers that are permitted by the Environmental Services Department. This agreement between the franchisee and City identifies standards to be maintained for the operation of solid waste collection services.

PRIOR COUNCIL ACTION:

Non-exclusive franchises for solid waste collection services are routinely approved by Council.

AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Environmental Services Department

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWAL OF NON-EXCLUSIVE FRANCHISE TO LORETTO INVESTMENT CORPORATION, TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by ordinance passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the State of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, the attached franchise agreement is a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City of El Paso requires in City Code Section 9.04, that all haulers of municipal solid waste are required to enter into a franchise agreement with the City; and

WHEREAS, LORETTO INVESTMENT CORPORATION is engaged in the business of collection and transportation of solid waste within the City and has requested a franchise to use the City's rights-of-way; and,

WHEREAS, LORETTO INVESTMENT CORPORATION has agreed to the terms of the Solid Waste Franchise Agreement with the City of El Paso, granting LORETTO INVESTMENT CORPORATION a non-exclusive franchise to operate and maintain a solid waste collection service using the City's rights-of-way; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

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

1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.
2. The City Manager is authorized to sign a renewal of non-exclusive Solid Waste Franchise Agreement by and between the City of El Paso LORETTO INVESTMENT CORPORATION for the franchisee to operate and maintain a Solid Waste Collection Service, in, over, along and across the Public

Rights-of-Way in the Authorized Area, to end on December 31, 2026, as set forth and defined in the document labeled Exhibit "A", attached and incorporated by reference for all purposes.

3. All ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

4. The City Manager or authorized agent is authorized to extend this agreement for an additional five years at the end of the date of the contract.

5. This ordinance shall take effect on January 1, 2022.

PASSED AND APPROVED this ____ day of ____, 2022.


CITY OF EL PASO:

Oscar Leoser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

EXHIBIT “A”

**SOLID WASTE
FRANCHISE AGREEMENT**

BY AND BETWEEN

CITY OF EL PASO, TEXAS

AND

LORETTO INVESTMENT CORPORATION

EFFECTIVE DATE: January 1, 2022

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SECTION VII.	Term, Termination and Performance Evaluation
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SECTION IX.	Default
SECTION X.	Remedies
SECTION XI.	Recordkeeping and audit
SECTION XII.	Miscellaneous

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

THIS Solid Waste Franchise Agreement (“Agreement”) effective January 1, 2022 is entered into this ____ day of _____, 2022, by and between the CITY OF EL PASO, a Texas home rule municipality, hereinafter referred to as the "CITY", and LORETTO INVESTMENT CORPORATION, hereinafter referred to as “Franchisee”.

RECITALS

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by Agreement passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the state of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, this franchise agreement is a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City desires to exercise the authority provided to it by ordinance, charter and state law to grant a franchise for the collection, transportation, hauling and disposal of Solid Waste as further defined herein, within the corporate limits of the City and under the terms of this Agreement as set out below; and,

WHEREAS, Franchisee desires to obtain a franchise to provide for the collection, transportation, hauling and disposal of Solid Waste from the City of El Paso, and agrees to comply with the terms and conditions of this Agreement; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Agreement are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

WITNESSETH:

SECTION I. PREAMBLE

That the declarations contained in the preamble to this Agreement are material and incorporated herein as a part of this Agreement as though they were fully set forth in this Agreement in their entirety.

SECTION II. DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word “shall” is mandatory and not merely directory. The word “may” is not mandatory and is merely permissive. The word “day” means a calendar day and not a business day. Words defined elsewhere in this Agreement shall be accorded that meaning throughout this Agreement. Words not defined shall be given their common and ordinary meaning.

a. **Affiliate** and **Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.

b. **Agreement** shall mean this document.

c. **Authorized Area** means the entire area within the corporate limits of the City of El Paso, including any territory annexed into the City limits after the Effective Date of this Agreement.

d. **City** means the City of El Paso, a home rule municipal corporation, a political subdivision of the State of Texas.

e. **City Charter** means the City’s organic law, equivalent to a constitution, which defines the City’s existence and prescribes the powers, duties, and organization of the City’s governmental structure.

f. **City Code** shall mean the ordinances of the City codified into the EL PASO CITY CODE, as amended from time to time.

g. **City Manager** shall mean the City Manager or the City Manager’s designated representative.

h. **Container** shall mean any receptacle for waste as defined by Title 9.04 to include Dumpsters, Containers, Carts, Roll-Offs and Compactors.

i. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

j. **Council** shall mean the governing body of the City of El Paso. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. Unless otherwise stated in this Agreement or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Agreement and to the Franchisee's exercise of the rights and privileges conferred in this Agreement.

k. **Director** means the Director of the Environmental Services Department of the City, or any successor department, or any Director as designated by the City Manager, or the Director's designated representative.

l. **Effective Date** means January 1, 2022.

m. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Rights-of-Way under this Agreement, and all of the incidental rights and obligations as described by this Agreement.

n. **Franchisee** shall mean LORETTO INVESTMENT CORPORATION hereinafter referred to as "Franchisee", the grantee of rights under this Agreement; or the successor, transferee, or assignee of this Agreement, including the officers, employees, agents, contractors, and subcontractors.

o. **Junk Removal Service** shall mean the collection and transportation of solid waste generated from a Property Clean-up Event by a Self-Transporter or Permitted Hauler, as defined within Chapter 9.04 of the El Paso City Code, when the waste is placed directly into a vehicle or trailer attached to a vehicle, or when a container placed at a property is removed within seven days.

p. **Property Clean-up Event** shall mean the removal of Solid Waste from the interior of a building or premises of a property for the purpose of abating a nuisance, resolving a violation of the El Paso City Code, or removing unsanitary or slightly debris or waste, when the duration of the event does not exceed seven days.

q. **Public Rights-of-Way** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated and accepted by the City as a public right-of-way. "Public Rights-of-Way" shall not include property of the City which is

not a dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated or accepted by the City as a public right-of-way.

r. **Solid Waste Collection Service** shall mean the collection and transportation of Solid Waste, not including a Junk Removal Service, as that term is defined herein within the Authorized Area, from a dumpster, roll-off container, or other container larger than two cubic yards in volume, or from a container less than two cubic yards in volume when providing service to more than four customers, for processing or disposal at an Authorized Municipal Solid Waste Facility as defined in Chapter 9.04 of the El Paso City Code or as may be subsequently amended from time to time.

s. **Solid Waste** shall mean that term as defined in Title 30 of the Texas Administrative Code § 330.3, or as may subsequently be amended from time to time, excluding Excluded Waste as defined in section 9.04.020 of the City Code, as may subsequently be amended from time to time. Solid Waste does not include any municipal solid waste and program recyclable materials generated at residential properties in which the City is the exclusive hauler as set forth in chapter 9.04 (Solid Waste Management) of the City Code.

SECTION III. GRANTING OF FRANCHISE

Subject to all the terms and conditions contained in this Agreement, the Constitution of the United States of America or of the State of Texas, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal or state law, the City hereby grants the Franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Rights-of-Way in the Authorized Area. This grant is subject to the following additional conditions:

a. **Non-Exclusive.**

Nothing herein contained shall be construed as granting an exclusive use or right to the Franchisee to the Public Rights-of-Way, and the City may grant an additional franchise, lease or special privilege to any other applicant in its discretion for the same Public Rights-of-Way described herein. The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Agreement.

b. **Authorized Municipal Solid Waste Facility.**

Franchisee shall deposit all Solid Waste only at an Authorized Municipal Solid Waste Facility in accordance with the City Code, as may be amended from time to time.

c. **Other Services.**

By granting this Agreement, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

d. No Priority.

This Agreement does not establish any priority for the use of the Public Rights-of-Way by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

e. City's Use of Public Rights-of-Way.

The Franchisee acknowledges that by this Agreement it obtains no rights to use or further use of the Public Rights-of-Way other than those expressly granted in this Agreement. The City reserves the right to use the surface or subsurface or airspace above the Public Rights-of-Way covered by this Agreement for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Rights-of-Way. Further the City expressly reserves the right to install, repair, or reconstruct the Public Rights-of-Way used or occupied by Franchisee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, including but not limited to, drainage and utility facilities and structures.

The Franchisee acknowledges and accepts at its own risk, that the City may make use in the future of the Public Rights-of-Way as described above or as otherwise permitted by law, in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Rights-of-Way for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation or further remedy from the City unless compensation is available to all users of the Public Rights-of-Way which are affected in a similar manner.

f. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee or close or otherwise restrict the use of Public Rights-of-Way in the event of a public emergency or calamity as determined in the City's sole discretion. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee.

g. Compliance with Law and Standards of Operation.

The parties shall be subject to and comply with the Constitutions of the United States of America and the State of Texas, all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Agreement does not relieve the Franchisee of, and the Franchisee shall comply with, any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Agreement shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person, entity or individual. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

SECTION IV. SERVICE REQUIREMENTS

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all Solid Waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, expressly excluding services for which the City is the exclusive hauler as defined in Chapter 9.04 of the City Code. The Franchisee shall, at its own expense, furnish personnel and equipment to collect Solid Waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner, maintain a valid, current Hauler Permit issued by the City of El Paso, and shall comply with all requirements of the City Code, including but not limited to Chapter 9.04 of the City Code.

b. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Rights-of-Way and other facilities that are damaged as a result of the negligence, willful misconduct, or intentional acts of the Franchisee during the Franchisee's operations pursuant to this Agreement.

c. The Franchisee will comply with all rules, regulations, laws and agreements pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction.

d. Waste Containers

1. Graffiti.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the Container, as defined in Chapter 9.04 of the City Code or as amended from time to time, free from graffiti. Franchisee's Containers may display the name, address and/or phone number of

the Franchisee, identification numbering or lettering assigned by the Franchisee, and any warnings, notices or instructions posted by Franchisee. If Franchisee's customers do not remove graffiti from the Franchisee's Containers, then Franchisee shall remove the graffiti and may bill its customer for the cost or replace the Container at the customer's expense.

If, after five days notice from the Director, the Franchisee or its customer has not removed the graffiti or replaced the Containers, then the City may cover or remove the graffiti or the Container.

2. Over-Capacity.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the area around the Container clean and free of rubbish, litter, Solid Waste, garbage, recyclables, or other unsightly material, regardless of the cause of the placement of the rubbish, litter, Solid Waste, garbage or recyclables around the Container. Franchisee shall monitor its customer's use of their Containers and ensure that the customer is not overfilling the Container beyond the acceptable capacity of the Container.

If the City observes that the lid of a Container is not securely closed as a result of overfilling the Container, or rubbish, Solid Waste, garbage, recyclables or unsightly material of any kind has accumulated or is being stored outside the Container, or is visible above the top level of the Container, then the City may: (1) notify the Franchisee or the customer of the violation and require immediate removal of the rubbish, Solid Waste, garbage, recyclables or unsightly materials; or (2) may remove the rubbish, Solid Waste, garbage, recyclables or unsightly materials and bill the Franchisee for its actual expense in cleaning the site around the Container.

If the City observes and records three or more instances of a violation of this section or violations of the City's ordinances by the Franchisee's customer, then it shall notify the Franchisee and the Franchisee shall require the customer to contract for additional Solid Waste services, additional Containers or a larger Container sufficient to satisfy its Solid Waste and recyclables needs, or take other steps to ensure compliance with the City's ordinances. Compliance with the provisions of this section by a Franchisee customer shall not waive the City's right to seek all remedies available under the law or this Agreement whether against the Franchisee or the Franchisee's customer.

3. Franchisee shall affix a label to each Container supplied to its customers that reads "NO SCAVENGING/KEEP LIDS CLOSED." For roll-off Containers which are not equipped with lids, only "NO SCAVENGING" shall be required on the label. Label may be in the form of a decal or paint; letters shall be capitalized and either black or white in color, whichever more contrasts the paint color of the Container. The label may consist of either one or two lines, and should be clearly visible from a distance of 20 feet.

SECTION V. INDEMNITY AND INSURANCE

a. INDEMNIFICATION OF CITY.

1. THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS, CONTRACTORS AND SUBCONTRACTORS (HEREINAFTER REFERRED TO COLLECTIVELY AS “INDEMNITEES”), FROM AND AGAINST:

(A) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OR FOR HARM SUFFERED OR ALLEGED TO HAVE BEEN SUFFERED BY ANY PERSON OR PERSONS (INCLUDING THIRD PARTIES, WHETHER INDIVIDUALS OR ENTITIES), THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE AGREEMENT, (ii) BY ANY ACT OR OMISSION CONSTITUTING NEGLIGENCE, GROSS NEGLIGENCE OR OTHER FAULT OF FRANCHISEE, ITS OFFICERS, DIRECTORS, PARTNERS, OWNERS OR OTHER PRINCIPALS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, OR FOR WHICH THE FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS (ALL COLLECTIVELY “FRANCHISEE PERSONS”), OR (iii) FOR WHICH THE FRANCHISEE OR FRANCHISEE PERSONS MAY BE STRICTLY LIABLE, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; AND

(B) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, FEES, PENALTIES OR OTHER ASSESSMENTS, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES THAT MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR SUFFERED BY ANY INDEMNITEES ARISING FROM OR RELATED TO ANY VIOLATION BY FRANCHISEE OR ANY FRANCHISEE PERSON OF ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE, OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE OR ANY FRANCHISEE PERSON, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER

WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION, INCLUDING ANY AND ALL COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT AGAINST THE CITY OR ANY OTHER INDEMNITEE RELATED TO ANY SUCH CLAIM.

2. FRANCHISEE'S OBLIGATION TO INDEMNIFY INCLUDES INDEMNIFICATION FOR ANY ATTORNEY'S FEES, COSTS OF COURT OR EXPENSES OF ANY THIRD PARTY ASSESSED AGAINST THE CITY OR ANY OTHER INDEMNITEE; AND ANY ATTORNEY'S FEES, COSTS AND EXPENSES OF DEFENSE OR SETTLEMENT OR ATTEMPTED SETTLEMENT (INCLUDING BUT NOT LIMITED TO INFORMAL SETTLEMENT DISCUSSIONS, MEDIATION, ARBITRATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS) BY THE CITY OR ANY OTHER INDEMNITEES.

3. FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO ALL CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH FOR WHICH ONE OR MORE INDEMNITEES MAY BE CONTRIBUTORILY LIABLE, PROVIDED, HOWEVER, THAT ANY INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW; AND PROVIDED, FURTHER, THAT THIS APPLICATION OF PROPORTIONATE RESPONSIBILITY IS NOT A WAIVER OF ANY GOVERNMENTAL IMMUNITY FOR SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS LAW, AND FURTHER DOES NOT CONSTITUTE A WAIVER OF ANY OTHER DEFENSES AVAILABLE TO EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW.

4. FRANCHISEE'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY JUDGMENT OF LIABILITY AGAINST THE CITY RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

5. THIS SUBSECTION V.A. DOES NOT, AND SHALL NOT, BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO THE CITY OR ANY INDEMNITEE UNDER TEXAS OR FEDERAL LAW, INCLUDING ANY INDIVIDUAL ABSOLUTE OR QUALIFIED IMMUNITY. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE OTHER INDEMNITEES AND THE FRANCHISEE, AND ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. FRANCHISEE'S ASSUMPTION OF RISK.

1. FRANCHISEE UNDERTAKES AND ASSUMES ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CONTROLLED PROPERTY, INCLUDING THE PUBLIC RIGHTS-OF-WAY.

2. FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND INDEMNITEES FROM AND AGAINST ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, AGREEMENT OR REGULATION.

c. Survival. **THE INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS SECTION V. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY ACTION, CLAIM, LAWSUIT OR OTHER PROCEEDING, OR JUDGMENT ARISING FROM EVENTS OCCURING DURING THE TERM OF THIS AGREEMENT.**

d. Defense of City and other Indemnitees.

In the event any action or proceeding shall be brought against any Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, and at the Franchisee's sole cost and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld. The Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's and other Indemnitees' written consent. Further, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified herein without the prior written consent of the Franchisee.

e. Expenses of Defense; Participation by Indemnitees.

The Indemnitees shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section V. Nothing herein shall prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in their defense, provided that the participation has been requested or required by the Franchisee in conducting the defense of the action, suit, or other proceeding. These covered expenses include reasonable attorney's fees and expenses, out-of-pocket expenses reasonably and necessarily incurred, the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed or incurred by the Indemnitees in connection with such suits, actions or proceedings. Covered expenses shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by the Franchisee.

f. Insurance Required.

Not later than the Effective Date, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Attachment “1”, attached to and made a part of this Agreement. The insurance shall be written by a company(ies) approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The City shall be named a beneficiary and co-insured of such policy(ies). Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee.

THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the City Council approves this Agreement, then this Agreement shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of current continuous insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on at least an annual basis, no later than the anniversary date of this Agreement; and the Director shall have the right to request evidence of current insurance at any time. If the Franchisee fails to maintain insurance as required by this subsection, then the Franchisee shall forfeit any rights to contribution as defined in subsection V.a.3 above, and Franchisee shall be solely liable *in toto* for any judgment, award, claim or demand arising from the Franchisee’s operation of a Solid Waste Collection Service, whether the City or any other Indemnitee is or may be contributorily liable under applicable law or not.

g. Adjustments to Insurance Requirements.

The Director reserves the right to review the insurance requirements stated herein during the term of this Agreement and to recommend to the City Council reasonable adjustments in the insurance requirements prior to any anniversary renewal of the insurance when deemed necessary or prudent by the City. Any adjustments recommended and approved by the City Council may be based upon changes in statutory law, applicable court decisions, the claims history of the industry as well as of the Franchisee, or a commercially reasonable determination by the City that existing coverage is inadequate for the risks associated with the services to be provided hereunder. When any insurance coverage limits are changed, the Franchisee shall pay any resulting increase in cost due to the changes. If Franchisee does not agree to an increase in coverage recommended by the City and approved by Council, the City may opt to pay the difference in premium that would be required for such increased coverage; but if the City declines to do so, the City shall have the right to terminate this Agreement as of the end of the current insurance term, or at the next contract year anniversary, whichever is sooner.

h. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability

for indemnity, damages and accidents as set forth in the Agreement. The bankruptcy, insolvency, receivership or denial of liability by any insurer of Franchisee shall not excuse the Franchisee from the responsibility for indemnity, liability of, or damages payable by the Franchisee as provided in this Agreement.

SECTION VI. FEES, PAYMENTS AND COMPENSATION.

a. Consideration.

Council finds and determines that Franchisee has incurred, or will incur, significant costs to upgrade its facilities as costs associated with performance under this Franchise Agreement. Council finds that such expenditures as well as the promises contained in this Franchise Agreement are satisfactory consideration to support this Agreement.

b. Additional Consideration.

Upon notice from the City, Franchisee shall provide Solid Waste removal, collection, and transport, services to the City following natural disasters or Acts of God. The term “Acts of God” as used herein, shall include, but not be limited to, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability. Franchisee understands that it is not guaranteed to receive compensation for these services. Council and the Franchisee agree that this obligation to provide emergency services without a guarantee of compensation constitutes part of the consideration offered by the Franchisee to support this Franchise Agreement.

c. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due or owed under this Agreement or of any other obligation of the Franchisee.

SECTION VII. TERM, TERMINATION AND PERFORMANCE EVALUATION

a. Term and Extensions.

This Agreement shall be effective as of the Effective Date, and, unless it is terminated earlier pursuant to its terms, shall continue in effect until December 31, 2026, with the possibility for one two-year extension as mutually agreed to by the City and the Franchisee. Franchisee shall give ninety (90) days written notice to the City prior to the expiration of the term to request an extension. The City in its sole discretion may decide to approve or decline the extension, or request an amendment of this Agreement prior to such extension.

b. Termination.

1. Right to Terminate

This Agreement may be terminated by either party, for cause or convenience, by providing ninety (90) days’ written notice to the non-terminating party. Notwithstanding the foregoing, the City may terminate this Agreement if the City determines in its sole discretion termination is necessary to secure the efficiency of public service at a reasonable rate, to assure the Public Rights-of-Way are maintained

in good order throughout the term of this Agreement, or termination is in the public interest when Franchisee is utilizing the Public Rights-of-Way in a manner the City deems is inconsistent with the public use of the City's Public Rights-of-Way without providing prior notice to the Franchisee. If the City chooses to act pursuant to this authority it shall notify the Franchisee of its decision within three days of the termination of this Agreement.

2. Rights Upon Termination.

Subject to applicable law, or as specifically provided for otherwise in this Agreement, this Agreement and all rights, permissions, and privileges of the parties defined in this Agreement shall automatically cease upon the termination of this Agreement, unless such rights are extended by mutual agreement of the parties, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

In the event the Franchisee continues use of the Public Rights-of-Way after the expiration or termination of this Agreement the City may utilize any means available in law or in equity to prevent violations of the EL PASO CITY CODE or this Agreement. Franchisee shall be responsible for all attorney's fees and court costs incurred as a result of any action taken by the City pursuant to this paragraph.

c. Performance Evaluation.

In order to: (i) assure that the Franchisee is complying with the terms of this Agreement, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation during the term of the Agreement in accordance with the following process:

1. At least sixty (60) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(ii) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within thirty (30) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, a minimum, the following areas:

- (i) documentation that all of Franchisee's vehicles used in accordance with this agreement have been properly inspected for compliance with safety and air emission standards in the vehicles' state of registration, and documentation related to local government requirements for the permitting of vehicles for the hauling of Solid Waste;
- (ii) any other topic deemed material or relevant by the City for its enforcement of this Agreement.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information collected from the Effective Date, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than twenty-four (24) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than twenty (20) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

SECTION VIII. TRANSFERS OF OWNERSHIP AND CONTROL

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates identified herein, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, this Agreement or the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Assignee: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee and its Affiliates shall request approval from Council in writing and shall provide the Council with the Assignee's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

2. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs. If the Franchisee cannot provide at least sixty (60) days notice before a transfer solely for

security purposes, then Franchisee must notify the Director in writing of such a transfer at the earliest possible date after becoming aware of such transfer.

3. The Franchisee may not transfer or assign this Agreement to an Affiliate not identified herein, without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee shall request approval from Council in writing and shall provide the Council with the Affiliate's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

b. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Attachment "2", attached to and made a part of this Agreement, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Agreement.

SECTION IX. DEFAULT

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Agreement shall constitute an Event of Default by the Franchisee under this Agreement:

1. The failure or refusal by the Franchisee to pay consideration when due as prescribed by this Agreement.

2. The Franchisee's material violation of or failure to comply with any provision or condition of chapter 9.04 of the City Code relating to Solid Waste collection service or any other applicable provision or condition of the City Code.

3. The suspension or revocation of the Franchisee's Hauler Permit.

4. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Agreement, or the Franchisee's failure or refusal to perform any obligation contained in this Agreement.

5. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real property taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

6. The entry of any judgment against the Franchisee by which another party becomes entitled to possession of any of the Franchisee's Solid Waste Collection Service's assets, and for which transfer of these assets requires prior consent of the

Council, and such judgment is not stayed pending rehearing or appeal following entry of the judgment for a period of forty-five (45) or more days.

7. The dissolution of the Franchisee.

8. The Franchisee's filing of a voluntary petition in bankruptcy; the filing of an involuntary petition in bankruptcy against the Franchisee; an adjudication finding the Franchisee insolvent; the Franchisee's obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of the Franchisee, or any of Franchisee's property or this Agreement or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Agreement.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Agreement.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Agreement.

12. The Franchisee's failure or refusal to comply with a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section X. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section X, unless the Director, the City Manager, or the Council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section X.

SECTION X. REMEDIES

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section IX., the Director shall report the occurrence of default to the City Manager and the Council. The Council shall be entitled in its sole discretion to exercise any or all of the following remedies, which shall be cumulative:

1. Exercise its rights to liquidated damages as described in subsection c. of this Section X.
2. Commence an action at law against the Franchisee for monetary damages.
3. Commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable, or other equitable relief.
4. Revoke the Franchise granted under this Agreement.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Agreement. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Agreement shall be automatically terminated and deemed null and void and shall have no further force or effect, and the provisions that are contractual in nature which are also included as a part of this Agreement are hereby automatically terminated, other than provisions that expressly are continued after termination or which impose obligations or rights of a kind that are intended and appropriate to be continued beyond termination, such as but not limited to Franchisee's obligations to defend and indemnify.

Upon revocation, the City shall retain any portion of the consideration and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered or decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. The Council reserves the right, in its sole discretion, to seek liquidated damages or to pursue other remedies as provided in this Section X, or allowed in law or equity in addition to revocation.

c. Liquidated Damages.

In addition to the other remedies provided for in this Section X., other remedies provided in this Agreement and remedies available at law or in equity, in the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Agreement, the Franchisee shall pay Two Hundred Dollars (\$200.00) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted. This subsection X.c. does not apply to the failure or refusal by the Franchisee to pay the Franchise Fee or other consideration when it becomes due (Event of

Default, subsection IX.a.1.) or the failure or the refusal to pay or cause to be paid any of the City's governmentally imposed taxes (Event of Default, subsection IX.a.4).

d. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section X. shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control to have prevented or avoided, the Council may pursue any or all of the remedies provided in Section X. or otherwise at law or in equity. The remedies of the City created under this Agreement shall be cumulative of other remedies under the Agreement, at law or in equity to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Agreement shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default.

e. Curable Violations.

The Franchisee shall not be found in violation of this Agreement or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee; provided, that the Franchisee has made reasonably diligent efforts to have prevented or avoided the violation, or the violation occurs as a result of circumstances beyond Franchisee's control or its ability to have prevented or avoided, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship, or election of actions based on, or for the purpose of realizing economic benefit or advantage; nor by the negligence or misfeasance or malfeasance of its directors, officers, principals, employees, agents, representatives, contractors or subcontractors.

SECTION XI. RECORDKEEPING AND AUDIT

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations in the Authorized Area under and in connection with this Agreement in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates within the scope of this Agreement during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Agreement. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law. To the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this

Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Reports.

If the Franchisee is a publicly traded company, the Franchisee shall file with the City by the end of each calendar year a copy of its certified financial statements filed with the Security and Exchange Commission, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City for inspection upon request.

d. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Agreement. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION XII. MISCELLANEOUS

a. Entire Agreement.

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Agreement. This Agreement can only be modified by an Agreement amendment approved by Council.

b. Notices.

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by any of the means described in subsection XII.d. of this Agreement. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to:

City of El Paso, Environmental Services Department
Attention: Director
7968 San Paulo
El Paso, Texas 79907

And:

City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

If to the Franchisee:

LORETTO INVESTMENT CORPORATION
Attn: John Pinkerton
6161 Doniphan Drive
El Paso, Texas 79932

c. Notice of Claim.

This Agreement is subject to the provisions of Section 1.5 of the El Paso City Charter, as amended, relating to requirements for filing a notice of a claim against the City. Section 1.5 of the El Paso City Charter, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Franchisee shall comply with the requirements of Section 1.5 as a precondition of any claim against the City relating to or arising out of this Agreement.

d. Delivery of Notices.

Notices required to be given under this Agreement may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.
2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.
3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.
4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement transmission as a recipient shall request) and with a hard copy on the same date or the next day mailed to all by first class mail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Agreement or the services or facilities of the

Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Agreement, acknowledges that it has not been induced to accept this Agreement by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Agreement. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Agreement.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Agreement.

k. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by the EL PASO CITY CODE, and any other applicable laws and regulations. If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable and neither the remainder hereof nor the application of such provision to other persons, entities, or circumstances or other instruments shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law. To the extent that any party's performance under this contract becomes impossible or illegal as a result of future and unknown regulations not contemplated by the parties, and the parties are not able to modify the terms of this Agreement as contemplated above, then the

parties shall be excused from further performance under those portions of this Agreement, and such offending portions shall be severed and excluded from this Agreement.

l. City Retained Powers.

In addition to all rights provided in this Agreement, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City Agreements which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Agreement which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Agreement and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Agreement.

n. Time is of the Essence.

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Agreement.

o. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term “force majeure” shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Agreement, Franchisee shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

p. Recognition of Rights.

The Franchisee agrees that by adopting this Agreement, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Agreement in whole or in part upon the Franchisee.

q. Police Powers.

1. In accepting this Agreement, the Franchisee acknowledges that its rights under this Agreement are subject to the police power of the City to adopt and enforce general Agreements necessary to the health, safety, and welfare of the public. Except as otherwise agreed to by the parties or exempted by a City ordinance, Franchisee shall comply with all applicable general laws and Agreements enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other

present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Agreement as convenient and necessary to promote the public's interest.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

r. No Presumption of Renewal

This Agreement and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

s. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the El Paso City Charter. Any request by the Franchisee for an amendment to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

t. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

u. This Agreement may be amended, revised or modified only by a written instrument, executed by the parties hereto.

v. The headings, captions and arrangements contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. If the context required, words used in the singular shall be read as including the plural and vice versa, and pronouns of any gender shall include all genders. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, paragraph, subparagraph, section or article.

w. This Agreement is executed for the sole benefit of parties hereto and is not for the benefit of any third party. No other party will have rights under this Agreement.

x. Authorization. Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective entity.

y. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

z. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

aa. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an attachment or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of El Paso, EL PASO CITY CODE, and the ordinance granting this Agreement and all exhibits thereto.

bb. No discrimination. Franchisee, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of this contract, or be otherwise subjected to discrimination in the execution of this contract.

2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in or denied the benefits of said services, or otherwise be subjected to discrimination.

3. If applicable, Franchisee shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. If applicable, Franchisee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

4. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

List of Attachments:

Attachment “1” – Insurance Requirements

Attachment “2” – Schedule of Ownership

STATE OF TEXAS)
)
COUNTY OF EL PASO)

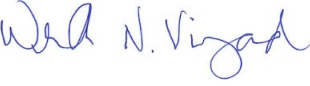
SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and LORETTO INVESTMENT CORPORATION.

THE CITY OF EL PASO:

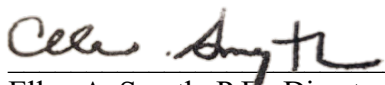
Tomás González
City Manager

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

STATE OF TEXAS)
)
COUNTY OF EL PASO) **SOLID WASTE FRANCHISE AGREEMENT**

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and LORETTO INVESTMENT CORPORATION.

LORETTO INVESTMENT CORPORATION:

By: _____
John Pinkerton, President

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared John Pinkerton, as president of LORETTO INVESTMENT CORPORATION, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me and that he executed the same as the act of LORETTO INVESTMENT CORPORATION for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ___ day of _____, 2022.

Notary Public
State of _____

SEAL

ATTACHMENT "1"

INSURANCE REQUIREMENTS

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE:

For the duration of this Agreement and any extension hereof, Franchisee shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

2. WORKERS' COMPENSATION

For the duration of this Agreement and any extension hereof, Franchisee shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law:

\$500,000.00

3. AUTOMOBILE LIABILITY INSURANCE

Minimum \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.

ATTACHMENT “2”

SCHEDULE OF OWNERSHIP

Franchisee Name: LORETTO INVESTMENT CORPORATION
Legal Entity: LORETTO INVESTMENT CORPORATION

Identity of Owners:
(Identify each partner, member, shareholder, or other owner. For each owner identified identify the individual ownership interest, to include total number of shares owned.)

John Pinkerton (100%)



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-45, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting a renewal of non-exclusive franchise to Moore Service, Inc., to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBGOAL:

SUBJECT:

An ordinance granting a renewal of non-exclusive franchise to Moore Service, Inc., to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in section 9.04.630 of the El Paso city code.

BACKGROUND / DISCUSSION:

A franchise is required for solid waste collection haulers that are permitted by the Environmental Services Department. This agreement between the franchisee and City identifies standards to be maintained for the operation of solid waste collection services.

PRIOR COUNCIL ACTION:

Non-exclusive franchises for solid waste collection services are routinely approved by Council.

AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Environmental Services Department

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWAL OF NON-EXCLUSIVE FRANCHISE TO MOORE SERVICE, INC. , TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by ordinance passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the State of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, the attached franchise agreement is a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City of El Paso requires in City Code Section 9.04, that all haulers of municipal solid waste are required to enter into a franchise agreement with the City; and

WHEREAS, MOORE SERVICE, INC. is engaged in the business of collection and transportation of solid waste within the City and has requested a franchise to use the City's rights-of-way; and,

WHEREAS, MOORE SERVICE, INC. has agreed to the terms of the Solid Waste Franchise Agreement with the City of El Paso, granting MOORE SERVICE, INC. a non-exclusive franchise to operate and maintain a solid waste collection service using the City's rights-of-way; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

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

1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.
2. The City Manager is authorized to sign a renewal of non-exclusive Solid Waste Franchise Agreement by and between the City of El Paso MOORE SERVICE, INC. for the franchisee to operate and maintain a Solid Waste Collection Service, in, over, along and across the Public Rights-of-Way in the Authorized Area, to end on December 31, 2026, as set forth and defined in the document labeled Exhibit "A", attached and incorporated by reference for all purposes.

3. All ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

4. The City Manager or authorized agent is authorized to extend this agreement for an additional five years at the end of the date of the contract.

5. This ordinance shall take effect on January 1, 2022.

PASSED AND APPROVED this ____ day of ____, 2022.


CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

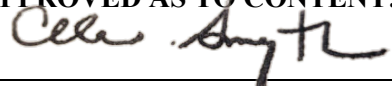
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 6th day of January, 2022.

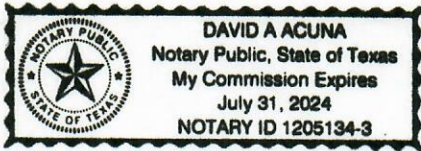
MOORE SERVICE, INC.

[Signature]
By: Ronald A. Smith, Vice-President

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 6th day of January, 2022, by Ronald A. Smith, Vice President of Moore Service, Inc.



[Signature]
Notary Public, State of Texas
Notary's Printed or Typed Name:
David A. Acuña

My Commission Expires:
07-31-2024

EXHIBIT “A”

**SOLID WASTE
FRANCHISE AGREEMENT**

**BY AND BETWEEN
CITY OF EL PASO, TEXAS
AND
MOORE SERVICE, INC.**

EFFECTIVE DATE: January 1, 2022

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SECTION VII.	Term, Termination and Performance Evaluation
SECTION VIII.	Transfers of Ownership and Control
SECTION IX.	Default
SECTION X.	Remedies
SECTION XI.	Recordkeeping and audit
SECTION XII.	Miscellaneous

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

THIS Solid Waste Franchise Agreement (“Agreement”) effective January 1, 2022 is entered into this ____ day of _____, 2022, by and between the CITY OF EL PASO, a Texas home rule municipality, hereinafter referred to as the "CITY", and MOORE SERVICE, INC., hereinafter referred to as “Franchisee”.

RECITALS

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by Agreement passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the state of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, this franchise agreement is a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City desires to exercise the authority provided to it by ordinance, charter and state law to grant a franchise for the collection, transportation, hauling and disposal of Solid Waste as further defined herein, within the corporate limits of the City and under the terms of this Agreement as set out below; and,

WHEREAS, Franchisee desires to obtain a franchise to provide for the collection, transportation, hauling and disposal of Solid Waste from the City of El Paso, and agrees to comply with the terms and conditions of this Agreement; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Agreement are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

WITNESSETH:

SECTION I. PREAMBLE

That the declarations contained in the preamble to this Agreement are material and incorporated herein as a part of this Agreement as though they were fully set forth in this Agreement in their entirety.

SECTION II. DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word “shall” is mandatory and not merely directory. The word “may” is not mandatory and is merely permissive. The word “day” means a calendar day and not a business day. Words defined elsewhere in this Agreement shall be accorded that meaning throughout this Agreement. Words not defined shall be given their common and ordinary meaning.

a. **Affiliate** and **Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.

b. **Agreement** shall mean this document.

c. **Authorized Area** means the entire area within the corporate limits of the City of El Paso, including any territory annexed into the City limits after the Effective Date of this Agreement.

d. **City** means the City of El Paso, a home rule municipal corporation, a political subdivision of the State of Texas.

e. **City Charter** means the City’s organic law, equivalent to a constitution, which defines the City’s existence and prescribes the powers, duties, and organization of the City’s governmental structure.

f. **City Code** shall mean the ordinances of the City codified into the EL PASO CITY CODE, as amended from time to time.

g. **City Manager** shall mean the City Manager or the City Manager’s designated representative.

h. **Container** shall mean any receptacle for waste as defined by Title 9.04 to include Dumpsters, Containers, Carts, Roll-Offs and Compactors.

i. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

j. **Council** shall mean the governing body of the City of El Paso. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. Unless otherwise stated in this Agreement or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Agreement and to the Franchisee's exercise of the rights and privileges conferred in this Agreement.

k. **Director** means the Director of the Environmental Services Department of the City, or any successor department, or any Director as designated by the City Manager, or the Director's designated representative.

l. **Effective Date** means January 1, 2022.

m. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Rights-of-Way under this Agreement, and all of the incidental rights and obligations as described by this Agreement.

n. **Franchisee** shall mean MOORE SERVICE, INC. hereinafter referred to as "Franchisee", the grantee of rights under this Agreement; or the successor, transferee, or assignee of this Agreement, including the officers, employees, agents, contractors, and subcontractors.

o. **Junk Removal Service** shall mean the collection and transportation of solid waste generated from a Property Clean-up Event by a Self-Transporter or Permitted Hauler, as defined within Chapter 9.04 of the El Paso City Code, when the waste is placed directly into a vehicle or trailer attached to a vehicle, or when a container placed at a property is removed within seven days.

p. **Property Clean-up Event** shall mean the removal of Solid Waste from the interior of a building or premises of a property for the purpose of abating a nuisance, resolving a violation of the El Paso City Code, or removing unsanitary or slightly debris or waste, when the duration of the event does not exceed seven days.

q. **Public Rights-of-Way** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated and accepted by the City as a public right-of-way. "Public Rights-of-Way" shall not include property of the City which is not a

dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated or accepted by the City as a public right-of-way.

r. **Solid Waste Collection Service** shall mean the collection and transportation of Solid Waste, not including a Junk Removal Service, as that term is defined herein within the Authorized Area, from a dumpster, roll-off container, or other container larger than two cubic yards in volume, or from a container less than two cubic yards in volume when providing service to more than four customers, for processing or disposal at an Authorized Municipal Solid Waste Facility as defined in Chapter 9.04 of the El Paso City Code or as may be subsequently amended from time to time.

s. **Solid Waste** shall mean that term as defined in Title 30 of the Texas Administrative Code § 330.3, or as may subsequently be amended from time to time, excluding Excluded Waste as defined in section 9.04.020 of the City Code, as may subsequently be amended from time to time. Solid Waste does not include any municipal solid waste and program recyclable materials generated at residential properties in which the City is the exclusive hauler as set forth in chapter 9.04 (Solid Waste Management) of the City Code.

SECTION III. GRANTING OF FRANCHISE

Subject to all the terms and conditions contained in this Agreement, the Constitution of the United States of America or of the State of Texas, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal or state law, the City hereby grants the Franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Rights-of-Way in the Authorized Area. This grant is subject to the following additional conditions:

a. **Non-Exclusive.**

Nothing herein contained shall be construed as granting an exclusive use or right to the Franchisee to the Public Rights-of-Way, and the City may grant an additional franchise, lease or special privilege to any other applicant in its discretion for the same Public Rights-of-Way described herein. The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Agreement.

b. **Authorized Municipal Solid Waste Facility.**

Franchisee shall deposit all Solid Waste only at an Authorized Municipal Solid Waste Facility in accordance with the City Code, as may be amended from time to time.

c. **Other Services.**

By granting this Agreement, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

d. No Priority.

This Agreement does not establish any priority for the use of the Public Rights-of-Way by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

e. City's Use of Public Rights-of-Way.

The Franchisee acknowledges that by this Agreement it obtains no rights to use or further use of the Public Rights-of-Way other than those expressly granted in this Agreement. The City reserves the right to use the surface or subsurface or airspace above the Public Rights-of-Way covered by this Agreement for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Rights-of-Way. Further the City expressly reserves the right to install, repair, or reconstruct the Public Rights-of-Way used or occupied by Franchisee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, including but not limited to, drainage and utility facilities and structures.

The Franchisee acknowledges and accepts at its own risk, that the City may make use in the future of the Public Rights-of-Way as described above or as otherwise permitted by law, in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Rights-of-Way for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation or further remedy from the City unless compensation is available to all users of the Public Rights-of-Way which are affected in a similar manner.

f. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee or close or otherwise restrict the use of Public Rights-of-Way in the event of a public emergency or calamity as determined in the City's sole discretion. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee.

g. Compliance with Law and Standards of Operation.

The parties shall be subject to and comply with the Constitutions of the United States of America and the State of Texas, all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Agreement does not relieve the Franchisee of, and the Franchisee shall comply with, any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Agreement shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person, entity or individual. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

SECTION IV. SERVICE REQUIREMENTS

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all Solid Waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, expressly excluding services for which the City is the exclusive hauler as defined in Chapter 9.04 of the City Code. The Franchisee shall, at its own expense, furnish personnel and equipment to collect Solid Waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner, maintain a valid, current Hauler Permit issued by the City of El Paso, and shall comply with all requirements of the City Code, including but not limited to Chapter 9.04 of the City Code.

b. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Rights-of-Way and other facilities that are damaged as a result of the negligence, willful misconduct, or intentional acts of the Franchisee during the Franchisee's operations pursuant to this Agreement.

c. The Franchisee will comply with all rules, regulations, laws and agreements pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction.

d. Waste Containers

1. Graffiti.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the Container, as defined in Chapter 9.04 of the City Code or as amended from time to time, free from graffiti. Franchisee's Containers may display the name, address and/or phone number of

the Franchisee, identification numbering or lettering assigned by the Franchisee, and any warnings, notices or instructions posted by Franchisee. If Franchisee's customers do not remove graffiti from the Franchisee's Containers, then Franchisee shall remove the graffiti and may bill its customer for the cost or replace the Container at the customer's expense.

If, after five days notice from the Director, the Franchisee or its customer has not removed the graffiti or replaced the Containers, then the City may cover or remove the graffiti or the Container.

2. Over-Capacity.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the area around the Container clean and free of rubbish, litter, Solid Waste, garbage, recyclables, or other unsightly material, regardless of the cause of the placement of the rubbish, litter, Solid Waste, garbage or recyclables around the Container. Franchisee shall monitor its customer's use of their Containers and ensure that the customer is not overfilling the Container beyond the acceptable capacity of the Container.

If the City observes that the lid of a Container is not securely closed as a result of overfilling the Container, or rubbish, Solid Waste, garbage, recyclables or unsightly material of any kind has accumulated or is being stored outside the Container, or is visible above the top level of the Container, then the City may: (1) notify the Franchisee or the customer of the violation and require immediate removal of the rubbish, Solid Waste, garbage, recyclables or unsightly materials; or (2) may remove the rubbish, Solid Waste, garbage, recyclables or unsightly materials and bill the Franchisee for its actual expense in cleaning the site around the Container.

If the City observes and records three or more instances of a violation of this section or violations of the City's ordinances by the Franchisee's customer, then it shall notify the Franchisee and the Franchisee shall require the customer to contract for additional Solid Waste services, additional Containers or a larger Container sufficient to satisfy its Solid Waste and recyclables needs, or take other steps to ensure compliance with the City's ordinances. Compliance with the provisions of this section by a Franchisee customer shall not waive the City's right to seek all remedies available under the law or this Agreement whether against the Franchisee or the Franchisee's customer.

3. Franchisee shall affix a label to each Container supplied to its customers that reads "NO SCAVENGING/KEEP LIDS CLOSED." For roll-off Containers which are not equipped with lids, only "NO SCAVENGING" shall be required on the label. Label may be in the form of a decal or paint; letters shall be capitalized and either black or white in color, whichever more contrasts the paint color of the Container. The label may consist of either one or two lines, and should be clearly visible from a distance of 20 feet.

SECTION V. INDEMNITY AND INSURANCE

a. INDEMNIFICATION OF CITY.

1. THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS, CONTRACTORS AND SUBCONTRACTORS (HEREINAFTER REFERRED TO COLLECTIVELY AS “INDEMNITEES”), FROM AND AGAINST:

(A) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OR FOR HARM SUFFERED OR ALLEGED TO HAVE BEEN SUFFERED BY ANY PERSON OR PERSONS (INCLUDING THIRD PARTIES, WHETHER INDIVIDUALS OR ENTITIES), THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE AGREEMENT, (ii) BY ANY ACT OR OMISSION CONSTITUTING NEGLIGENCE, GROSS NEGLIGENCE OR OTHER FAULT OF FRANCHISEE, ITS OFFICERS, DIRECTORS, PARTNERS, OWNERS OR OTHER PRINCIPALS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, OR FOR WHICH THE FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS (ALL COLLECTIVELY “FRANCHISEE PERSONS”), OR (iii) FOR WHICH THE FRANCHISEE OR FRANCHISEE PERSONS MAY BE STRICTLY LIABLE, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; AND

(B) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, FEES, PENALTIES OR OTHER ASSESSMENTS, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES THAT MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR SUFFERED BY ANY INDEMNITEES ARISING FROM OR RELATED TO ANY VIOLATION BY FRANCHISEE OR ANY FRANCHISEE PERSON OF ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE, OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE OR ANY FRANCHISEE PERSON, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER

WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION, INCLUDING ANY AND ALL COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT AGAINST THE CITY OR ANY OTHER INDEMNITEE RELATED TO ANY SUCH CLAIM.

2. FRANCHISEE'S OBLIGATION TO INDEMNIFY INCLUDES INDEMNIFICATION FOR ANY ATTORNEY'S FEES, COSTS OF COURT OR EXPENSES OF ANY THIRD PARTY ASSESSED AGAINST THE CITY OR ANY OTHER INDEMNITEE; AND ANY ATTORNEY'S FEES, COSTS AND EXPENSES OF DEFENSE OR SETTLEMENT OR ATTEMPTED SETTLEMENT (INCLUDING BUT NOT LIMITED TO INFORMAL SETTLEMENT DISCUSSIONS, MEDIATION, ARBITRATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS) BY THE CITY OR ANY OTHER INDEMNITEES.

3. FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO ALL CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH FOR WHICH ONE OR MORE INDEMNITEES MAY BE CONTRIBUTORILY LIABLE, PROVIDED, HOWEVER, THAT ANY INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW; AND PROVIDED, FURTHER, THAT THIS APPLICATION OF PROPORTIONATE RESPONSIBILITY IS NOT A WAIVER OF ANY GOVERNMENTAL IMMUNITY FOR SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS LAW, AND FURTHER DOES NOT CONSTITUTE A WAIVER OF ANY OTHER DEFENSES AVAILABLE TO EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW.

4. FRANCHISEE'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY JUDGMENT OF LIABILITY AGAINST THE CITY RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

5. THIS SUBSECTION V.A. DOES NOT, AND SHALL NOT, BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO THE CITY OR ANY INDEMNITEE UNDER TEXAS OR FEDERAL LAW, INCLUDING ANY INDIVIDUAL ABSOLUTE OR QUALIFIED IMMUNITY. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE OTHER INDEMNITEES AND THE FRANCHISEE, AND ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. FRANCHISEE'S ASSUMPTION OF RISK.

1. FRANCHISEE UNDERTAKES AND ASSUMES ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CONTROLLED PROPERTY, INCLUDING THE PUBLIC RIGHTS-OF-WAY.

2. FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND INDEMNITEES FROM AND AGAINST ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, AGREEMENT OR REGULATION.

c. Survival. **THE INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS SECTION V. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY ACTION, CLAIM, LAWSUIT OR OTHER PROCEEDING, OR JUDGMENT ARISING FROM EVENTS OCCURING DURING THE TERM OF THIS AGREEMENT.**

d. Defense of City and other Indemnitees.

In the event any action or proceeding shall be brought against any Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, and at the Franchisee's sole cost and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld. The Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's and other Indemnitees' written consent. Further, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified herein without the prior written consent of the Franchisee.

e. Expenses of Defense; Participation by Indemnitees.

The Indemnitees shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section V. Nothing herein shall prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in their defense, provided that the participation has been requested or required by the Franchisee in conducting the defense of the action, suit, or other proceeding. These covered expenses include reasonable attorney's fees and expenses, out-of-pocket expenses reasonably and necessarily incurred, the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed or incurred by the Indemnitees in connection with such suits, actions or proceedings. Covered expenses shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by the Franchisee.

f. Insurance Required.

Not later than the Effective Date, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Attachment “1”, attached to and made a part of this Agreement. The insurance shall be written by a company(ies) approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The City shall be named a beneficiary and co-insured of such policy(ies). Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee.

THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the City Council approves this Agreement, then this Agreement shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of current continuous insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on at least an annual basis, no later than the anniversary date of this Agreement; and the Director shall have the right to request evidence of current insurance at any time. If the Franchisee fails to maintain insurance as required by this subsection, then the Franchisee shall forfeit any rights to contribution as defined in subsection V.a.3 above, and Franchisee shall be solely liable *in toto* for any judgment, award, claim or demand arising from the Franchisee’s operation of a Solid Waste Collection Service, whether the City or any other Indemnitee is or may be contributorily liable under applicable law or not.

g. Adjustments to Insurance Requirements.

The Director reserves the right to review the insurance requirements stated herein during the term of this Agreement and to recommend to the City Council reasonable adjustments in the insurance requirements prior to any anniversary renewal of the insurance when deemed necessary or prudent by the City. Any adjustments recommended and approved by the City Council may be based upon changes in statutory law, applicable court decisions, the claims history of the industry as well as of the Franchisee, or a commercially reasonable determination by the City that existing coverage is inadequate for the risks associated with the services to be provided hereunder. When any insurance coverage limits are changed, the Franchisee shall pay any resulting increase in cost due to the changes. If Franchisee does not agree to an increase in coverage recommended by the City and approved by Council, the City may opt to pay the difference in premium that would be required for such increased coverage; but if the City declines to do so, the City shall have the right to terminate this Agreement as of the end of the current insurance term, or at the next contract year anniversary, whichever is sooner.

h. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability

for indemnity, damages and accidents as set forth in the Agreement. The bankruptcy, insolvency, receivership or denial of liability by any insurer of Franchisee shall not excuse the Franchisee from the responsibility for indemnity, liability of, or damages payable by the Franchisee as provided in this Agreement.

SECTION VI. FEES, PAYMENTS AND COMPENSATION.

a. Consideration.

Council finds and determines that Franchisee has incurred, or will incur, significant costs to upgrade its facilities as costs associated with performance under this Franchise Agreement. Council finds that such expenditures as well as the promises contained in this Franchise Agreement are satisfactory consideration to support this Agreement.

b. Additional Consideration.

Upon notice from the City, Franchisee shall provide Solid Waste removal, collection, and transport, services to the City following natural disasters or Acts of God. The term “Acts of God” as used herein, shall include, but not be limited to, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability. Franchisee understands that it is not guaranteed to receive compensation for these services. Council and the Franchisee agree that this obligation to provide emergency services without a guarantee of compensation constitutes part of the consideration offered by the Franchisee to support this Franchise Agreement.

c. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due or owed under this Agreement or of any other obligation of the Franchisee.

SECTION VII. TERM, TERMINATION AND PERFORMANCE EVALUATION

a. Term and Extensions.

This Agreement shall be effective as of the Effective Date, and, unless it is terminated earlier pursuant to its terms, shall continue in effect until December 31, 2026, with the possibility for one two-year extension as mutually agreed to by the City and the Franchisee. Franchisee shall give ninety (90) days written notice to the City prior to the expiration of the term to request an extension. The City in its sole discretion may decide to approve or decline the extension, or request an amendment of this Agreement prior to such extension.

b. Termination.

1. Right to Terminate

This Agreement may be terminated by either party, for cause or convenience, by providing ninety (90) days’ written notice to the non-terminating party. Notwithstanding the foregoing, the City may terminate this Agreement if the City determines in its sole discretion termination is necessary to secure the efficiency of public service at a reasonable rate, to assure the Public Rights-of-Way are maintained

in good order throughout the term of this Agreement, or termination is in the public interest when Franchisee is utilizing the Public Rights-of-Way in a manner the City deems is inconsistent with the public use of the City's Public Rights-of-Way without providing prior notice to the Franchisee. If the City chooses to act pursuant to this authority it shall notify the Franchisee of its decision within three days of the termination of this Agreement.

2. Rights Upon Termination.

Subject to applicable law, or as specifically provided for otherwise in this Agreement, this Agreement and all rights, permissions, and privileges of the parties defined in this Agreement shall automatically cease upon the termination of this Agreement, unless such rights are extended by mutual agreement of the parties, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

In the event the Franchisee continues use of the Public Rights-of-Way after the expiration or termination of this Agreement the City may utilize any means available in law or in equity to prevent violations of the EL PASO CITY CODE or this Agreement. Franchisee shall be responsible for all attorney's fees and court costs incurred as a result of any action taken by the City pursuant to this paragraph.

c. Performance Evaluation.

In order to: (i) assure that the Franchisee is complying with the terms of this Agreement, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation during the term of the Agreement in accordance with the following process:

1. At least sixty (60) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(ii) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within thirty (30) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, a minimum, the following areas:

- (i) documentation that all of Franchisee's vehicles used in accordance with this agreement have been properly inspected for compliance with safety and air emission standards in the vehicles' state of registration, and documentation related to local government requirements for the permitting of vehicles for the hauling of Solid Waste;
- (ii) any other topic deemed material or relevant by the City for its enforcement of this Agreement.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information collected from the Effective Date, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than twenty-four (24) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than twenty (20) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

SECTION VIII. TRANSFERS OF OWNERSHIP AND CONTROL

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates identified herein, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, this Agreement or the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Assignee: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee and its Affiliates shall request approval from Council in writing and shall provide the Council with the Assignee's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

2. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs. If the Franchisee cannot provide at least sixty (60) days notice before a transfer solely for

security purposes, then Franchisee must notify the Director in writing of such a transfer at the earliest possible date after becoming aware of such transfer.

3. The Franchisee may not transfer or assign this Agreement to an Affiliate not identified herein, without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee shall request approval from Council in writing and shall provide the Council with the Affiliate's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

b. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Attachment "2", attached to and made a part of this Agreement, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Agreement.

SECTION IX. DEFAULT

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Agreement shall constitute an Event of Default by the Franchisee under this Agreement:

1. The failure or refusal by the Franchisee to pay consideration when due as prescribed by this Agreement.

2. The Franchisee's material violation of or failure to comply with any provision or condition of chapter 9.04 of the City Code relating to Solid Waste collection service or any other applicable provision or condition of the City Code.

3. The suspension or revocation of the Franchisee's Hauler Permit.

4. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Agreement, or the Franchisee's failure or refusal to perform any obligation contained in this Agreement.

5. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real property taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

6. The entry of any judgment against the Franchisee by which another party becomes entitled to possession of any of the Franchisee's Solid Waste Collection Service's assets, and for which transfer of these assets requires prior consent of the

Council, and such judgment is not stayed pending rehearing or appeal following entry of the judgment for a period of forty-five (45) or more days.

7. The dissolution of the Franchisee.

8. The Franchisee's filing of a voluntary petition in bankruptcy; the filing of an involuntary petition in bankruptcy against the Franchisee; an adjudication finding the Franchisee insolvent; the Franchisee's obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of the Franchisee, or any of Franchisee's property or this Agreement or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Agreement.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Agreement.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Agreement.

12. The Franchisee's failure or refusal to comply with a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section X. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section X, unless the Director, the City Manager, or the Council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section X.

SECTION X. REMEDIES

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section IX., the Director shall report the occurrence of default to the City Manager and the Council. The Council shall be entitled in its sole discretion to exercise any or all of the following remedies, which shall be cumulative:

1. Exercise its rights to liquidated damages as described in subsection c. of this Section X.
2. Commence an action at law against the Franchisee for monetary damages.
3. Commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable, or other equitable relief.
4. Revoke the Franchise granted under this Agreement.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Agreement. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Agreement shall be automatically terminated and deemed null and void and shall have no further force or effect, and the provisions that are contractual in nature which are also included as a part of this Agreement are hereby automatically terminated, other than provisions that expressly are continued after termination or which impose obligations or rights of a kind that are intended and appropriate to be continued beyond termination, such as but not limited to Franchisee's obligations to defend and indemnify.

Upon revocation, the City shall retain any portion of the consideration and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered or decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. The Council reserves the right, in its sole discretion, to seek liquidated damages or to pursue other remedies as provided in this Section X, or allowed in law or equity in addition to revocation.

c. Liquidated Damages.

In addition to the other remedies provided for in this Section X., other remedies provided in this Agreement and remedies available at law or in equity, in the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Agreement, the Franchisee shall pay Two Hundred Dollars (\$200.00) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted. This subsection X.c. does not apply to the failure or refusal by the Franchisee to pay the Franchise Fee or other consideration when it becomes due (Event of

Default, subsection IX.a.1.) or the failure or the refusal to pay or cause to be paid any of the City's governmentally imposed taxes (Event of Default, subsection IX.a.4).

d. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section X. shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control to have prevented or avoided, the Council may pursue any or all of the remedies provided in Section X. or otherwise at law or in equity. The remedies of the City created under this Agreement shall be cumulative of other remedies under the Agreement, at law or in equity to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Agreement shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default.

e. Curable Violations.

The Franchisee shall not be found in violation of this Agreement or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee; provided, that the Franchisee has made reasonably diligent efforts to have prevented or avoided the violation, or the violation occurs as a result of circumstances beyond Franchisee's control or its ability to have prevented or avoided, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship, or election of actions based on, or for the purpose of realizing economic benefit or advantage; nor by the negligence or misfeasance or malfeasance of its directors, officers, principals, employees, agents, representatives, contractors or subcontractors.

SECTION XI. RECORDKEEPING AND AUDIT

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations in the Authorized Area under and in connection with this Agreement in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates within the scope of this Agreement during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Agreement. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law. To the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this

Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Reports.

If the Franchisee is a publicly traded company, the Franchisee shall file with the City by the end of each calendar year a copy of its certified financial statements filed with the Security and Exchange Commission, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City for inspection upon request.

d. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Agreement. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION XII. MISCELLANEOUS

a. Entire Agreement.

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Agreement. This Agreement can only be modified by an Agreement amendment approved by Council.

b. Notices.

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by any of the means described in subsection XII.d. of this Agreement. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to:

City of El Paso, Environmental Services Department
Attention: Director
7968 San Paulo
El Paso, Texas 79907

And:

City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

If to the Franchisee:

MOORE SERVICE, INC.
Attn: Ronald A. Smith, Vice-President
P.O. Box 370187
El Paso, Texas 79937

c. Notice of Claim.

This Agreement is subject to the provisions of Section 1.5 of the El Paso City Charter, as amended, relating to requirements for filing a notice of a claim against the City. Section 1.5 of the El Paso City Charter, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Franchisee shall comply with the requirements of Section 1.5 as a precondition of any claim against the City relating to or arising out of this Agreement.

d. Delivery of Notices.

Notices required to be given under this Agreement may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.
2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.
3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.
4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement transmission as a recipient shall request) and with a hard copy on the same date or the next day mailed to all by first class mail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Agreement or the services or facilities of the

Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Agreement, acknowledges that it has not been induced to accept this Agreement by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Agreement. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Agreement.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Agreement.

k. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by the EL PASO CITY CODE, and any other applicable laws and regulations. If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable and neither the remainder hereof nor the application of such provision to other persons, entities, or circumstances or other instruments shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law. To the extent that any party's performance under this contract becomes impossible or illegal as a result of future and unknown regulations not contemplated by the parties, and the parties are not able to modify the terms of this Agreement as contemplated above, then the

parties shall be excused from further performance under those portions of this Agreement, and such offending portions shall be severed and excluded from this Agreement.

l. City Retained Powers.

In addition to all rights provided in this Agreement, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City Agreements which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Agreement which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Agreement and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Agreement.

n. Time is of the Essence.

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Agreement.

o. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term “force majeure” shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Agreement, Franchisee shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

p. Recognition of Rights.

The Franchisee agrees that by adopting this Agreement, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Agreement in whole or in part upon the Franchisee.

q. Police Powers.

1. In accepting this Agreement, the Franchisee acknowledges that its rights under this Agreement are subject to the police power of the City to adopt and enforce general Agreements necessary to the health, safety, and welfare of the public. Except as otherwise agreed to by the parties or exempted by a City ordinance, Franchisee shall comply with all applicable general laws and Agreements enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other

present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Agreement as convenient and necessary to promote the public's interest.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

r. No Presumption of Renewal

This Agreement and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

s. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the El Paso City Charter. Any request by the Franchisee for an amendment to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

t. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

u. This Agreement may be amended, revised or modified only by a written instrument, executed by the parties hereto.

v. The headings, captions and arrangements contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. If the context required, words used in the singular shall be read as including the plural and vice versa, and pronouns of any gender shall include all genders. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, paragraph, subparagraph, section or article.

w. This Agreement is executed for the sole benefit of parties hereto and is not for the benefit of any third party. No other party will have rights under this Agreement.

x. Authorization. Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective entity.

y. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

z. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

aa. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an attachment or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of El Paso, EL PASO CITY CODE, and the ordinance granting this Agreement and all exhibits thereto.

bb. No discrimination. Franchisee, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of this contract, or be otherwise subjected to discrimination in the execution of this contract.

2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in or denied the benefits of said services, or otherwise be subjected to discrimination.

3. If applicable, Franchisee shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. If applicable, Franchisee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

4. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

List of Attachments:

Attachment “1” – Insurance Requirements

Attachment “2” – Schedule of Ownership

STATE OF TEXAS)
)
COUNTY OF EL PASO)

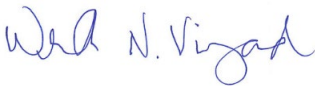
SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and MOORE SERVICE, INC. .

THE CITY OF EL PASO:


Tomás González
City Manager

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



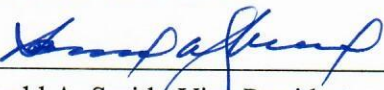
Ellen A. Smyth, P.E., Director
Department of Environmental Services

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and MOORE SERVICE, INC. .

MOORE SERVICE, INC. :


By: 
Ronald A. Smith, Vice-President

ACKNOWLEDGMENT

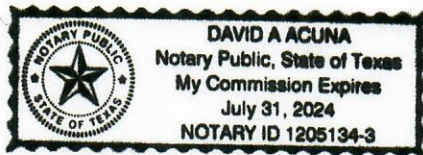
STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Ronald A. Smith as Vice-President of MOORE SERVICE, INC., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me and that he executed the same as the act of MOORE SERVICE, INC. for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 6th day of January, 2022.


Notary Public
State of Texas

SEAL



ATTACHMENT "1"

INSURANCE REQUIREMENTS

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE:

For the duration of this Agreement and any extension hereof, Franchisee shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

2. WORKERS' COMPENSATION

For the duration of this Agreement and any extension hereof, Franchisee shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law:

\$500,000.00

3. AUTOMOBILE LIABILITY INSURANCE

Minimum \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.

ATTACHMENT “2”

SCHEDULE OF OWNERSHIP

Franchisee Name: MOORE SERVICE, INC.
Legal Entity: MOORE SERVICE, INC.

Identity of Owners:
(Identify each partner,
member, shareholder,
or other owner. For each
owner identified identify
the individual ownership
interest, to include total
number of shares owned.)

Opal R. Smith (100%)



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-46, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting a renewal of non-exclusive franchise to Sandoval Capital Inc. DBA Bronco Disposal, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBGOAL:

SUBJECT:

An ordinance granting a renewal of non-exclusive franchise to Sandoval Capital Inc. DBA Bronco Disposal, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in section 9.04.630 of the El Paso city code.

BACKGROUND / DISCUSSION:

A franchise is required for solid waste collection haulers that are permitted by the Environmental Services Department. This agreement between the franchisee and City identifies standards to be maintained for the operation of solid waste collection services.

PRIOR COUNCIL ACTION:

Non-exclusive franchises for solid waste collection services are routinely approved by Council.

AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Environmental Services Department

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWAL OF NON-EXCLUSIVE FRANCHISE TO SANDOVAL CAPITAL INC. DBA BRONCO DISPOSAL, TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by ordinance passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the State of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, the attached franchise agreement is a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City of El Paso requires in City Code Section 9.04, that all haulers of municipal solid waste are required to enter into a franchise agreement with the City; and

WHEREAS, SANDOVAL CAPITAL INC. DBA BRONCO DISPOSAL is engaged in the business of collection and transportation of solid waste within the City and has requested a franchise to use the City's rights-of-way; and,

WHEREAS, SANDOVAL CAPITAL INC. DBA BRONCO DISPOSAL has agreed to the terms of the Solid Waste Franchise Agreement with the City of El Paso, granting SANDOVAL CAPITAL INC. DBA BRONCO DISPOSAL a non-exclusive franchise to operate and maintain a solid waste collection service using the City's rights-of-way; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

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

1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.
2. The City Manager is authorized to sign a renewal of non-exclusive Solid Waste Franchise Agreement by and between the City of El Paso SANDOVAL CAPITAL INC. DBA BRONCO DISPOSAL for the franchisee to operate and maintain a Solid Waste Collection Service, in, over, along and across the

Public Rights-of-Way in the Authorized Area, to end on December 31, 2026, as set forth and defined in the document labeled Exhibit "A", attached and incorporated by reference for all purposes.

3. All ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

4. The City Manager or authorized agent is authorized to extend this agreement for an additional five years at the end of the date of the contract.

5. This ordinance shall take effect on January 1, 2022.

PASSED AND APPROVED this ____ day of ____, 2022.


CITY OF EL PASO:

Oscar Leoser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this ____ day of _____, 2021.

**SANDOVAL CAPITAL INC. DBA
BRONCO DISPOSAL**

By: Raul Sandoval, Co-President

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 202__, by Raul Sandoval.

Notary Public, State of Texas
Notary's Printed or Typed Name:

My Commission Expires:

EXHIBIT “A”

**SOLID WASTE
FRANCHISE AGREEMENT**

BY AND BETWEEN

CITY OF EL PASO, TEXAS

AND

SANDOVAL CAPITAL INC. DBA BRONCO DISPOSAL

EFFECTIVE DATE: January 1, 2022

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SECTION III.	Granting of Franchise
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SECTION VI.	Fees, Payments and Compensation.
SECTION VII.	Term, Termination and Performance Evaluation
SECTION VIII.	Transfers of Ownership and Control
SECTION IX.	Default
SECTION X.	Remedies
SECTION XI.	Recordkeeping and audit
SECTION XII.	Miscellaneous

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

THIS Solid Waste Franchise Agreement (“Agreement”) effective on January 1, 2022 is entered into this ____ day of _____, 2022, by and between the CITY OF EL PASO, a Texas home rule municipality, hereinafter referred to as the "CITY", and SANDOVAL CAPITAL INC. DBA BRONCO DISPOSAL., hereinafter referred to as “Franchisee”.

RECITALS

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by Agreement passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the state of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, this franchise agreement is a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City desires to exercise the authority provided to it by ordinance, charter and state law to grant a franchise for the collection, transportation, hauling and disposal of Solid Waste as further defined herein, within the corporate limits of the City and under the terms of this Agreement as set out below; and,

WHEREAS, Franchisee desires to obtain a franchise to provide for the collection, transportation, hauling and disposal of Solid Waste from the City of El Paso, and agrees to comply with the terms and conditions of this Agreement; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Agreement are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

WITNESSETH:

SECTION I. PREAMBLE

That the declarations contained in the preamble to this Agreement are material and incorporated herein as a part of this Agreement as though they were fully set forth in this Agreement in their entirety.

SECTION II. DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word “shall” is mandatory and not merely directory. The word “may” is not mandatory and is merely permissive. The word “day” means a calendar day and not a business day. Words defined elsewhere in this Agreement shall be accorded that meaning throughout this Agreement. Words not defined shall be given their common and ordinary meaning.

a. **Affiliate** and **Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.

b. **Agreement** shall mean this document.

c. **Authorized Area** means the entire area within the corporate limits of the City of El Paso, including any territory annexed into the City limits after the Effective Date of this Agreement.

d. **City** means the City of El Paso, a home rule municipal corporation, a political subdivision of the State of Texas.

e. **City Charter** means the City’s organic law, equivalent to a constitution, which defines the City’s existence and prescribes the powers, duties, and organization of the City’s governmental structure.

f. **City Code** shall mean the ordinances of the City codified into the EL PASO CITY CODE, as amended from time to time.

g. **City Manager** shall mean the City Manager or the City Manager’s designated representative.

h. **Container** shall mean any receptacle for waste as defined by Title 9.04 to include Dumpsters, Containers, Carts, Roll-Offs and Compactors.

i. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

j. **Council** shall mean the governing body of the City of El Paso. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. Unless otherwise stated in this Agreement or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Agreement and to the Franchisee's exercise of the rights and privileges conferred in this Agreement.

k. **Director** means the Director of the Environmental Services Department of the City, or any successor department, or any Director as designated by the City Manager, or the Director's designated representative.

l. **Effective Date** means January 1, 2022.

m. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Rights-of-Way under this Agreement, and all of the incidental rights and obligations as described by this Agreement.

n. **Franchisee** shall mean SANDOVAL CAPITAL INC. DBA BRONCO DISPOSAL hereinafter referred to as "Franchisee", the grantee of rights under this Agreement; or the successor, transferee, or assignee of this Agreement, including the officers, employees, agents, contractors, and subcontractors.

o. **Junk Removal Service** shall mean the collection and transportation of solid waste generated from a Property Clean-up Event by a Self-Transporter or Permitted Hauler, as defined within Chapter 9.04 of the El Paso City Code, when the waste is placed directly into a vehicle or trailer attached to a vehicle, or when a container placed at a property is removed within seven days.

p. **Property Clean-up Event** shall mean the removal of Solid Waste from the interior of a building or premises of a property for the purpose of abating a nuisance, resolving a violation of the El Paso City Code, or removing unsanitary or slightly debris or waste, when the duration of the event does not exceed seven days.

q. **Public Rights-of-Way** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated and accepted by the City as a public right-of-way. "Public Rights-of-Way" shall not include property of the City which is not a

dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated or accepted by the City as a public right-of-way.

r. **Solid Waste Collection Service** shall mean the collection and transportation of Solid Waste, not including a Junk Removal Service, as that term is defined herein within the Authorized Area, from a dumpster, roll-off container, or other container larger than two cubic yards in volume, or from a container less than two cubic yards in volume when providing service to more than four customers, for processing or disposal at an Authorized Municipal Solid Waste Facility as defined in Chapter 9.04 of the El Paso City Code or as may be subsequently amended from time to time.

s. **Solid Waste** shall mean that term as defined in Title 30 of the Texas Administrative Code § 330.3, or as may subsequently be amended from time to time, excluding Excluded Waste as defined in section 9.04.020 of the City Code, as may subsequently be amended from time to time. Solid Waste does not include any municipal solid waste and program recyclable materials generated at residential properties in which the City is the exclusive hauler as set forth in chapter 9.04 (Solid Waste Management) of the City Code.

SECTION III. GRANTING OF FRANCHISE

Subject to all the terms and conditions contained in this Agreement, the Constitution of the United States of America or of the State of Texas, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal or state law, the City hereby grants the Franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Rights-of-Way in the Authorized Area. This grant is subject to the following additional conditions:

a. **Non-Exclusive.**

Nothing herein contained shall be construed as granting an exclusive use or right to the Franchisee to the Public Rights-of-Way, and the City may grant an additional franchise, lease or special privilege to any other applicant in its discretion for the same Public Rights-of-Way described herein. The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Agreement.

b. **Authorized Municipal Solid Waste Facility.**

Franchisee shall deposit all Solid Waste only at an Authorized Municipal Solid Waste Facility in accordance with the City Code, as may be amended from time to time.

c. **Other Services.**

By granting this Agreement, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

d. No Priority.

This Agreement does not establish any priority for the use of the Public Rights-of-Way by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

e. City's Use of Public Rights-of-Way.

The Franchisee acknowledges that by this Agreement it obtains no rights to use or further use of the Public Rights-of-Way other than those expressly granted in this Agreement. The City reserves the right to use the surface or subsurface or airspace above the Public Rights-of-Way covered by this Agreement for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Rights-of-Way. Further the City expressly reserves the right to install, repair, or reconstruct the Public Rights-of-Way used or occupied by Franchisee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, including but not limited to, drainage and utility facilities and structures.

The Franchisee acknowledges and accepts at its own risk, that the City may make use in the future of the Public Rights-of-Way as described above or as otherwise permitted by law, in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Rights-of-Way for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation or further remedy from the City unless compensation is available to all users of the Public Rights-of-Way which are affected in a similar manner.

f. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee or close or otherwise restrict the use of Public Rights-of-Way in the event of a public emergency or calamity as determined in the City's sole discretion. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee.

g. Compliance with Law and Standards of Operation.

The parties shall be subject to and comply with the Constitutions of the United States of America and the State of Texas, all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Agreement does not relieve the Franchisee of, and the Franchisee shall comply with, any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Agreement shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person, entity or individual. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

SECTION IV. SERVICE REQUIREMENTS

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all Solid Waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, expressly excluding services for which the City is the exclusive hauler as defined in Chapter 9.04 of the City Code. The Franchisee shall, at its own expense, furnish personnel and equipment to collect Solid Waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner, maintain a valid, current Hauler Permit issued by the City of El Paso, and shall comply with all requirements of the City Code, including but not limited to Chapter 9.04 of the City Code.

b. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Rights-of-Way and other facilities that are damaged as a result of the negligence, willful misconduct, or intentional acts of the Franchisee during the Franchisee's operations pursuant to this Agreement.

c. The Franchisee will comply with all rules, regulations, laws and agreements pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction.

d. Waste Containers

1. Graffiti.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the Container, as defined in Chapter 9.04 of the City Code or as amended from time to time, free from graffiti. Franchisee's Containers may display the name, address and/or phone number of

the Franchisee, identification numbering or lettering assigned by the Franchisee, and any warnings, notices or instructions posted by Franchisee. If Franchisee's customers do not remove graffiti from the Franchisee's Containers, then Franchisee shall remove the graffiti and may bill its customer for the cost or replace the Container at the customer's expense.

If, after five days notice from the Director, the Franchisee or its customer has not removed the graffiti or replaced the Containers, then the City may cover or remove the graffiti or the Container.

2. Over-Capacity.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the area around the Container clean and free of rubbish, litter, Solid Waste, garbage, recyclables, or other unsightly material, regardless of the cause of the placement of the rubbish, litter, Solid Waste, garbage or recyclables around the Container. Franchisee shall monitor its customer's use of their Containers and ensure that the customer is not overfilling the Container beyond the acceptable capacity of the Container.

If the City observes that the lid of a Container is not securely closed as a result of overfilling the Container, or rubbish, Solid Waste, garbage, recyclables or unsightly material of any kind has accumulated or is being stored outside the Container, or is visible above the top level of the Container, then the City may: (1) notify the Franchisee or the customer of the violation and require immediate removal of the rubbish, Solid Waste, garbage, recyclables or unsightly materials; or (2) may remove the rubbish, Solid Waste, garbage, recyclables or unsightly materials and bill the Franchisee for its actual expense in cleaning the site around the Container.

If the City observes and records three or more instances of a violation of this section or violations of the City's ordinances by the Franchisee's customer, then it shall notify the Franchisee and the Franchisee shall require the customer to contract for additional Solid Waste services, additional Containers or a larger Container sufficient to satisfy its Solid Waste and recyclables needs, or take other steps to ensure compliance with the City's ordinances. Compliance with the provisions of this section by a Franchisee customer shall not waive the City's right to seek all remedies available under the law or this Agreement whether against the Franchisee or the Franchisee's customer.

3. Franchisee shall affix a label to each Container supplied to its customers that reads "NO SCAVENGING/KEEP LIDS CLOSED." For roll-off Containers which are not equipped with lids, only "NO SCAVENGING" shall be required on the label. Label may be in the form of a decal or paint; letters shall be capitalized and either black or white in color, whichever more contrasts the paint color of the Container. The label may consist of either one or two lines, and should be clearly visible from a distance of 20 feet.

SECTION V. INDEMNITY AND INSURANCE

a. INDEMNIFICATION OF CITY.

1. THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS, CONTRACTORS AND SUBCONTRACTORS (HEREINAFTER REFERRED TO COLLECTIVELY AS “INDEMNITEES”), FROM AND AGAINST:

(A) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OR FOR HARM SUFFERED OR ALLEGED TO HAVE BEEN SUFFERED BY ANY PERSON OR PERSONS (INCLUDING THIRD PARTIES, WHETHER INDIVIDUALS OR ENTITIES), THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE AGREEMENT, (ii) BY ANY ACT OR OMISSION CONSTITUTING NEGLIGENCE, GROSS NEGLIGENCE OR OTHER FAULT OF FRANCHISEE, ITS OFFICERS, DIRECTORS, PARTNERS, OWNERS OR OTHER PRINCIPALS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, OR FOR WHICH THE FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS (ALL COLLECTIVELY “FRANCHISEE PERSONS”), OR (iii) FOR WHICH THE FRANCHISEE OR FRANCHISEE PERSONS MAY BE STRICTLY LIABLE, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; AND

(B) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, FEES, PENALTIES OR OTHER ASSESSMENTS, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES THAT MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR SUFFERED BY ANY INDEMNITEES ARISING FROM OR RELATED TO ANY VIOLATION BY FRANCHISEE OR ANY FRANCHISEE PERSON OF ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE, OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE OR ANY FRANCHISEE PERSON, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER

WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION, INCLUDING ANY AND ALL COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT AGAINST THE CITY OR ANY OTHER INDEMNITEE RELATED TO ANY SUCH CLAIM.

2. FRANCHISEE'S OBLIGATION TO INDEMNIFY INCLUDES INDEMNIFICATION FOR ANY ATTORNEY'S FEES, COSTS OF COURT OR EXPENSES OF ANY THIRD PARTY ASSESSED AGAINST THE CITY OR ANY OTHER INDEMNITEE; AND ANY ATTORNEY'S FEES, COSTS AND EXPENSES OF DEFENSE OR SETTLEMENT OR ATTEMPTED SETTLEMENT (INCLUDING BUT NOT LIMITED TO INFORMAL SETTLEMENT DISCUSSIONS, MEDIATION, ARBITRATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS) BY THE CITY OR ANY OTHER INDEMNITEES.

3. FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO ALL CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH FOR WHICH ONE OR MORE INDEMNITEES MAY BE CONTRIBUTORILY LIABLE, PROVIDED, HOWEVER, THAT ANY INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW; AND PROVIDED, FURTHER, THAT THIS APPLICATION OF PROPORTIONATE RESPONSIBILITY IS NOT A WAIVER OF ANY GOVERNMENTAL IMMUNITY FOR SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS LAW, AND FURTHER DOES NOT CONSTITUTE A WAIVER OF ANY OTHER DEFENSES AVAILABLE TO EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW.

4. FRANCHISEE'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY JUDGMENT OF LIABILITY AGAINST THE CITY RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

5. THIS SUBSECTION V.A. DOES NOT, AND SHALL NOT, BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO THE CITY OR ANY INDEMNITEE UNDER TEXAS OR FEDERAL LAW, INCLUDING ANY INDIVIDUAL ABSOLUTE OR QUALIFIED IMMUNITY. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE OTHER INDEMNITEES AND THE FRANCHISEE, AND ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. FRANCHISEE'S ASSUMPTION OF RISK.

1. FRANCHISEE UNDERTAKES AND ASSUMES ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CONTROLLED PROPERTY, INCLUDING THE PUBLIC RIGHTS-OF-WAY.

2. FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND INDEMNITEES FROM AND AGAINST ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, AGREEMENT OR REGULATION.

c. Survival. **THE INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS SECTION V. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY ACTION, CLAIM, LAWSUIT OR OTHER PROCEEDING, OR JUDGMENT ARISING FROM EVENTS OCCURING DURING THE TERM OF THIS AGREEMENT.**

d. Defense of City and other Indemnitees.

In the event any action or proceeding shall be brought against any Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, and at the Franchisee's sole cost and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld. The Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's and other Indemnitees' written consent. Further, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified herein without the prior written consent of the Franchisee.

e. Expenses of Defense; Participation by Indemnitees.

The Indemnitees shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section V. Nothing herein shall prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in their defense, provided that the participation has been requested or required by the Franchisee in conducting the defense of the action, suit, or other proceeding. These covered expenses include reasonable attorney's fees and expenses, out-of-pocket expenses reasonably and necessarily incurred, the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed or incurred by the Indemnitees in connection with such suits, actions or proceedings. Covered expenses shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by the Franchisee.

f. Insurance Required.

Not later than the Effective Date, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Attachment “1”, attached to and made a part of this Agreement. The insurance shall be written by a company(ies) approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The City shall be named a beneficiary and co-insured of such policy(ies). Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee.

THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the City Council approves this Agreement, then this Agreement shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of current continuous insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on at least an annual basis, no later than the anniversary date of this Agreement; and the Director shall have the right to request evidence of current insurance at any time. If the Franchisee fails to maintain insurance as required by this subsection, then the Franchisee shall forfeit any rights to contribution as defined in subsection V.a.3 above, and Franchisee shall be solely liable *in toto* for any judgment, award, claim or demand arising from the Franchisee’s operation of a Solid Waste Collection Service, whether the City or any other Indemnitee is or may be contributorily liable under applicable law or not.

g. Adjustments to Insurance Requirements.

The Director reserves the right to review the insurance requirements stated herein during the term of this Agreement and to recommend to the City Council reasonable adjustments in the insurance requirements prior to any anniversary renewal of the insurance when deemed necessary or prudent by the City. Any adjustments recommended and approved by the City Council may be based upon changes in statutory law, applicable court decisions, the claims history of the industry as well as of the Franchisee, or a commercially reasonable determination by the City that existing coverage is inadequate for the risks associated with the services to be provided hereunder. When any insurance coverage limits are changed, the Franchisee shall pay any resulting increase in cost due to the changes. If Franchisee does not agree to an increase in coverage recommended by the City and approved by Council, the City may opt to pay the difference in premium that would be required for such increased coverage; but if the City declines to do so, the City shall have the right to terminate this Agreement as of the end of the current insurance term, or at the next contract year anniversary, whichever is sooner.

h. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability

for indemnity, damages and accidents as set forth in the Agreement. The bankruptcy, insolvency, receivership or denial of liability by any insurer of Franchisee shall not excuse the Franchisee from the responsibility for indemnity, liability of, or damages payable by the Franchisee as provided in this Agreement.

SECTION VI. FEES, PAYMENTS AND COMPENSATION.

a. Consideration.

Council finds and determines that Franchisee has incurred, or will incur, significant costs to upgrade its facilities as costs associated with performance under this Franchise Agreement. Council finds that such expenditures as well as the promises contained in this Franchise Agreement are satisfactory consideration to support this Agreement.

b. Additional Consideration.

Upon notice from the City, Franchisee shall provide Solid Waste removal, collection, and transport, services to the City following natural disasters or Acts of God. The term “Acts of God” as used herein, shall include, but not be limited to, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability. Franchisee understands that it is not guaranteed to receive compensation for these services. Council and the Franchisee agree that this obligation to provide emergency services without a guarantee of compensation constitutes part of the consideration offered by the Franchisee to support this Franchise Agreement.

c. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due or owed under this Agreement or of any other obligation of the Franchisee.

SECTION VII. TERM, TERMINATION AND PERFORMANCE EVALUATION

a. Term and Extensions.

This Agreement shall be effective as of the Effective Date, and, unless it is terminated earlier pursuant to its terms, shall continue in effect until December 31, 2026, with the possibility for one two-year extension as mutually agreed to by the City and the Franchisee. Franchisee shall give ninety (90) days written notice to the City prior to the expiration of the term to request an extension. The City in its sole discretion may decide to approve or decline the extension, or request an amendment of this Agreement prior to such extension.

b. Termination.

1. Right to Terminate

This Agreement may be terminated by either party, for cause or convenience, by providing ninety (90) days’ written notice to the non-terminating party. Notwithstanding the foregoing, the City may terminate this Agreement if the City determines in its sole discretion termination is necessary to secure the efficiency of public service at a reasonable rate, to assure the Public Rights-of-Way are maintained

in good order throughout the term of this Agreement, or termination is in the public interest when Franchisee is utilizing the Public Rights-of-Way in a manner the City deems is inconsistent with the public use of the City's Public Rights-of-Way without providing prior notice to the Franchisee. If the City chooses to act pursuant to this authority it shall notify the Franchisee of its decision within three days of the termination of this Agreement.

2. Rights Upon Termination.

Subject to applicable law, or as specifically provided for otherwise in this Agreement, this Agreement and all rights, permissions, and privileges of the parties defined in this Agreement shall automatically cease upon the termination of this Agreement, unless such rights are extended by mutual agreement of the parties, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

In the event the Franchisee continues use of the Public Rights-of-Way after the expiration or termination of this Agreement the City may utilize any means available in law or in equity to prevent violations of the EL PASO CITY CODE or this Agreement. Franchisee shall be responsible for all attorney's fees and court costs incurred as a result of any action taken by the City pursuant to this paragraph.

c. Performance Evaluation.

In order to: (i) assure that the Franchisee is complying with the terms of this Agreement, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation during the term of the Agreement in accordance with the following process:

1. At least sixty (60) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(ii) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within thirty (30) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, a minimum, the following areas:

- (i) documentation that all of Franchisee's vehicles used in accordance with this agreement have been properly inspected for compliance with safety and air emission standards in the vehicles' state of registration, and documentation related to local government requirements for the permitting of vehicles for the hauling of Solid Waste;
- (ii) any other topic deemed material or relevant by the City for its enforcement of this Agreement.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information collected from the Effective Date, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than twenty-four (24) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than twenty (20) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

SECTION VIII. TRANSFERS OF OWNERSHIP AND CONTROL

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates identified herein, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, this Agreement or the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Assignee: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee and its Affiliates shall request approval from Council in writing and shall provide the Council with the Assignee's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

2. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs. If the Franchisee cannot provide at least sixty (60) days notice before a transfer solely for

security purposes, then Franchisee must notify the Director in writing of such a transfer at the earliest possible date after becoming aware of such transfer.

3. The Franchisee may not transfer or assign this Agreement to an Affiliate not identified herein, without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee shall request approval from Council in writing and shall provide the Council with the Affiliate's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

b. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Attachment "2", attached to and made a part of this Agreement, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Agreement.

SECTION IX. DEFAULT

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Agreement shall constitute an Event of Default by the Franchisee under this Agreement:

1. The failure or refusal by the Franchisee to pay consideration when due as prescribed by this Agreement.

2. The Franchisee's material violation of or failure to comply with any provision or condition of chapter 9.04 of the City Code relating to Solid Waste collection service or any other applicable provision or condition of the City Code.

3. The suspension or revocation of the Franchisee's Hauler Permit.

4. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Agreement, or the Franchisee's failure or refusal to perform any obligation contained in this Agreement.

5. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real property taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

6. The entry of any judgment against the Franchisee by which another party becomes entitled to possession of any of the Franchisee's Solid Waste Collection Service's assets, and for which transfer of these assets requires prior consent of the

Council, and such judgment is not stayed pending rehearing or appeal following entry of the judgment for a period of forty-five (45) or more days.

7. The dissolution of the Franchisee.

8. The Franchisee's filing of a voluntary petition in bankruptcy; the filing of an involuntary petition in bankruptcy against the Franchisee; an adjudication finding the Franchisee insolvent; the Franchisee's obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of the Franchisee, or any of Franchisee's property or this Agreement or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Agreement.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Agreement.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Agreement.

12. The Franchisee's failure or refusal to comply with a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section X. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section X, unless the Director, the City Manager, or the Council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section X.

SECTION X. REMEDIES

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section IX., the Director shall report the occurrence of default to the City Manager and the Council. The Council shall be entitled in its sole discretion to exercise any or all of the following remedies, which shall be cumulative:

1. Exercise its rights to liquidated damages as described in subsection c. of this Section X.
2. Commence an action at law against the Franchisee for monetary damages.
3. Commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable, or other equitable relief.
4. Revoke the Franchise granted under this Agreement.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Agreement. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Agreement shall be automatically terminated and deemed null and void and shall have no further force or effect, and the provisions that are contractual in nature which are also included as a part of this Agreement are hereby automatically terminated, other than provisions that expressly are continued after termination or which impose obligations or rights of a kind that are intended and appropriate to be continued beyond termination, such as but not limited to Franchisee's obligations to defend and indemnify.

Upon revocation, the City shall retain any portion of the consideration and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered or decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. The Council reserves the right, in its sole discretion, to seek liquidated damages or to pursue other remedies as provided in this Section X, or allowed in law or equity in addition to revocation.

c. Liquidated Damages.

In addition to the other remedies provided for in this Section X., other remedies provided in this Agreement and remedies available at law or in equity, in the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Agreement, the Franchisee shall pay Two Hundred Dollars (\$200.00) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted. This subsection X.c. does not apply to the failure or refusal by the Franchisee to pay the Franchise Fee or other consideration when it becomes due (Event of

Default, subsection IX.a.1.) or the failure or the refusal to pay or cause to be paid any of the City's governmentally imposed taxes (Event of Default, subsection IX.a.4).

d. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section X. shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control to have prevented or avoided, the Council may pursue any or all of the remedies provided in Section X. or otherwise at law or in equity. The remedies of the City created under this Agreement shall be cumulative of other remedies under the Agreement, at law or in equity to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Agreement shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default.

e. Curable Violations.

The Franchisee shall not be found in violation of this Agreement or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee; provided, that the Franchisee has made reasonably diligent efforts to have prevented or avoided the violation, or the violation occurs as a result of circumstances beyond Franchisee's control or its ability to have prevented or avoided, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship, or election of actions based on, or for the purpose of realizing economic benefit or advantage; nor by the negligence or misfeasance or malfeasance of its directors, officers, principals, employees, agents, representatives, contractors or subcontractors.

SECTION XI. RECORDKEEPING AND AUDIT

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations in the Authorized Area under and in connection with this Agreement in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates within the scope of this Agreement during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Agreement. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law. To the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this

Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Reports.

If the Franchisee is a publicly traded company, the Franchisee shall file with the City by the end of each calendar year a copy of its certified financial statements filed with the Security and Exchange Commission, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City for inspection upon request.

d. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Agreement. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION XII. MISCELLANEOUS

a. Entire Agreement.

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Agreement. This Agreement can only be modified by an Agreement amendment approved by Council.

b. Notices.

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by any of the means described in subsection XII.d. of this Agreement. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to:

City of El Paso, Environmental Services Department
Attention: Director
7968 San Paulo
El Paso, Texas 79907

And:

City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

If to the Franchisee:

SANDOVAL CAPITAL INC. DBA BRONCO
DISPOSAL
Attn: Opal R. Smith
P.O. Box 370187
El Paso, Texas 79937

c. Notice of Claim.

This Agreement is subject to the provisions of Section 1.5 of the El Paso City Charter, as amended, relating to requirements for filing a notice of a claim against the City. Section 1.5 of the El Paso City Charter, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Franchisee shall comply with the requirements of Section 1.5 as a precondition of any claim against the City relating to or arising out of this Agreement.

d. Delivery of Notices.

Notices required to be given under this Agreement may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.
2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.
3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.
4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement transmission as a recipient shall request) and with a hard copy on the same date or the next day mailed to all by first class airmail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Agreement or the services or facilities of the Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Agreement, acknowledges that it has not been induced to accept this Agreement by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Agreement. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Agreement.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Agreement.

k. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by the EL PASO CITY CODE, and any other applicable laws and regulations. If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable and neither the remainder hereof nor the application of such provision to other persons, entities, or circumstances or other instruments shall be affected thereby, but rather, the same shall be enforced to the greatest extent

permitted by law. To the extent that any party's performance under this contract becomes impossible or illegal as a result of future and unknown regulations not contemplated by the parties, and the parties are not able to modify the terms of this Agreement as contemplated above, then the parties shall be excused from further performance under those portions of this Agreement, and such offending portions shall be severed and excluded from this Agreement.

l. City Retained Powers.

In addition to all rights provided in this Agreement, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City Agreements which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Agreement which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Agreement and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Agreement.

n. Time is of the Essence.

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Agreement.

o. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term "force majeure" shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Agreement, Franchisee shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

p. Recognition of Rights.

The Franchisee agrees that by adopting this Agreement, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Agreement in whole or in part upon the Franchisee.

q. Police Powers.

1. In accepting this Agreement, the Franchisee acknowledges that its rights under this Agreement are subject to the police power of the City to adopt and enforce general Agreements necessary to the health, safety, and welfare of the public. Except as

otherwise agreed to by the parties or exempted by a City ordinance, Franchisee shall comply with all applicable general laws and Agreements enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Agreement as convenient and necessary to promote the public's interest.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

r. No Presumption of Renewal

This Agreement and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

s. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the El Paso City Charter. Any request by the Franchisee for an amendment to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

t. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

u. This Agreement may be amended, revised or modified only by a written instrument, executed by the parties hereto.

v. The headings, captions and arrangements contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. If the context required, words used in the singular shall be read as including the plural and vice versa, and pronouns of any gender shall include all genders. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, paragraph, subparagraph, section or article.

w. This Agreement is executed for the sole benefit of parties hereto and is not for the benefit of any third party. No other party will have rights under this Agreement.

x. Authorization. Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective entity.

y. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

z. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

aa. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an attachment or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of El Paso, EL PASO CITY CODE, and the ordinance granting this Agreement and all exhibits thereto.

bb. No discrimination. Franchisee, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of this contract, or be otherwise subjected to discrimination in the execution of this contract.

2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in or denied the benefits of said services, or otherwise be subjected to discrimination.

3. If applicable, Franchisee shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. If applicable, Franchisee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

4. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

List of Attachments:

Attachment “1” – Insurance Requirements

Attachment “2” – Schedule of Ownership

STATE OF TEXAS)
)
COUNTY OF EL PASO)

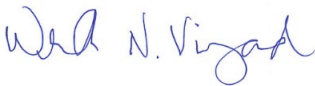
SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and SANDOVAL CAPITAL INC. DBA BRONCO DISPOSAL.

THE CITY OF EL PASO:


Tomás González
City Manager

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

ATTACHMENT "1"

INSURANCE REQUIREMENTS

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE:

For the duration of this Agreement and any extension hereof, Franchisee shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

2. WORKERS' COMPENSATION

For the duration of this Agreement and any extension hereof, Franchisee shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law:

\$500,000.00

3. AUTOMOBILE LIABILITY INSURANCE

Minimum \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.

ATTACHMENT “2”

SCHEDULE OF OWNERSHIP

Franchisee Name: SANDOVAL CAPITAL INC. DBA BRONCO DISPOSAL
Legal Entity: SANDOVAL CAPITAL INC. DBA BRONCO DISPOSAL

Identity of Owners: Progressive Resources Inc. (100%)

(Identify each partner, member, shareholder, or other owner. For each owner identified identify the individual ownership interest, to include total number of shares owned.)



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-47, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Environmental Services, Ellen A. Smyth, (915) 212-6000

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance granting a renewal of non-exclusive franchise to Southwest Disposal Inc, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in Section 9.04.630 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 1, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 3 – Promote the Visual Image of El Paso

SUBGOAL:

SUBJECT:

An ordinance granting a renewal of non-exclusive franchise to Southwest Disposal Inc, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the franchise terms and conditions; the penalty as provided in section 9.04.630 of the El Paso city code.

BACKGROUND / DISCUSSION:

A franchise is required for solid waste collection haulers that are permitted by the Environmental Services Department. This agreement between the franchisee and City identifies standards to be maintained for the operation of solid waste collection services.

PRIOR COUNCIL ACTION:

Non-exclusive franchises for solid waste collection services are routinely approved by Council.

AMOUNT AND SOURCE OF FUNDING:

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Environmental Services Department

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWAL OF NON-EXCLUSIVE FRANCHISE TO SOUTHWEST DISPOSAL INC, TO OPERATE AND MAINTAIN A SOLID WASTE COLLECTION AND HAULER SERVICE WITHIN THE CITY OF EL PASO SUBJECT TO THE FRANCHISE TERMS AND CONDITIONS; THE PENALTY AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by ordinance passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the State of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, the attached franchise agreement is a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City of El Paso requires in City Code Section 9.04, that all haulers of municipal solid waste are required to enter into a franchise agreement with the City; and

WHEREAS, SOUTHWEST DISPOSAL INC is engaged in the business of collection and transportation of solid waste within the City and has requested a franchise to use the City's rights-of-way; and,

WHEREAS, SOUTHWEST DISPOSAL INC has agreed to the terms of the Solid Waste Franchise Agreement with the City of El Paso, granting SOUTHWEST DISPOSAL INC a non-exclusive franchise to operate and maintain a solid waste collection service using the City's rights-of-way; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

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

1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

2. The City Manager is authorized to sign a renewal of non-exclusive Solid Waste Franchise Agreement by and between the City of El Paso SOUTHWEST DISPOSAL INC for the franchisee to operate and maintain a Solid Waste Collection Service, in, over, along and across the Public Rights-of-Way in the Authorized Area, to end on December 31, 2026, as set forth and defined in the document labeled Exhibit "A", attached and incorporated by reference for all purposes.

3. All ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

4. The City Manager or authorized agent is authorized to extend this agreement for an additional five years at the end of the date of the contract.

5. This ordinance shall take effect on January 1, 2022.

PASSED AND APPROVED this ____ day of ____, 2022.


CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

(Acceptance and Acknowledgment follow on next page)

EXHIBIT “A”

**SOLID WASTE
FRANCHISE AGREEMENT**

BY AND BETWEEN

CITY OF EL PASO, TEXAS

AND

SOUTHWEST DISPOSAL INC

EFFECTIVE DATE: January 1, 2022

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STATE OF TEXAS)
)
COUNTY OF EL PASO)

SOLID WASTE FRANCHISE AGREEMENT

THIS Solid Waste Franchise Agreement (“Agreement”) effective January 1, 2022 is entered into this ____ day of _____, 2022, by and between the CITY OF EL PASO, a Texas home rule municipality, hereinafter referred to as the "CITY", and SOUTHWEST DISPOSAL INC., hereinafter referred to as “Franchisee”.

RECITALS

WHEREAS, pursuant to Section 3.18 of the El Paso City Charter the right of control, ownership and use of streets and alleys is declared to be inalienable except as provided by Agreement passed by the Council; and,

WHEREAS, the City of El Paso is authorized by Section 7.13 of the El Paso City Charter to levy and collect franchise fees in accordance with the laws of the state of Texas; and,

WHEREAS, in addition to the authority granted by the City Charter, this franchise agreement is a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to including but not limited to, Texas Local Government Code Chapters 51 and 52, and the Texas Health and Safety Code Chapter 363; and,

WHEREAS, the City desires to exercise the authority provided to it by ordinance, charter and state law to grant a franchise for the collection, transportation, hauling and disposal of Solid Waste as further defined herein, within the corporate limits of the City and under the terms of this Agreement as set out below; and,

WHEREAS, Franchisee desires to obtain a franchise to provide for the collection, transportation, hauling and disposal of Solid Waste from the City of El Paso, and agrees to comply with the terms and conditions of this Agreement; and,

WHEREAS, the City Council of the City of El Paso is of the opinion that the granting of the franchise on the terms and conditions set forth in this Agreement are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

WITNESSETH:

SECTION I. PREAMBLE

That the declarations contained in the preamble to this Agreement are material and incorporated herein as a part of this Agreement as though they were fully set forth in this Agreement in their entirety.

SECTION II. DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given in this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word “shall” is mandatory and not merely directory. The word “may” is not mandatory and is merely permissive. The word “day” means a calendar day and not a business day. Words defined elsewhere in this Agreement shall be accorded that meaning throughout this Agreement. Words not defined shall be given their common and ordinary meaning.

a. **Affiliate** and **Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.

b. **Agreement** shall mean this document.

c. **Authorized Area** means the entire area within the corporate limits of the City of El Paso, including any territory annexed into the City limits after the Effective Date of this Agreement.

d. **City** means the City of El Paso, a home rule municipal corporation, a political subdivision of the State of Texas.

e. **City Charter** means the City’s organic law, equivalent to a constitution, which defines the City’s existence and prescribes the powers, duties, and organization of the City’s governmental structure.

f. **City Code** shall mean the ordinances of the City codified into the EL PASO CITY CODE, as amended from time to time.

g. **City Manager** shall mean the City Manager or the City Manager’s designated representative.

h. **Container** shall mean any receptacle for waste as defined by Title 9.04 to include Dumpsters, Containers, Carts, Roll-Offs and Compactors.

i. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

j. **Council** shall mean the governing body of the City of El Paso. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. Unless otherwise stated in this Agreement or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Agreement and to the Franchisee's exercise of the rights and privileges conferred in this Agreement.

k. **Director** means the Director of the Environmental Services Department of the City, or any successor department, or any Director as designated by the City Manager, or the Director's designated representative.

l. **Effective Date** means January 1, 2022.

m. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Rights-of-Way under this Agreement, and all of the incidental rights and obligations as described by this Agreement.

n. **Franchisee** shall mean SOUTHWEST DISPOSAL INC hereinafter referred to as "Franchisee", the grantee of rights under this Agreement; or the successor, transferee, or assignee of this Agreement, including the officers, employees, agents, contractors, and subcontractors.

o. **Junk Removal Service** shall mean the collection and transportation of solid waste generated from a Property Clean-up Event by a Self-Transporter or Permitted Hauler, as defined within Chapter 9.04 of the El Paso City Code, when the waste is placed directly into a vehicle or trailer attached to a vehicle, or when a container placed at a property is removed within seven days.

p. **Property Clean-up Event** shall mean the removal of Solid Waste from the interior of a building or premises of a property for the purpose of abating a nuisance, resolving a violation of the El Paso City Code, or removing unsanitary or slightly debris or waste, when the duration of the event does not exceed seven days.

q. **Public Rights-of-Way** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated and accepted by the City as a public right-of-way. "Public Rights-of-Way" shall not include property of the City which is not a

dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated or accepted by the City as a public right-of-way.

r. **Solid Waste Collection Service** shall mean the collection and transportation of Solid Waste, not including a Junk Removal Service, as that term is defined herein within the Authorized Area, from a dumpster, roll-off container, or other container larger than two cubic yards in volume, or from a container less than two cubic yards in volume when providing service to more than four customers, for processing or disposal at an Authorized Municipal Solid Waste Facility as defined in Chapter 9.04 of the El Paso City Code or as may be subsequently amended from time to time.

s. **Solid Waste** shall mean that term as defined in Title 30 of the Texas Administrative Code § 330.3, or as may subsequently be amended from time to time, excluding Excluded Waste as defined in section 9.04.020 of the City Code, as may subsequently be amended from time to time. Solid Waste does not include any municipal solid waste and program recyclable materials generated at residential properties in which the City is the exclusive hauler as set forth in chapter 9.04 (Solid Waste Management) of the City Code.

SECTION III. GRANTING OF FRANCHISE

Subject to all the terms and conditions contained in this Agreement, the Constitution of the United States of America or of the State of Texas, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal or state law, the City hereby grants the Franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Rights-of-Way in the Authorized Area. This grant is subject to the following additional conditions:

a. **Non-Exclusive.**

Nothing herein contained shall be construed as granting an exclusive use or right to the Franchisee to the Public Rights-of-Way, and the City may grant an additional franchise, lease or special privilege to any other applicant in its discretion for the same Public Rights-of-Way described herein. The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Agreement.

b. **Authorized Municipal Solid Waste Facility.**

Franchisee shall deposit all Solid Waste only at an Authorized Municipal Solid Waste Facility in accordance with the City Code, as may be amended from time to time.

c. **Other Services.**

By granting this Agreement, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

d. No Priority.

This Agreement does not establish any priority for the use of the Public Rights-of-Way by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

e. City's Use of Public Rights-of-Way.

The Franchisee acknowledges that by this Agreement it obtains no rights to use or further use of the Public Rights-of-Way other than those expressly granted in this Agreement. The City reserves the right to use the surface or subsurface or airspace above the Public Rights-of-Way covered by this Agreement for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Rights-of-Way. Further the City expressly reserves the right to install, repair, or reconstruct the Public Rights-of-Way used or occupied by Franchisee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, including but not limited to, drainage and utility facilities and structures.

The Franchisee acknowledges and accepts at its own risk, that the City may make use in the future of the Public Rights-of-Way as described above or as otherwise permitted by law, in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Rights-of-Way for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation or further remedy from the City unless compensation is available to all users of the Public Rights-of-Way which are affected in a similar manner.

f. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee or close or otherwise restrict the use of Public Rights-of-Way in the event of a public emergency or calamity as determined in the City's sole discretion. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee.

g. Compliance with Law and Standards of Operation.

The parties shall be subject to and comply with the Constitutions of the United States of America and the State of Texas, all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Agreement does not relieve the Franchisee of, and the Franchisee shall comply with, any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Agreement shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person, entity or individual. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

SECTION IV. SERVICE REQUIREMENTS

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all Solid Waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, expressly excluding services for which the City is the exclusive hauler as defined in Chapter 9.04 of the City Code. The Franchisee shall, at its own expense, furnish personnel and equipment to collect Solid Waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner, maintain a valid, current Hauler Permit issued by the City of El Paso, and shall comply with all requirements of the City Code, including but not limited to Chapter 9.04 of the City Code.

b. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Rights-of-Way and other facilities that are damaged as a result of the negligence, willful misconduct, or intentional acts of the Franchisee during the Franchisee's operations pursuant to this Agreement.

c. The Franchisee will comply with all rules, regulations, laws and agreements pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction.

d. Waste Containers

1. Graffiti.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the Container, as defined in Chapter 9.04 of the City Code or as amended from time to time, free from graffiti. Franchisee's Containers may display the name, address and/or phone number of

the Franchisee, identification numbering or lettering assigned by the Franchisee, and any warnings, notices or instructions posted by Franchisee. If Franchisee's customers do not remove graffiti from the Franchisee's Containers, then Franchisee shall remove the graffiti and may bill its customer for the cost or replace the Container at the customer's expense.

If, after five days notice from the Director, the Franchisee or its customer has not removed the graffiti or replaced the Containers, then the City may cover or remove the graffiti or the Container.

2. Over-Capacity.

Franchisee shall require in all contracts (entered into after the Effective Date) with each of its customers of their Solid Waste Collection Services to maintain the area around the Container clean and free of rubbish, litter, Solid Waste, garbage, recyclables, or other unsightly material, regardless of the cause of the placement of the rubbish, litter, Solid Waste, garbage or recyclables around the Container. Franchisee shall monitor its customer's use of their Containers and ensure that the customer is not overfilling the Container beyond the acceptable capacity of the Container.

If the City observes that the lid of a Container is not securely closed as a result of overfilling the Container, or rubbish, Solid Waste, garbage, recyclables or unsightly material of any kind has accumulated or is being stored outside the Container, or is visible above the top level of the Container, then the City may: (1) notify the Franchisee or the customer of the violation and require immediate removal of the rubbish, Solid Waste, garbage, recyclables or unsightly materials; or (2) may remove the rubbish, Solid Waste, garbage, recyclables or unsightly materials and bill the Franchisee for its actual expense in cleaning the site around the Container.

If the City observes and records three or more instances of a violation of this section or violations of the City's ordinances by the Franchisee's customer, then it shall notify the Franchisee and the Franchisee shall require the customer to contract for additional Solid Waste services, additional Containers or a larger Container sufficient to satisfy its Solid Waste and recyclables needs, or take other steps to ensure compliance with the City's ordinances. Compliance with the provisions of this section by a Franchisee customer shall not waive the City's right to seek all remedies available under the law or this Agreement whether against the Franchisee or the Franchisee's customer.

3. Franchisee shall affix a label to each Container supplied to its customers that reads "NO SCAVENGING/KEEP LIDS CLOSED." For roll-off Containers which are not equipped with lids, only "NO SCAVENGING" shall be required on the label. Label may be in the form of a decal or paint; letters shall be capitalized and either black or white in color, whichever more contrasts the paint color of the Container. The label may consist of either one or two lines, and should be clearly visible from a distance of 20 feet.

SECTION V. INDEMNITY AND INSURANCE

a. INDEMNIFICATION OF CITY.

1. THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS, CONTRACTORS AND SUBCONTRACTORS (HEREINAFTER REFERRED TO COLLECTIVELY AS “INDEMNITEES”), FROM AND AGAINST:

(A) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OR FOR HARM SUFFERED OR ALLEGED TO HAVE BEEN SUFFERED BY ANY PERSON OR PERSONS (INCLUDING THIRD PARTIES, WHETHER INDIVIDUALS OR ENTITIES), THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE AGREEMENT, (ii) BY ANY ACT OR OMISSION CONSTITUTING NEGLIGENCE, GROSS NEGLIGENCE OR OTHER FAULT OF FRANCHISEE, ITS OFFICERS, DIRECTORS, PARTNERS, OWNERS OR OTHER PRINCIPALS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, OR FOR WHICH THE FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS (ALL COLLECTIVELY “FRANCHISEE PERSONS”), OR (iii) FOR WHICH THE FRANCHISEE OR FRANCHISEE PERSONS MAY BE STRICTLY LIABLE, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; AND

(B) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, FEES, PENALTIES OR OTHER ASSESSMENTS, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES THAT MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR SUFFERED BY ANY INDEMNITEES ARISING FROM OR RELATED TO ANY VIOLATION BY FRANCHISEE OR ANY FRANCHISEE PERSON OF ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE, OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE OR ANY FRANCHISEE PERSON, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER

WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION, INCLUDING ANY AND ALL COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT AGAINST THE CITY OR ANY OTHER INDEMNITEE RELATED TO ANY SUCH CLAIM.

2. FRANCHISEE'S OBLIGATION TO INDEMNIFY INCLUDES INDEMNIFICATION FOR ANY ATTORNEY'S FEES, COSTS OF COURT OR EXPENSES OF ANY THIRD PARTY ASSESSED AGAINST THE CITY OR ANY OTHER INDEMNITEE; AND ANY ATTORNEY'S FEES, COSTS AND EXPENSES OF DEFENSE OR SETTLEMENT OR ATTEMPTED SETTLEMENT (INCLUDING BUT NOT LIMITED TO INFORMAL SETTLEMENT DISCUSSIONS, MEDIATION, ARBITRATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS) BY THE CITY OR ANY OTHER INDEMNITEES.

3. FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO ALL CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH FOR WHICH ONE OR MORE INDEMNITEES MAY BE CONTRIBUTORILY LIABLE, PROVIDED, HOWEVER, THAT ANY INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW; AND PROVIDED, FURTHER, THAT THIS APPLICATION OF PROPORTIONATE RESPONSIBILITY IS NOT A WAIVER OF ANY GOVERNMENTAL IMMUNITY FOR SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS LAW, AND FURTHER DOES NOT CONSTITUTE A WAIVER OF ANY OTHER DEFENSES AVAILABLE TO EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW.

4. FRANCHISEE'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY JUDGMENT OF LIABILITY AGAINST THE CITY RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

5. THIS SUBSECTION V.A. DOES NOT, AND SHALL NOT, BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO THE CITY OR ANY INDEMNITEE UNDER TEXAS OR FEDERAL LAW, INCLUDING ANY INDIVIDUAL ABSOLUTE OR QUALIFIED IMMUNITY. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE OTHER INDEMNITEES AND THE FRANCHISEE, AND ARE NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. FRANCHISEE'S ASSUMPTION OF RISK.

1. FRANCHISEE UNDERTAKES AND ASSUMES ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CONTROLLED PROPERTY, INCLUDING THE PUBLIC RIGHTS-OF-WAY.

2. FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND INDEMNITEES FROM AND AGAINST ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, AGREEMENT OR REGULATION.

c. Survival. **THE INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS SECTION V. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY ACTION, CLAIM, LAWSUIT OR OTHER PROCEEDING, OR JUDGMENT ARISING FROM EVENTS OCCURING DURING THE TERM OF THIS AGREEMENT.**

d. Defense of City and other Indemnitees.

In the event any action or proceeding shall be brought against any Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, and at the Franchisee's sole cost and expense (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld. The Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's and other Indemnitees' written consent. Further, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified herein without the prior written consent of the Franchisee.

e. Expenses of Defense; Participation by Indemnitees.

The Indemnitees shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section V. Nothing herein shall prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in their defense, provided that the participation has been requested or required by the Franchisee in conducting the defense of the action, suit, or other proceeding. These covered expenses include reasonable attorney's fees and expenses, out-of-pocket expenses reasonably and necessarily incurred, the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed or incurred by the Indemnitees in connection with such suits, actions or proceedings. Covered expenses shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by the Franchisee.

f. Insurance Required.

Not later than the Effective Date, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Attachment “1”, attached to and made a part of this Agreement. The insurance shall be written by a company(ies) approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The City shall be named a beneficiary and co-insured of such policy(ies). Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee.

THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the City Council approves this Agreement, then this Agreement shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of current continuous insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on at least an annual basis, no later than the anniversary date of this Agreement; and the Director shall have the right to request evidence of current insurance at any time. If the Franchisee fails to maintain insurance as required by this subsection, then the Franchisee shall forfeit any rights to contribution as defined in subsection V.a.3 above, and Franchisee shall be solely liable *in toto* for any judgment, award, claim or demand arising from the Franchisee’s operation of a Solid Waste Collection Service, whether the City or any other Indemnitee is or may be contributorily liable under applicable law or not.

g. Adjustments to Insurance Requirements.

The Director reserves the right to review the insurance requirements stated herein during the term of this Agreement and to recommend to the City Council reasonable adjustments in the insurance requirements prior to any anniversary renewal of the insurance when deemed necessary or prudent by the City. Any adjustments recommended and approved by the City Council may be based upon changes in statutory law, applicable court decisions, the claims history of the industry as well as of the Franchisee, or a commercially reasonable determination by the City that existing coverage is inadequate for the risks associated with the services to be provided hereunder. When any insurance coverage limits are changed, the Franchisee shall pay any resulting increase in cost due to the changes. If Franchisee does not agree to an increase in coverage recommended by the City and approved by Council, the City may opt to pay the difference in premium that would be required for such increased coverage; but if the City declines to do so, the City shall have the right to terminate this Agreement as of the end of the current insurance term, or at the next contract year anniversary, whichever is sooner.

h. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability

for indemnity, damages and accidents as set forth in the Agreement. The bankruptcy, insolvency, receivership or denial of liability by any insurer of Franchisee shall not excuse the Franchisee from the responsibility for indemnity, liability of, or damages payable by the Franchisee as provided in this Agreement.

SECTION VI. FEES, PAYMENTS AND COMPENSATION.

a. Consideration.

Council finds and determines that Franchisee has incurred, or will incur, significant costs to upgrade its facilities as costs associated with performance under this Franchise Agreement. Council finds that such expenditures as well as the promises contained in this Franchise Agreement are satisfactory consideration to support this Agreement.

b. Additional Consideration.

Upon notice from the City, Franchisee shall provide Solid Waste removal, collection, and transport, services to the City following natural disasters or Acts of God. The term “Acts of God” as used herein, shall include, but not be limited to, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability. Franchisee understands that it is not guaranteed to receive compensation for these services. Council and the Franchisee agree that this obligation to provide emergency services without a guarantee of compensation constitutes part of the consideration offered by the Franchisee to support this Franchise Agreement.

c. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for sums due or owed under this Agreement or of any other obligation of the Franchisee.

SECTION VII. TERM, TERMINATION AND PERFORMANCE EVALUATION

a. Term and Extensions.

This Agreement shall be effective as of the Effective Date, and, unless it is terminated earlier pursuant to its terms, shall continue in effect until December 31, 2026, with the possibility for one two-year extension as mutually agreed to by the City and the Franchisee. Franchisee shall give ninety (90) days written notice to the City prior to the expiration of the term to request an extension. The City in its sole discretion may decide to approve or decline the extension, or request an amendment of this Agreement prior to such extension.

b. Termination.

1. Right to Terminate

This Agreement may be terminated by either party, for cause or convenience, by providing ninety (90) days’ written notice to the non-terminating party. Notwithstanding the foregoing, the City may terminate this Agreement if the City determines in its sole discretion termination is necessary to secure the efficiency of public service at a reasonable rate, to assure the Public Rights-of-Way are maintained

in good order throughout the term of this Agreement, or termination is in the public interest when Franchisee is utilizing the Public Rights-of-Way in a manner the City deems is inconsistent with the public use of the City's Public Rights-of-Way without providing prior notice to the Franchisee. If the City chooses to act pursuant to this authority it shall notify the Franchisee of its decision within three days of the termination of this Agreement.

2. Rights Upon Termination.

Subject to applicable law, or as specifically provided for otherwise in this Agreement, this Agreement and all rights, permissions, and privileges of the parties defined in this Agreement shall automatically cease upon the termination of this Agreement, unless such rights are extended by mutual agreement of the parties, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

In the event the Franchisee continues use of the Public Rights-of-Way after the expiration or termination of this Agreement the City may utilize any means available in law or in equity to prevent violations of the EL PASO CITY CODE or this Agreement. Franchisee shall be responsible for all attorney's fees and court costs incurred as a result of any action taken by the City pursuant to this paragraph.

c. Performance Evaluation.

In order to: (i) assure that the Franchisee is complying with the terms of this Agreement, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation during the term of the Agreement in accordance with the following process:

1. At least sixty (60) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(ii) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within thirty (30) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, a minimum, the following areas:

- (i) documentation that all of Franchisee's vehicles used in accordance with this agreement have been properly inspected for compliance with safety and air emission standards in the vehicles' state of registration, and documentation related to local government requirements for the permitting of vehicles for the hauling of Solid Waste;
- (ii) any other topic deemed material or relevant by the City for its enforcement of this Agreement.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information collected from the Effective Date, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than twenty-four (24) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than twenty (20) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

SECTION VIII. TRANSFERS OF OWNERSHIP AND CONTROL

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates identified herein, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, this Agreement or the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Assignee: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee and its Affiliates shall request approval from Council in writing and shall provide the Council with the Assignee's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

2. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs. If the Franchisee cannot provide at least sixty (60) days notice before a transfer solely for

security purposes, then Franchisee must notify the Director in writing of such a transfer at the earliest possible date after becoming aware of such transfer.

3. The Franchisee may not transfer or assign this Agreement to an Affiliate not identified herein, without the prior written consent of Council, and such prior written consent shall not be unreasonably withheld provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Agreement occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Agreement; (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee; and (iv) has the capacity to enter into contracts with the City and/or is not barred from entering into contracts with the City. The Franchisee shall request approval from Council in writing and shall provide the Council with the Affiliate's qualifications at least one hundred and twenty (120) days before the proposed transfer is to occur.

b. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Attachment "2", attached to and made a part of this Agreement, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Agreement.

SECTION IX. DEFAULT

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Agreement shall constitute an Event of Default by the Franchisee under this Agreement:

1. The failure or refusal by the Franchisee to pay consideration when due as prescribed by this Agreement.

2. The Franchisee's material violation of or failure to comply with any provision or condition of chapter 9.04 of the City Code relating to Solid Waste collection service or any other applicable provision or condition of the City Code.

3. The suspension or revocation of the Franchisee's Hauler Permit.

4. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Agreement, or the Franchisee's failure or refusal to perform any obligation contained in this Agreement.

5. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real property taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

6. The entry of any judgment against the Franchisee by which another party becomes entitled to possession of any of the Franchisee's Solid Waste Collection Service's assets, and for which transfer of these assets requires prior consent of the

Council, and such judgment is not stayed pending rehearing or appeal following entry of the judgment for a period of forty-five (45) or more days.

7. The dissolution of the Franchisee.

8. The Franchisee's filing of a voluntary petition in bankruptcy; the filing of an involuntary petition in bankruptcy against the Franchisee; an adjudication finding the Franchisee insolvent; the Franchisee's obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of the Franchisee, or any of Franchisee's property or this Agreement or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Agreement.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Agreement.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Agreement.

12. The Franchisee's failure or refusal to comply with a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section X. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section X, unless the Director, the City Manager, or the Council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section X.

SECTION X. REMEDIES

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section IX., the Director shall report the occurrence of default to the City Manager and the Council. The Council shall be entitled in its sole discretion to exercise any or all of the following remedies, which shall be cumulative:

1. Exercise its rights to liquidated damages as described in subsection c. of this Section X.
2. Commence an action at law against the Franchisee for monetary damages.
3. Commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable, or other equitable relief.
4. Revoke the Franchise granted under this Agreement.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Agreement. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Agreement shall be automatically terminated and deemed null and void and shall have no further force or effect, and the provisions that are contractual in nature which are also included as a part of this Agreement are hereby automatically terminated, other than provisions that expressly are continued after termination or which impose obligations or rights of a kind that are intended and appropriate to be continued beyond termination, such as but not limited to Franchisee's obligations to defend and indemnify.

Upon revocation, the City shall retain any portion of the consideration and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered or decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. The Council reserves the right, in its sole discretion, to seek liquidated damages or to pursue other remedies as provided in this Section X, or allowed in law or equity in addition to revocation.

c. Liquidated Damages.

In addition to the other remedies provided for in this Section X., other remedies provided in this Agreement and remedies available at law or in equity, in the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Agreement, the Franchisee shall pay Two Hundred Dollars (\$200.00) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted. This subsection X.c. does not apply to the failure or refusal by the Franchisee to pay the Franchise Fee or other consideration when it becomes due (Event of

Default, subsection IX.a.1.) or the failure or the refusal to pay or cause to be paid any of the City's governmentally imposed taxes (Event of Default, subsection IX.a.4).

d. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section X. shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control to have prevented or avoided, the Council may pursue any or all of the remedies provided in Section X. or otherwise at law or in equity. The remedies of the City created under this Agreement shall be cumulative of other remedies under the Agreement, at law or in equity to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Agreement shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default.

e. Curable Violations.

The Franchisee shall not be found in violation of this Agreement or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee; provided, that the Franchisee has made reasonably diligent efforts to have prevented or avoided the violation, or the violation occurs as a result of circumstances beyond Franchisee's control or its ability to have prevented or avoided, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship, or election of actions based on, or for the purpose of realizing economic benefit or advantage; nor by the negligence or misfeasance or malfeasance of its directors, officers, principals, employees, agents, representatives, contractors or subcontractors.

SECTION XI. RECORDKEEPING AND AUDIT

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations in the Authorized Area under and in connection with this Agreement in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates within the scope of this Agreement during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Agreement. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law. To the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this

Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Reports.

If the Franchisee is a publicly traded company, the Franchisee shall file with the City by the end of each calendar year a copy of its certified financial statements filed with the Security and Exchange Commission, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City for inspection upon request.

d. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Agreement. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION XII. MISCELLANEOUS

a. Entire Agreement.

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Agreement. This Agreement can only be modified by an Agreement amendment approved by Council.

b. Notices.

Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by any of the means described in subsection XII.d. of this Agreement. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to:

City of El Paso, Environmental Services Department
Attention: Director
7968 San Paulo
El Paso, Texas 79907

And:

City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

If to the Franchisee:

SOUTHWEST DISPOSAL INC
Attn: Opal R. Smith
P.O. Box 370187
El Paso, Texas 79937

c. Notice of Claim.

This Agreement is subject to the provisions of Section 1.5 of the El Paso City Charter, as amended, relating to requirements for filing a notice of a claim against the City. Section 1.5 of the El Paso City Charter, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Franchisee shall comply with the requirements of Section 1.5 as a precondition of any claim against the City relating to or arising out of this Agreement.

d. Delivery of Notices.

Notices required to be given under this Agreement may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.
2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.
3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.
4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement transmission as a recipient shall request) and with a hard copy on the same date or the next day mailed to all by first class mail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Agreement or the services or facilities of the

Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Agreement, acknowledges that it has not been induced to accept this Agreement by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Agreement. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Agreement.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Agreement that it has carefully read the terms and conditions of this Agreement and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Agreement.

k. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by the EL PASO CITY CODE, and any other applicable laws and regulations. If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable and neither the remainder hereof nor the application of such provision to other persons, entities, or circumstances or other instruments shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law. To the extent that any party's performance under this contract becomes impossible or illegal as a result of future and unknown regulations not contemplated by the parties, and the parties are not able to modify the terms of this Agreement as contemplated above, then the

parties shall be excused from further performance under those portions of this Agreement, and such offending portions shall be severed and excluded from this Agreement.

l. City Retained Powers.

In addition to all rights provided in this Agreement, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City Agreements which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Agreement which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Agreement and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Agreement.

n. Time is of the Essence.

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Agreement.

o. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term “force majeure” shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Agreement, Franchisee shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

p. Recognition of Rights.

The Franchisee agrees that by adopting this Agreement, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Agreement in whole or in part upon the Franchisee.

q. Police Powers.

1. In accepting this Agreement, the Franchisee acknowledges that its rights under this Agreement are subject to the police power of the City to adopt and enforce general Agreements necessary to the health, safety, and welfare of the public. Except as otherwise agreed to by the parties or exempted by a City ordinance, Franchisee shall comply with all applicable general laws and Agreements enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other

present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Agreement as convenient and necessary to promote the public's interest.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

r. No Presumption of Renewal

This Agreement and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

s. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Agreement are subject to the applicable provisions of the El Paso City Charter. Any request by the Franchisee for an amendment to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

t. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

u. This Agreement may be amended, revised or modified only by a written instrument, executed by the parties hereto.

v. The headings, captions and arrangements contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. If the context required, words used in the singular shall be read as including the plural and vice versa, and pronouns of any gender shall include all genders. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, paragraph, subparagraph, section or article.

w. This Agreement is executed for the sole benefit of parties hereto and is not for the benefit of any third party. No other party will have rights under this Agreement.

x. Authorization. Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective entity.

y. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

z. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

aa. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an attachment or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of El Paso, EL PASO CITY CODE, and the ordinance granting this Agreement and all exhibits thereto.

bb. No discrimination. Franchisee, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of this contract, or be otherwise subjected to discrimination in the execution of this contract.

2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in or denied the benefits of said services, or otherwise be subjected to discrimination.

3. If applicable, Franchisee shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. If applicable, Franchisee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

4. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

List of Attachments:

Attachment “1” – Insurance Requirements

Attachment “2” – Schedule of Ownership

STATE OF TEXAS)
)
COUNTY OF EL PASO)


SOLID WASTE FRANCHISE AGREEMENT

Signature page for the City of El Paso, Solid Waste Franchise Agreement between City of El Paso, Texas and SOUTHWEST DISPOSAL INC.

THE CITY OF EL PASO:


Tomás González
City Manager

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

ATTACHMENT "1"

INSURANCE REQUIREMENTS

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE:

For the duration of this Agreement and any extension hereof, Franchisee shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

2. WORKERS' COMPENSATION

For the duration of this Agreement and any extension hereof, Franchisee shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law:

\$500,000.00

3. AUTOMOBILE LIABILITY INSURANCE

Minimum \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.

ATTACHMENT “2”

SCHEDULE OF OWNERSHIP

Franchisee Name: SOUTHWEST DISPOSAL INC
Legal Entity: SOUTHWEST DISPOSAL INC

Identity of Owners:
(Identify each partner, member, shareholder, or other owner. For each owner identified identify the individual ownership interest, to include total number of shares owned.)

Jaime Silva (50%)

Gabriela Silva (50%)



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-64, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Planning and Inspections, Philip F. Etiwe, (915) 212-1553

Planning and Inspections, Raul Garcia, (915) 212-1643

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance amending Title 20 (Zoning) Section 20.18.140 (Prohibited Signs) and adding Section 20.18.320 (Mobile Billboards) to allow Mobile Billboards. The penalty being as provided in Section 20.24 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 15, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553
Raul Garcia, (915) 212-1643

DISTRICT(S) AFFECTED: City-wide

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

SUBGOAL: 3.2 Set one standard for infrastructure across the city

SUBJECT:

An Ordinance amending Title 20 (Zoning) Section 20.18.140 (Prohibited Signs) and adding Section 20.18.320 (Mobile Billboards) to allow Mobile Billboards. The penalty being as provided in Section 20.24 of the El Paso City Code.

BACKGROUND / DISCUSSION:

On December 16, 2021 the City Plan Commission recommended 5-0 to deny the proposed amendment.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Planning & Inspections, Planning Division

SECONDARY DEPARTMENT: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Philip Etiwe

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 20 (ZONING) SECTION 20.18.140 (PROHIBITED SIGNS) AND ADDING SECTION 20.18.320 (MOBILE BILLBOARDS) TO ALLOW MOBILE BILLBOARDS. THE PENALTY BEING AS PROVIDED IN SECTION 20.24 OF THE EL PASO CITY CODE.

WHEREAS, Title 20 (Zoning) of the El Paso City Code, Chapter 20.18 regulates signage; and,

WHEREAS, Chapter 20.18 (Sign Regulations) currently prohibits Mobile Billboards; and,

WHEREAS, Mobile Billboards can be allowed on public Rights-of-Way with appropriate regulations to mitigate the impact on surrounding areas,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. That Title 20 (Zoning), Chapter 20.18 (Sign Regulations), Section 20.04.140 (Prohibited Signs), is amended by removing the following section:

- I. Mobile Billboards

SECTION 2. That Title 20 (Zoning), Chapter 20.18 (Sign Regulations), Section 20.04.320 (Mobile Billboards) be added:

20.18.320 – Mobile Billboards.

- A. This section shall apply to mobile billboards operated within the corporate limits of the city and no permit shall be issued for a mobile billboard in the city, except as authorized by this Section.
- B. A person shall not operate a Mobile Billboard on the Public Right of Way without obtaining a Special Privilege Permit in accordance with Section 15.08.160 Mobile Billboards. A mobile billboard operator who obtains a Special Privilege Permit shall abide by all requirements prescribed under the applicable standards in Section 15.08.160 Mobile Billboards.

(Signatures Begin on Following Page)

APPROVED this _____ day of _____, 2022.

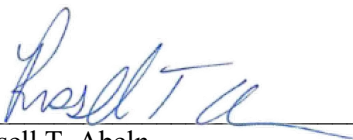
THE CITY OF EL PASO:

Oscar Leoser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Russell T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:



Philip Etiwe, Director
Planning & Inspections Department



El Paso, TX

300 N. Campbell
El Paso, TX

Legislation Text

File #: 22-65, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Planning and Inspections, Philip F. Etiwe, (915) 212-1553

Planning and Inspections, Raul Garcia, (915) 212-1643

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance amending Title 15, (Public Services), Chapter 15.08 (Street Rentals), establishing Section 15.08.160 (Mobile Billboards) of the El Paso City Code to add regulations for Mobile Billboards. The penalty is as provided for in Section 15.08.160 of the El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: February 15, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553
Raul Garcia, (915) 212-1643

DISTRICT(S) AFFECTED: City-wide

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

SUBGOAL: 3.2 Set one standard for infrastructure across the city

SUBJECT:

An Ordinance amending Title 15, (Public Services), Chapter 15.08 (Street Rentals), establishing Section 15.08.160 (Mobile Billboards) of the El Paso City Code to add regulations for Mobile Billboards. The penalty is as provided for in Section 15.08.160 of the El Paso City Code.

BACKGROUND / DISCUSSION:

On December 16, 2021 the City Plan Commission recommended 5-0 to deny the proposed amendment.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Planning & Inspections, Planning Division

SECONDARY DEPARTMENT: N/A

*****REQUIRED AUTHORIZATION***** **DEPARTMENT**

HEAD:

Philip Etiwe

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE 15 (PUBLIC SERVICES), CHAPTER 15.08 (STREET RENTALS), ESTABLISHING SECTION 15.08.160 (MOBILE BILLBOARDS) OF THE EL PASO CITY CODE TO ADD REGULATIONS FOR MOBILE BILLBOARDS. THE PENALTY IS AS PROVIDED FOR IN SECTION 15.08.160 OF THE EL PASO CITY CODE.

WHEREAS, the public right of way is primary for the passage of persons and goods;
and

WHEREAS, the City has authority to allow for the use of a street for a private purpose provided that use does not interfere with the public use of the street and does not create a dangerous condition on the street; and

WHEREAS, the City finds that it is in the best interest of the public to regulate mobile billboards on city streets in order to ensure that the public use of the street is maintained and no dangerous conditions on the street are created; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. That Title 15 (Public Services), Chapter 15.08 (Street Rentals) is amended, establishing Section 15.08.160 (Mobile Billboards) as follows:

A. Definitions. For purposes of this section, the following terms have the following definitions.

1. "Mobile billboard" means a motor vehicle or trailer, which is used for the display of general advertising for hire.
2. "Director" means the individual designated by the city manager in charge of overseeing the enforcement of this Section.
3. "Applicant" means a natural person as well as any entity or organization authorized to do business in the State of Texas and County of El Paso.
4. "Permit" means a permit issued by the Director under this section.
5. "Public Right-of-Way" means any portion of a street or sidewalk dedicated to the City of El Paso for the use of the public.

6. "Changeable Electronic Variable Message Sign (CEVM)" means a sign which uses electronic technology that is capable of displaying changeable or intermittent images, such as by turning on or off various lighting elements. The term includes any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, or which changes the visual image more than one time per twenty-four-hour period. The term includes display technology such as LED (light emitting diode) or digital displays which can vary in color or intensity, or any system which is functionally equivalent even if the message is static. The term also includes any display, or device, which changes the "static" message or copy on the sign, in "slide show" fashion, by electronic means.

B. Prohibition. An applicant shall not operate a Mobile Billboard on the Public Right-of-Way without obtaining a Permit under this section of the El Paso City Code. An applicant who obtains a Permit under this Section shall abide by all requirements prescribed under this Section as well as all regulations adopted by the Director under the authority granted to the Director under this Section.

C. Permit. An Applicant who wants to operate a Mobile Billboard on the Public Right-of-Way shall apply for a Permit on an application form as required by the Director. The Director shall issue no more than three Permits to three Applicants that comply with requirements of this Section and any regulations adopted by the Director pursuant to this Section. The Director shall not issue a Permit to an Applicant that does not comply with the requirements of this section or any regulations adopted by the Director pursuant to this section. An Applicant is not eligible to apply for a permit for one year following a revocation of a permit under this Section. Unless terminated earlier as provided under this section, all permits issued under this section expire ***1 year after adoption*** regardless of the date such Permit is issued. No Permit shall be issued to an Applicant owing ad valorem taxes to the City or who has defaulted on an agreement with the City within five years preceding the application for a Permit under this Section. Notwithstanding anything to the contrary, a Permit may only be issued to an Applicant who owns the Mobile Billboard for which the permit is requested. All application forms and documents under this section must be executed by the owner of the Mobile Billboard. Nothing in the section prohibits City Council from amending this Section to change the expiration date of all Permits.

D. Regulations. Mobile Billboards shall comply with the following:

1. Each Applicant who has been issued a Permit shall be limited to no more than 3 Mobile Billboard vehicles operating on city streets at one time.
2. Mobile Billboards shall not contain sound.
3. CEVM Mobile billboards are prohibited.
4. Any illumination shall comply with the City's dark sky ordinance.

5. Mobile Billboards shall operate only on designated arterials, operating on local streets and freeways is prohibited.
6. Mobile Billboards shall be prohibited from operating during the hours between twelve am and eight am.
7. Mobile Billboards shall comply with the following dimensions:
 - i. The Mobile Billboard sign face area shall not exceed 14 feet in height measured from the ground.
 - ii. The Mobile Billboard sign face area shall not exceed 22 feet in length.
 - iii. The Mobile Billboard sign face area shall not exceed 220 square feet in size.
8. The operation of Mobile Billboards shall be prohibited when sustained winds in excess of 35 miles per hour exist within the immediate vicinity of the Mobile Billboard or its proposed route.
9. The issued Permit shall be displayed at all times in an open and conspicuous place on the premises of the permitted Mobile Billboard.

E. A Permit may be denied for failure to comply with this section or the regulations adopted by the Director under this Section. The Director may deny a Permit for up to one year following a Applicant's failure to comply with this Section or the regulations adopted by the Director under this section. A Permit may be denied or revoked upon discovery of any false information submitted by an Applicant under this Section. The Director may remove any Mobile Billboard placed on the Public Right-of-Way in violation of this Section or any regulation adopted by the Director under this Section.

F. Proof of Ownership and Insurance. An Applicant shall submit proof of ownership and insurance for all Mobile Billboards under a Permit and shall comply with all other applicable traffic laws and regulations.

G. Maintenance. Applicants shall ensure every Mobile Billboard is maintained in a condition to be operated safely upon City Public Rights-of-Way. An Applicant shall not perform maintenance on any Mobile Billboard on a Public Right-of-Way.

H. Non-Transferability. Permits issued under this section are not transferable.

I. No Property Rights. A permit does not grant any Applicant an exclusive right to any portion of the right-of-way.

J. Enforcement. The Director, a City Code Enforcement Officer, and/or a City of El Paso Police Officer are authorized to enforce the provisions of this section and the regulations adopted by the

Director under this Section. An Applicant authorized to enforce this section is authorized to remove Mobile Billboards that threaten the public safety or welfare. An Applicant authorized to enforce this Section is also authorized to require an Applicant operating a Mobile Billboard to remove/relocate a Mobile Billboard that threatens the public safety or welfare.

K. Termination. Any Permits issued under this Section may be terminated by City Council as determined by City Council, at its sole and absolute discretion. This provision does not limit the authority of the Director under this Section.

L. Fees and Costs. City council may establish fees related to this Section in the annual budget resolution, including but not limited to fees for the use of the Public Right-of-Way, and fees for impoundment of a Mobile Billboard, as may be permitted by law.

M. Headings. All headings in this Section are for reference purposes only and do not control the meaning of any provision under this section.

N. Penalty. An Applicant who violates a provision under this section may have a Permit denied or revoked.

O. Not Applicable. This section does not apply to the following: an Applicant, or government entity, operating a Mobile Billboard on the Public Right-of-Way pursuant to a valid permit or authorization issued under any other section of the El Paso City Code; or a government entity operating a Mobile Billboard on the Public Right-of-Way pursuant to an interlocal or other similar agreement with the City of El Paso.

APPROVED this _____ day of _____, 2022.

THE CITY OF EL PASO:

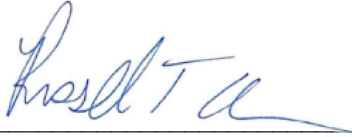
ATTEST:

Oscar Leeser
Mayor

Laura D. Prine
City Clerk

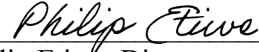
(Signatures continued on Following Page)

APPROVED AS TO FORM:



Russell T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:



Philip Etiwe, Director
Planning & Inspections Department



Legislation Text

File #: 22-67, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Fire, Chief Mario D'Agostino, (915) 212-5605
Purchasing and Strategic Sourcing, Claudia Garcia, (915) 212-1181

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

The linkage to the Strategic Plan is subsection 2.3 - Increase Public Safety Operational Efficiency.

Award Summary:

Discussion and action that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue a Purchase Order to Datamark, Inc., referencing Contract 2015-687R Customer Service Call Center - Staffing & Management Service Operations. This will be a change order to increase the contract by \$525,000.00 for a total amount not to exceed \$9,524,999.94. The change order will cover expenses for the remainder of the contract for Customer Service Call Center - Staffing & Management Service Operations for the 311-communication center.

Contract Variance:

There is not contract variance for the same services.

Department:	Fire
Award to:	Datamark, Inc. El Paso, TX
Total Estimated Amount:	\$525,000.00
Account No.:	322 - 520010 - 1000 - 22080 - P2218
Funding Source:	General Funds
District(s):	All

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Mario D'Agostino, Fire Chief, (915) 212-5605
Claudia A. Garcia, Interim Director, Purchasing & Strategic Sourcing,
(915) 212-1181

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 2 – Set the Standard for a Safe and Secure City

SUBGOAL: 2.3 - Increase Public Safety Operational Efficiency.

SUBJECT:

Discussion and action that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue a Purchase Order to Datamark, Inc., referencing Contract 2015-687R Customer Service Call Center - Staffing & Management Service Operations. This will be a change order to increase the contract by \$525,000.00 for a total amount not to exceed \$9,524,999.94. The change order will cover expenses for the remainder of the contract for Customer Service Call Center - Staffing & Management Service Operations for the 311-communication center.

BACKGROUND / DISCUSSION:

On August 25, 2015 Solicitation No. 2015-687R was awarded as a service contract to Datamark, Inc., to provide the Customer Service Call Center - Staffing & Management Service Operations for the Fire Department; the City will be procuring the Customer Service Call Center - Staffing & Management Service Operations.

SELECTION SUMMARY:

NA

CONTRACT VARIANCE:

There is not contract variance for the same services.

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

On August 25, 2015, City Council approved the award of contract 2015-687R to Datamark, Inc., for a three (3) year term and three (3) additional terms of one (1) year each for a total six (6) year contract and total amount of \$8,999,999.94.

AMOUNT AND SOURCE OF FUNDING:

Amount: \$525,000.00
Funding Source: General Funds
Account: 322 – 520010 – 1000 – 22080 – P2218

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Fire

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



Chief Mario D'Agostino, Fire Department

**PROJECT FORM
(Contract Modification)**

Please place the following item on the **REGULAR** agenda for the Council Meeting of **January 19, 2022**.

STRATEGIC GOAL 2 – Set the Standard for a Safe and Secure City

The linkage to the Strategic Plan is subsection 2.3 – Increase Public Safety Operational Efficiency.

Award Summary:

Discussion and action that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue a Purchase Order to Datamark, Inc., referencing Contract 2015-687R Customer Service Call Center - Staffing & Management Service Operations. This will be a change order to increase the contract by \$525,000.00 for a total amount not to exceed \$9,524,999.94. The change order will cover expenses for the remainder of the contract for Customer Service Call Center - Staffing & Management Service Operations for the 311-communication center.

Contract Variance:

There is not contract variance for the same services.

Department:	Fire
Award to:	Datamark, Inc. El Paso, TX
Total Estimated Amount:	\$525,000.00
Account No.:	322 – 520010 – 1000 – 22080 – P2218
Funding Source:	General Funds
District(s):	All



Legislation Text

File #: 22-68, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Fire, Chief Mario D'Agostino, (915) 212-5605
Purchasing and Strategic Sourcing, Claudia Garcia, (915) 212-1218

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

The linkage to the Strategic Plan is subsection 2.3 - Increase Public Safety Operational Efficiency.

Award Summary:

Discussion and action that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue a Purchase Order to Datamark, Inc., for the 2022-0393 Customer Service Call Center - Staffing & Management Service Operations for the Fire Department. This contract will allow services essential to the public safety of our community through support of our 911 Communications Center. The purchase order is for an amount not to exceed \$1,899,874.40 for a one (1) year term.

Contract Variance:

The difference in cost, based on the comparison from previous contract is as follows: An annual increase of \$399,874.41, which represents a 26.66% increase due the changes in cost of living and wages increasing.

Department:	Fire
Award to:	Datamark, Inc. El Paso, TX
Term:	One (1) Year
Total Estimated Amount:	\$1,899,874.40
Account No.:	322 - 520010 - 1000 - 22080 - P2218
Funding Source:	General Funds
District(s):	All

This is a purchase pursuant to the Public Health and Safety Exemption, 252.022 (a) (2) of the Texas Local Government Code, services contract.

Additionally, it is requested that the City Attorney's Office review and that the City Manager be authorized to execute any related contract documents and agreements necessary to effectuate this award.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 19, 2022
PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER:
Mario D'Agostino, Fire Chief, (915) 212-5605
Claudia A. Garcia, Interim Director, Purchasing & Strategic Sourcing,
(915) 212-1181

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 2 – Set the Standard for a Safe and Secure City

SUBGOAL: 2.3 - Increase Public Safety Operational Efficiency.

SUBJECT:

Discussion and action that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue a Purchase Order to Datamark, Inc., for the 2022-0393 Customer Service Call Center - Staffing & Management Service Operations for the Fire Department. This contract will allow services essential to the public safety of our community through support of our 911 Communications Center. The purchase order is for an amount not to exceed \$1,899,874.40 for a one (1) year term.

BACKGROUND / DISCUSSION:

On August 25, 2015 Solicitation No. 2016-687R was awarded as a service contract to Datamark, Inc., to provide the Customer Service Call Center - Staffing & Management Service Operations for the Fire Department; the City is currently procuring the Customer Service Call Center - Staffing & Management Service Operations, the Parties have agreed to extend the term of Datamark, Inc., service contract to continue providing the Customer Service Call Center - Staffing & Management Service Operations on a month-to-month basis.

SELECTION SUMMARY:

NA

CONTRACT VARIANCE:

The difference in cost, based on the comparison from previous contract is as follows: An annual increase of \$399,874.41, which represents a 26.66% increase due the changes in cost of living and wages increasing.

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

NA

AMOUNT AND SOURCE OF FUNDING:

Amount: \$1,899,874.40
Funding Source: General Funds
Account: 322 – 520010 – 1000 – 22080 – P2218

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Fire

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



Chief Mario D'Agostino, Fire Department

**PROJECT FORM
(Exemption)**

Please place the following item on the **REGULAR** agenda for the Council Meeting of **January 19, 2022**.

STRATEGIC GOAL 2 – Set the Standard for a Safe and Secure City

The linkage to the Strategic Plan is subsection 2.3 – Increase Public Safety Operational Efficiency.

Award Summary:

Discussion and action that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue a Purchase Order to Datamark, Inc., for the 2022-0393 Customer Service Call Center - Staffing & Management Service Operations for the Fire Department. This contract will allow services essential to the public safety of our community through support of our 911 Communications Center. The purchase order is for an amount not to exceed \$1,899,874.40 for a one (1) year term.

Contract Variance:

The difference in cost, based on the comparison from previous contract is as follows: An annual increase of \$399,874.41, which represents a 26.66% increase due the changes in cost of living and wages increasing.

Department:	Fire
Award to:	Datamark, Inc. El Paso, TX
Term:	One (1) Year
Total Estimated Amount:	\$1,899,874.40
Account No.:	322 – 520010 – 1000 – 22080 – P2218
Funding Source:	General Funds
District(s):	All

This is a purchase pursuant to the Public Health and Safety Exemption, 252.022 (a) (2) of the Texas Local Government Code, services contract.

Additionally, it is requested that the City Attorney's Office review and that the City Manager be authorized to execute any related contract documents and agreements necessary to effectuate this award.



Legislation Text

File #: 22-63, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

District 2

Capital Improvement Department, Sam Rodriguez, (915) 212-1845
Purchasing and Strategic Sourcing, Claudia Garcia, (915) 212-0043

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

The linkage to the Strategic Plan is subsection 7.4 - Continue the strategic investment in City facilities and technology

Award Summary:

Discussion and action on the award of Solicitation 2021-1471 Animal Services HVAC Improvements (Re-Bid) to AAA General Contractors, LLC for a total estimated award of \$1,971,179.79. This project consists of replacing the existing HVAC system at the Animal Services and Dog Kennels Buildings located at 5001 Fred Wilson Avenue.

Department:	Capital Improvement
Award to:	AAA General Contractors, LLC El Paso, TX
Item(s):	Base Bid I
Initial Term:	210 Consecutive Calendar Days
Base Bid I:	\$1,971,179.79
Total Estimated Award:	\$1,971,179.79
Funding Source:	2020 Capital Fund
Account:	190-4746-38290-580220- PCP20ANMLSHELTE
Account:	190-4746-38290-580220- PCP20ANMLHOUSIN
District(s):	2

This is a Low Bid procurement, lump sum contract.

The Purchasing & Strategic Sourcing and Capital Improvement Departments recommend award as indicated to AAA General Contractors, LLC, the lowest responsive and responsible bidder and that Desert Contracting, LLC and PERIKIN Enterprises, LLC be deemed non-responsive due to submitting their bids on the incorrect solicitation documents.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

As a part of this award, upon the review of the City Attorney, the City Engineer may without further authorization from City Council approve contract changes which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable law, do not make changes to the prices and are within the appropriate budget.

CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

AGENDA DATE: January 19, 2022

PUBLIC HEARING DATE: Not Applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Sam Rodriguez, Chief Operations and Transportation Officer, Aviation Director
and City Engineer, (915) 212-1845

Claudia A. Garcia, Interim Director of Purchasing & Strategic Sourcing,
(915) 212-0043

DISTRICT(S) AFFECTED: 2

STRATEGIC GOAL: No. 7 – Enhance and Sustain El Paso's Infrastructure Network

SUBGOAL: 7. 4 - Continue the strategic investment in City facilities and technology

SUBJECT:

Discussion and action on the award of solicitation 2021-1471 Animal Services HVAC Improvements (Re-Bid) to AAA General Contractors, LLC for a total estimated award of \$1,971,179.79.

BACKGROUND / DISCUSSION:

The project consists of replacing the existing HVAC system at the Animal Services and Dog Kennels Buildings as per the construction documents and to include but not limited to the following: Partial removal of ceiling system in affected areas, removal of return and supply air grilles, removal of solar panels and associated equipment, partial removal of hydronic and drain lines as required, removal of evaporative coolers, ducts, chillers and associated electrical equipment. Installation of new energy recovery equipment, packaged outdoor HVAC equipment, HVAC ducts and insulation and Integrated Automation Control of HVAC. Installation of Structural Steel Framing reinforcement, installation of new roofing systems only in affected areas, installation of new ceiling system only in affected areas and removing the existing air ionization units and reinstall to the new HVAC units.

SELECTION SUMMARY:

Solicitation was advertised on August 24, 2021 and August 31, 2021. The solicitation was posted on City website on August 24, 2021. The email (Purmail) notification was sent out on August 26, 2021. There was a total of fifty-nine (59) viewers online; five (3) bids were received; two (2) from local suppliers.

CONTRACT VARIANCE:

N/A

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Amount: \$1,971,179.79

Funding Source: 2020 Capital Fund

Account: 190-4746-38290-580220- PCP20ANMLSHELTE

Account: 190-4746-38290-580220- PCP20ANMLHOUSIN

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Capital Improvement

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Jerry DeMuro/for

Sam Rodriguez, Chief Operations and Transportation Officer, Aviation Director and City Engineer

**COUNCIL PROJECT FORM
(Low Bid)**

*******POSTING LANGUAGE BELOW*******

Please place the following item on the **REGULAR AGENDA** for the Council Meeting of **January 19, 2022**.

STRATEGIC GOAL 7 – Enhance and Sustain El Paso's Infrastructure Network

The linkage to the Strategic Plan is subsection 7.4 - Continue the strategic investment in City facilities and technology

Award Summary:

Discussion and action on the award of solicitation 2021-1471 Animal Services HVAC Improvements (Re-Bid) to AAA General Contractors, LLC for a total estimated award of \$1,971,179.79. This project consists of replacing the existing HVAC system at the Animal Services and Dog Kennels Buildings located at 5001 Fred Wilson Avenue.

Department:	Capital Improvement
Award to:	AAA General Contractors, LLC El Paso, TX
Item(s):	Base Bid I
Initial Term:	210 Consecutive Calendar Days
Base Bid I:	\$1,971,179.79
Total Estimated Award:	\$1,971,179.79
Funding Source:	2020 Capital Fund
Account:	190-4746-38290-580220- PCP20ANMLSHELTE
Account:	190-4746-38290-580220- PCP20ANMLHOUSIN
District(s):	2

This is a Low Bid procurement, lump sum contract.

The Purchasing & Strategic Sourcing and Capital Improvement Departments recommend award as indicated to AAA General Contractors, LLC, the lowest responsive and responsible bidder and that Desert Contracting, LLC and PERIKIN Enterprises, LLC be deemed non-responsive due to submitting their bids on the incorrect solicitation documents.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

As a part of this award, upon the review of the City Attorney, the City Engineer may without further authorization from City Council approve contract changes which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable law, do not make changes to the prices and are within the appropriate budget.

2021-1471 Animal Services HVAC Improvements (Re-Bid)
Bid Tab Summary

No.	Bidder	Sum Total Base Bid I
1	AAA General Contractors, LLC	\$1,971,179.79
2	Desert Contracting, LLC	\$1,635,440.00
3	PERIKIN Enterprises, LLC	\$1,652,051.36



**CITY OF EL PASO
BID TABULATION FORM**



BID TITLE: Animal Services HVAC Improvements (Re-Bid)		SOLICITATION No.: 2021-1471	
BID DATE: October 6, 2021		DEPARTMENT: Capital Improvement	
	AAA General Contractors, LLC El Paso, TX BIDDER 1 of 3	Desert Contracting, LLC El Paso, TX BIDDER 2 of 3	PERIKIN Enterprises, LLC Albuquerque, NM BIDDER 3 of 3
Base Bid I	\$1,971,179.79	\$1,635,440.00	\$1,652,051.36
Amendments Acknowledged	Yes	Yes	Yes
Bid Bond Submitted	Yes	Yes	Yes

2021-1471 Animal Services HVAC Improvements (Re-Bid)**View List**

1	AAA General Contrato	Skertchly, Edgar
2	AB Powers, LLC.	Aguilera, Benjamin
3	Access Communication	Dittmar, Mark
4	Account Executive Bu	Hernandez, Roger
5	Air Moving Equipment	ELLIS, MARK
6	AREDI Enterprises, L	DIAZ, REBECA
7	ARGUS Logistics Grou	Vargas, Ronny
8	Border Demolition An	Acosta, David
9	Burke Insurance Grou	burke, wiliam
10	Burman	Aguilar, Francisco
11	CARDINA	Arguijo, Carlos
12	Construction Journal	Exton, Pamela
13	Construction Reporte	Wood, Jane
14	Contractors Register	Deg, Maria
15	Deltek	Management, Source
16	Desert Contracting	Ornelas, Pablo
17	Direx Construction,	Hudson, Brad
18	DIVISION 7 LLC	GONZALEZ, ALEXANDER
19	Dodge Data	Peggy, Koehn
20	DRS Rock Materials,	Soto, Daniel
21	El Paso Bid Deposito	Baca, Ricardo
22	El Paso JAG	Castro, Patricia
23	EP Hispanic Chamber	Lugo, Isabel
24	EP MECHANICAL TECHNO	LEON, VIRGIL
25	FloWar	Flores Warnock, Paula Patricia
26	Fulcrum Contracting	Jaramillo, Jorge
27	G. Sandoval Construc	Espinoza, Gilbert
28	Gracen Eng. And Cons	Sambrano, Michael
29	High Performance HVA	Garcia, Diego
30	i- Sourcing Technolo	Balai, Rakesh
31	IMS	Gaynor, Shabron
32	Iron Horse Electrica	Concha, Joe
33	JMR Demolition	Flores, Hugo
34	Jobe Materials, L.P.	Lowrance, Gloria
35	Johnson Controls, In	Dominguez, Jose

**2021-1471 Animal Services HVAC Improvements (Re-Bid)
View List**

36	LAndJ General contra	Nevarez, Luis
37	Lomeli and sons Land	Gonzalez, Ruben
38	Martinez Bros. Contr	Martinez, Heriberto
39	Millennium Contracti	Medina, Ana
40	Mirador	Lopez, Jose
41	Noble General Contra	Rey, Nohemi
42	Perikin Enterprises	Diaz, Andrew
43	Platinum Tint And Au	Ionut, Guliman
44	Prime Vendor Inc.	Jones, Kim
45	RCPM, LLC	Ortiz, Cecilia
46	RDZ BUILD	Rodriguez, Manny
47	Roman Construction	Valdespino, Carlos
48	Santana contracting	Albert, Arenivar
49	Smartprocure	Bjornsson, Ron
50	Sunset West Inc	Rall, Timothy
51	Synergy Temperature	Simental, Tony
52	The PlanIt Room	Hernandez, Cecilia
53	Trane U.S. Inc.	Hernandez, George
54	Vistacon Ventures	Silva, Basilio
55	Vitual Builders Exch	Olguin, Jeannette
56	Wayne Enterprises	Austin, Fork
57		Maldonado, Mariana
58		Banquil, Lovely
59		Watson, Frank



File #: 22-24, Version: 1

**CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM**

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

Please choose District and Department from drop down menu. Please post exactly as example below.

No Title's, No emails. Please use ARIAL 10 Font.

All Districts

Planning and Inspections, Philip F. Etiwe, (915) 212-1553

Planning and Inspections, Kevin Smith, (915) 212-1566

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance amending Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.150 (Shared Mobility Devices), to update permit term and renewal requirements.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 4, 2022
PUBLIC HEARING DATE: January 19, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553
Kevin Smith, (915) 212-1566

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

SUBGOAL: 3.1 Provide business friendly permitting and inspection process
3.2 Set one standard for infrastructure across the city

SUBJECT:

An Ordinance amending Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.150 (Shared Mobility Devices), to update permit term and renewal requirements.

BACKGROUND / DISCUSSION:

On January 8, 2019, City Council approved an ordinance establishing a twelve-month pilot program for the shared use mobility devices. City Council approved extensions of the pilot program to January 31, 2022. This item is a staff recommendation to extend the pilot program an additional year to January 31, 2023.

PRIOR COUNCIL ACTION:

- January 8, 2019 – City Council approved Ordinance 018899 establishing and governing the shared mobility pilot program.
- January 21, 2020 – City Council approved Ordinance 019012 extending pilot program by one year, to January 31, 2021.
- January 19, 2021 – City Council approved Ordinance 019134 extending pilot program by one year, to January 31, 2022.

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Planning & Inspections, Planning Division

SECONDARY DEPARTMENT: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Philip Etiwe

ORDINANCE NO. _____

ORDINANCE AMENDING TITLE 15 (PUBLIC SERVICES), CHAPTER 15.08 (STREET RENTALS), SECTION 15.08.150 (SHARED MOBILITY DEVICES), TO UPDATE PERMIT TERM AND RENEWAL REQUIREMENTS. THE PENALTY IS AS PROVIDED IN SECTION 15.08.150 OF THE EL PASO CITY CODE.

WHEREAS, on January 8th, 2019 the City of El Paso adopted Ordinance No. 018899 allowing for the placement of shared mobility devices on the public right of way for a 12 month evaluation period; and

WHEREAS, on January 21st, 2020 the City of El Paso adopted Ordinance No. 019012 extending the evaluation period for an additional 12 month period; and

WHEREAS, on January 19th, 2021 the City of El Paso adopted Ordinance No. 019134 extending the evaluation period for an additional 12 month period; and

WHEREAS, the City Council wishes to extend the evaluation period for an additional 12 months;

NOW THEREFORE BE IT ORDAINED BY THE CITY OF EL PASO:

SECTION 1. Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.150 (Shared Mobility Devices), Subsection C, of the El Paso City Code is amended to read as follows:

- C. Permit. A person who wants to place a shared use mobility device on the public right-of-way shall apply for a permit on an application form as required by the director. The director shall issue a permit to a person that complies with requirements of this section and any regulations adopted by the director pursuant to this section. The director shall not issue a permit to a person that does not comply with the requirements of this section or any regulations adopted by the director pursuant to this section. A person is not eligible to apply for a permit for one year following a revocation of a permit under this section. Unless terminated earlier as provided under this section, all permits issued under this section expire January 31, 2023 regardless of the date such permit is issued. No permit shall be issued to a person owing ad valorem taxes to the city or who has defaulted on an agreement with the city within five years preceding the application for a permit under this section. Notwithstanding anything to the contrary, a permit may only be issued to a person who owns the shared use mobility devices for which the permit is requested. All application forms and documents under this section must be executed by the owner of the shared use mobility devices. Nothing in the section prohibits city council from amending this section to change the expiration date of all permits.

SECTION 2. Except as herein amended, all provisions of Title 15 remain in full force and effect.

(Signatures Begin on Following Page)

ADOPTED this _____ day of _____, 2022.


CITY OF EL PASO:

Oscar Leaser, Mayor

ATTEST:

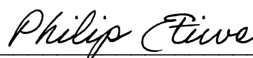
Laura D. Prine, City Clerk

APPROVED AS TO FORM:



Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:



Philip F. Etiwe, Director
Planning and Inspections Department

Title 15.08.150 – Shared Mobility Devices

C. Permit. A person who wants to place a shared use mobility device on the public right-of-way shall apply for a permit on an application form as required by the director. The director shall issue a permit to a person that complies with requirements of this section and any regulations adopted by the director pursuant to this section. The director shall not issue a permit to a person that does not comply with the requirements of this section or any regulations adopted by the director pursuant to this section. A person is not eligible to apply for a permit for one year following a revocation of a permit under this section. Unless terminated earlier as provided under this section, all permits issued under this section expire January 31, ~~2022-2023~~ regardless of the date such permit is issued. No permit shall be issued to a person owing ad valorem taxes to the city or who has defaulted on an agreement with the city within five years preceding the application for a permit under this section. Notwithstanding anything to the contrary, a permit may only be issued to a person who owns the shared use mobility devices for which the permit is requested. All application forms and documents under this section must be executed by the owner of the shared use mobility devices. Nothing in the section prohibits city council from amending this section to change the expiration date of all permits.



Legislation Text

File #: 22-29, Version: 1

CITY OF EL PASO, TEXAS
LEGISTAR AGENDA ITEM SUMMARY FORM

DISTRICT, DEPARTMENT, CONTACT INFORMATION:

*Please choose District and Department from drop down menu. Please post exactly as example below.
No Title's, No emails. Please use ARIAL 10 Font.*

All Districts

Animal Services Department, Ramon Herrera, (915) 212-8742

AGENDA LANGUAGE:

This is the language that will be posted to the agenda. Please use ARIAL 11 Font.

An Ordinance Amending Title 7 (Animals), Chapter 7.04 (Definitions And Administration), Section 7.04.010 (Definitions) to add Inclement Weather to the Definitions; Chapter 7.08 (Animals Generally), Section 7.08.050 (Standards For Animal Care) to add Inclement Weather Conditions to Unlawful Restraint Of A Dog; Chapter 7.12 (Dogs And Cats), Section 7.12.020 (Registration, Vaccination, and Microchips Required) to allow Veterinarians to exchange or return up to 100, unused, expired from the previous year Tags for current year tags; Chapter 7.15 (Grooming Services), Section 7.15.030 (Groomer License Application) to clarify the Contents of the Groomer's Application; Chapter 7.15, Section 7.15.070 (Denial) to Amend Conviction Timeframe Ineligibility; Chapter 7.15 (Grooming Services), Section 7.15.080 (Groomer License Suspension Or Revocation) to clarify the type of Investigation and Corrective Action Timeframe; Chapter 7.15, Section 7.15.090 (Shop Registration Required) to Clarify the type of Background Check required and allowing documents relevant to Application, Background Check, and Supporting Documents be available for Inspection; Chapter 7.15 (Grooming Services), Section 7.15.100 (Shop Registration Application) to Clarify the Issuance of Shop Registration Requirements; Chapter 7.15, Section 7.15.140 (Denial) to Clarify Denial Reasons for Permit Application; Chapter 7.28 (Animal Shelter Advisory Committee), Section 7.28.050 (Quorum And Procedures) to Amend Department; the Penalty as Provided in Section 7.04.080 of The El Paso City Code.

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 4, 2022

PUBLIC HEARING DATE: January 18, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ramon Herrera, 493-4324

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 8: Nurture and Promote a Healthy, Sustainable Community

SUBGOAL: 8.3: Enhance animal services to ensure El Paso's pets are provided a safe and healthy environment

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

AN ORDINANCE AMENDING TITLE 7 (ANIMALS), CHAPTER 7.04 (DEFINITIONS AND ADMINISTRATION), SECTION 7.04.010 (DEFINITIONS) TO ADD INCLEMENT WEATHER TO THE DEFINITIONS; CHAPTER 7.08 (ANIMALS GENERALLY), SECTION 7.08.050 (STANDARDS FOR ANIMAL CARE) TO ADD INCLEMENT WEATHER CONDITIONS TO UNLAWFUL RESTRAINT OF A DOG; CHAPTER 7.12 (DOGS AND CATS), SECTION 7.12.020 (REGISTRATION, VACCINATION, AND MICROCHIPS REQUIRED) TO ALLOW VETERINARIANS TO EXCHANGE OR RETURN UP TO 100, UNUSED, EXPIRED FROM THE PREVIOUS YEAR TAGS FOR CURRENT YEAR TAGS; CHAPTER 7.15 (GROOMING SERVICES), SECTION 7.15.030 (GROOMER LICENSE APPLICATION) TO CLARIFY THE CONTENTS OF THE GROOMER'S APPLICATION; CHAPTER 7.15, SECTION 7.15.070 (DENIAL) TO AMEND CONVICTION TIMEFRAME INELIGIBILITY; CHAPTER 7.15 (GROOMING SERVICES), SECTION 7.15.080 (GROOMER LICENSE SUSPENSION OR REVOCATION) TO CLARIFY THE TYPE OF INVESTIGATION AND CORRECTIVE ACTION TIMEFRAME; CHAPTER 7.15, SECTION 7.15.090 (SHOP REGISTRATION REQUIRED) TO CLARIFY THE TYPE OF BACKGROUND CHECK REQUIRED AND ALLOWING DOCUMENTS RELEVANT TO APPLICATION, BACKGROUND CHECK, AND SUPPORTING DOCUMENTS BE AVAILABLE FOR INSPECTION; CHAPTER 7.15 (GROOMING SERVICES), SECTION 7.15.100 (SHOP REGISTRATION APPLICATION) TO CLARIFY THE ISSUANCE OF SHOP REGISTRATION REQUIREMENTS; CHAPTER 7.15, SECTION 7.15.140 (DENIAL) TO CLARIFY DENIAL REASONS FOR PERMIT APPLICATION; CHAPTER 7.28 (ANIMAL SHELTER ADVISORY COMMITTEE), SECTION 7.28.050 (QUORUM AND PROCEDURES) TO AMEND DEPARTMENT; THE PENALTY AS PROVIDED IN SECTION 7.04.080 OF THE EL PASO CITY CODE

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

To amend Title 7 of the El Paso City Code to comply with existing state law, to amend minor typographical errors throughout Title 7 of the El Paso City Code, to adopt rules that align with and advance the City's no-kill goals and to ensure that Shops providing grooming services and their respective groomers adhere to consistent standards of care.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

N/A

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: El Paso Animal Services

SECONDARY DEPARTMENT:

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE _____

AN ORDINANCE AMENDING TITLE 7 (ANIMALS), CHAPTER 7.04 (DEFINITIONS AND ADMINISTRATION), SECTION 7.04.010 (DEFINITIONS) TO ADD INCLEMENT WEATHER TO THE DEFINITIONS; CHAPTER 7.08 (ANIMALS GENERALLY), SECTION 7.08.050 (STANDARDS FOR ANIMAL CARE) TO ADD INCLEMENT WEATHER CONDITIONS TO UNLAWFUL RESTRAINT OF A DOG; CHAPTER 7.12 (DOGS AND CATS), SECTION 7.12.020 (REGISTRATION, VACCINATION, AND MICROCHIPS REQUIRED) TO ALLOW VETERINARIANS TO EXCHANGE OR RETURN UP TO 100, UNUSED, EXPIRED FROM THE PREVIOUS YEAR TAGS FOR CURRENT YEAR TAGS; CHAPTER 7.15 (GROOMING SERVICES), SECTION 7.15.030 (GROOMER LICENSE APPLICATION) TO CLARIFY THE CONTENTS OF THE GROOMER'S APPLICATION; CHAPTER 7.15, SECTION 7.15.070 (DENIAL) TO AMEND CONVICTION TIMEFRAME INELIGIBILITY; CHAPTER 7.15 (GROOMING SERVICES), SECTION 7.15.080 (GROOMER LICENSE SUSPENSION OR REVOCATION) TO CLARIFY THE TYPE OF INVESTIGATION AND CORRECTIVE ACTION TIMEFRAME; CHAPTER 7.15, SECTION 7.15.090 (SHOP REGISTRATION REQUIRED) TO CLARIFY THE TYPE OF BACKGROUND CHECK REQUIRED AND ALLOWING DOCUMENTS RELEVANT TO APPLICATION, BACKGROUND CHECK, AND SUPPORTING DOCUMENTS BE AVAILABLE FOR INSPECTION; CHAPTER 7.15 (GROOMING SERVICES), SECTION 7.15.100 (SHOP REGISTRATION APPLICATION) TO CLARIFY THE ISSUANCE OF SHOP REGISTRATION REQUIREMENTS; CHAPTER 7.15, SECTION 7.15.140 (DENIAL) TO CLARIFY DENIAL REASONS FOR PERMIT APPLICATION; CHAPTER 7.28 (ANIMAL SHELTER ADVISORY COMMITTEE), SECTION 7.28.050 (QUORUM AND PROCEDURES) TO AMEND DEPARTMENT; THE PENALTY AS PROVIDED IN SECTION 7.04.080 OF THE EL PASO CITY CODE

WHEREAS, the City of El Paso desires to amend Title 7 of the El Paso City Code to comply with existing state law; and

WHEREAS, the City of El Paso wishes to amend minor typographical errors throughout Title 7 of the El Paso City Code; and

WHEREAS, the City of El Paso desires to adopt rules that align with and advance the City's no-kill goals; and

WHEREAS, City Council wishes to ensure that Shops providing grooming services and their respective groomers adhere to consistent standards of care.

ORDINANCE NO. _____

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

Section 1. That Title 7 (Animals), Chapter 7.04.010 (Definitions) be amended to add the definition of “inclement weather” as subsection X. as follows, and to renumber all subsequent definitions:

7.04.010 - Definitions.

X. “Inclement weather” includes rain, hail, sleet, snow, high winds, extreme low temperatures, or extreme high temperatures.

Section 2. That Title 7 (Animals), Chapter 7.08 (Animals Generally) Section 7.08.050 (Standards for animal care), Subsection H.1. be amended to read as follows:

H.1.c. In the case of inclement weather or extreme weather conditions, including conditions in which:

- i. The actual or effective outdoor temperature is below thirty-two degrees Fahrenheit;
- ii. A heat advisory has been issued by the National Weather Service, or a local or state authority, including the City of El Paso; or
- iii. A tornado warning has been issued for the City or County of El Paso by the National Weather Service.

Section 3. That Title 7 (Animals), Chapter 7.12 (Dogs and Cats), Section 7.12.020 (Registration, vaccination, and microchip required), Subsection 7.12.020.B. be amended as follows:

7.12.020 - Registration, vaccination, and microchips required.

B. Upon application by a veterinarian, the program shall furnish the veterinarian with a supply of microchips and pre-numbered registration certificates and corresponding tags. The veterinarian shall be authorized to receive applications and issue registration certificates and tags for animals that are currently vaccinated and microchipped. Copies of all certificates issued shall be distributed and transmitted to various city agencies in accordance with arrangements made by the program with the veterinarians, provided that no information shall be released in violation of Texas Health and Safety Code Section 826.0211. When applying for additional microchips, certificates and tags the veterinarian shall account to the program for all those previously supplied to him, and shall remit to the

program all fees collected. A veterinarian may exchange or return up to 100, unused, expired from the previous year tags for current year tags annually. This section does not apply to lost tags. He shall be held financially responsible for any microchips, certificates and tags no longer in his possession that have not been issued or voided and returned to the program. The program may refuse to supply additional microchips, certificates and tags to any veterinarian who fails to account for all items previously furnished to him by the program. All fees collected by any veterinarian are payable to the city upon demand.

Section 4. That Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.030 (Groomer license application), Subsections 7.15.030.B.3., and 7.15.030.B.4., and 7.15.030B.5. be amended to read as follows:

7.15.030 - Groomer license application.

- B. 3. Proof of identification of groomer, in the form of a valid government-issued photographic identification;
- 4. A copy of the individual's animal groomer certificate and pet CPR certificate;
- 5. A sworn statement that the groomer is not under criminal investigation for, does not have pending criminal charges or a conviction for animal cruelty or a similar offense (e.g., battery, assault, domestic violence, any crime of a violent nature) in Texas or any other jurisdiction in the past seven years;

Section 5. That Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.070 (Denial), Subsection 7.15.070.A.2.f. be amended to read as follows:

7.15.070 - Denial.

- A. 2. The permit official finds any of the following:
 - f. That the applicant has been convicted of animal cruelty or a similar offense (e.g., battery, assault, domestic violence, any crime of a violent nature) in Texas or any other jurisdiction in the past seven years;

Section 6. That Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.080 (Groomer license suspension or revocation), Subsections 7.15.080.A.1. and 7.15.080.A.2., Subsections 7.15.080.C.4. and 7.15.080.C.6., Subsections 7.15.080.E.3. and 7.15.080.E.4., Subsection 7.15.080.G.7. be amended to read as follows:

ORDINANCE NO. _____

7.15.080 - Groomer license suspension or revocation.

- A. 1. The license holder is under investigation or has pending criminal charges for violating a provision of this chapter or a rule adopted under this chapter;
- 2. The license holder is under investigation or has pending criminal charges for having been intoxicated or under the influence of a mind-altering substance while providing grooming services;
- C. 4. Ten calendar day time limit for the completion of the corrective measures;
- 6. Require the groomer license be surrendered in-person or by certified mail to the director within seven calendar days of receipt of notice of suspension.
- E. 3. The license holder is found to be violating a provision of this chapter or a rule adopted under this chapter;
- 4. The license holder is found to have been intoxicated or under the influence of a mind altering substance while providing grooming services;
- G. 7. Order that the groomer license be surrendered in-person or by certified mail to the director at Animal Services within seven calendar days of receipt of notice of suspension or revocation;

Section 7. That Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.090 (Shop registration required), Subsections 7.15.090.D.2. and 7.15.090.D.3. be amended and adding Subsection 7.15.090.M., to read as follows:

7.15.090 - Shop registration required.

- D. 2. The shop must perform a mandatory state-wide criminal background check on any groomer employed by or allowed to use the shop;
- 3. Any groomer with a conviction for animal cruelty or any similar violation (e.g., battery, assault, domestic violence, any crime of a violent nature) within the previous seven years must not be employed by or allowed use of the shop;
- M. All documents relevant to each groomer’s application, criminal background check, and supporting documents shall be available on site for inspection.

Section 8. That Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.100 (Shop registration application), Subsection 7.15.100.A.5. be amended to read as follows:

7.15.100 - Shop registration application.

- A. 5. Copies of all groomers' current animal grooming licenses issued by the department; shops will not be issued shop registration without licensed groomers;

Section 9. That Title 7 (Animals), Chapter 7.08 (Animals Generally), Section 7.15.140 (Denial), to add Subsection 7.15.140.A.2.d. to read as follows:

7.15.140 - Denial.

- A. 2. The permit official finds any of the following:
 - c. That the applicant has failed to pay the application fee; or
 - d. That the applicant does not have any licensed groomers employed to operate.

Section 10. That Title 7 (Animals), Chapter 7.28 (Animal Shelter Advisory Committee), Section 7.28.050 (Quorum and procedures), Subsection B., be amended to read as follows:

7.28.050 - Quorum and procedures.

- B. The city shall provide support to the ASAC for the purpose of scheduling and giving notice of the meetings, the preparation of minutes of each meeting, and the provision of other reasonable support services. The city's director of the Department of Animal Services shall designate a city employee to serve as the secretary. The secretary shall have the right to attend meetings and speak on questions before the ASAC, but shall have no vote and shall not be counted for the purpose of making a quorum or determining the number

Section 11. Title 7 (Animals) amendments shall take effect February 1, 2022.

Section 12. Except as expressly herein amended, Title 7 (Animals), of the El Paso City Code shall remain in full force and effect.

ADOPTED this _____ day of _____, 2022.


CITY OF EL PASO

Oscar Leoser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Eric Gutierrez
Assistant City Attorney

APPROVED AS TO CONTENT:



Ramon Herrera, Director
Department of Animal Services

ORDINANCE _____

AN ORDINANCE AMENDING TITLE 7 (ANIMALS), CHAPTER 7.04 (DEFINITIONS AND ADMINISTRATION), SECTION 7.04.010 (DEFINITIONS) TO ADD INCLEMENT WEATHER TO THE DEFINITIONS; CHAPTER 7.08 (ANIMALS GENERALLY), SECTION 7.08.050 (STANDARDS FOR ANIMAL CARE) TO ADD INCLEMENT WEATHER CONDITIONS TO UNLAWFUL RESTRAINT OF A DOG; CHAPTER 7.12 (DOGS AND CATS), SECTION 7.12.020 (REGISTRATION, VACCINATION, AND MICROCHIPS REQUIRED) TO ALLOW VETERINARIANS TO EXCHANGE OR RETURN UP TO 100, UNUSED, EXPIRED FROM THE PREVIOUS YEAR TAGS FOR CURRENT YEAR TAGS; CHAPTER 7.15 (GROOMING SERVICES), SECTION 7.15.030 (GROOMER LICENSE APPLICATION) TO CLARIFY THE CONTENTS OF THE GROOMER’S APPLICATION; CHAPTER 7.15, SECTION 7.15.070 (DENIAL) TO AMEND CONVICTION TIMEFRAME INELIGIBILITY; CHAPTER 7.15 (GROOMING SERVICES), SECTION 7.15.080 (GROOMER LICENSE SUSPENSION OR REVOCATION) TO CLARIFY THE TYPE OF INVESTIGATION AND CORRECTIVE ACTION TIMEFRAME; CHAPTER 7.15, SECTION 7.15.090 (SHOP REGISTRATION REQUIRED) TO CLARIFY THE TYPE OF BACKGROUND CHECK REQUIRED AND ALLOWING DOCUMENTS RELEVANT TO APPLICATION, BACKGROUND CHECK, AND SUPPORTING DOCUMENTS BE AVAILABLE FOR INSPECTION; CHAPTER 7.15 (GROOMING SERVICES), SECTION 7.15.100 (SHOP REGISTRATION APPLICATION) TO CLARIFY THE ISSUANCE OF SHOP REGISTRATION REQUIREMENTS; CHAPTER 7.15, SECTION 7.15.140 (DENIAL) TO CLARIFY DENIAL REASONS FOR PERMIT APPLICATION; CHAPTER 7.28 (ANIMAL SHELTER ADVISORY COMMITTEE), SECTION 7.28.050 (QUORUM AND PROCEDURES) TO AMEND DEPARTMENT; THE PENALTY AS PROVIDED IN SECTION 7.04.080 OF THE EL PASO CITY CODE

WHEREAS, the City of El Paso desires to amend Title 7 of the El Paso City Code to comply with existing state law; and

WHEREAS, the City of El Paso wishes to amend minor typographical errors throughout Title 7 of the El Paso City Code; and

WHEREAS, the City of El Paso desires to adopt rules that align with and advance the City’s no-kill goals; and

WHEREAS, City Council wishes to ensure that Shops providing grooming services and their respective groomers adhere to consistent standards of care.

ORDINANCE NO. _____

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Section 1. That Title 7 (Animals), Chapter 7.04.010 (Definitions) be amended to add the definition of “inclement weather” as subsection X. as follows, and to renumber all subsequent definitions:

7.04.010 - Definitions.

X. “Inclement weather” includes rain, hail, sleet, snow, high winds, extreme low temperatures, or extreme high temperatures.

Section 2. That Title 7 (Animals), Chapter 7.08 (Animals Generally) Section 7.08.050 (Standards for animal care), Subsection H.1.c. be amended to read as follows:

H.1. c. In the case of inclement weather or extreme weather conditions, including conditions in which:

- i. The actual or effective outdoor temperature is below thirty-two degrees Fahrenheit;
- ii. A heat advisory has been issued by the National Weather Service, or a local or state authority, including the City of El Paso; or
- iii. A tornado warning has been issued for the City or County of El Paso by the National Weather Service.

Section 3. That Title 7 (Animals), Chapter 7.12 (Dogs and Cats), Section 7.12.020 (Registration, vaccination, and microchip required) Subsection 7.12.020.B. be amended as follows:

7.12.020 - Registration, vaccination, and microchips required.

B. Upon application by a veterinarian, the program shall furnish the veterinarian with a supply of microchips and pre-numbered registration certificates and corresponding tags. The veterinarian shall be authorized to receive applications and issue registration certificates and tags for animals that are currently vaccinated and microchipped. Copies of all certificates issued shall be distributed and transmitted to various city agencies in accordance with arrangements made by the program with the veterinarians, provided that no information shall be released in violation of Texas Health and Safety Code Section 826.0211. When applying for additional microchips, certificates and tags the veterinarian shall account to the program for all those previously supplied to him, and shall remit to the program all fees collected. **A**

veterinarian may exchange or return up to 100, unused, expired from the previous year tags for current year tags annually. This section does not apply to lost tags. He shall be held financially responsible for any microchips, certificates and tags no longer in his possession that have not been issued or voided and returned to the program. The program may refuse to supply additional microchips, certificates and tags to any veterinarian who fails to account for all items previously furnished to him by the program. All fees collected by any veterinarian are payable to the city upon demand.

Section 4. That Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.030 (Groomer license application), Subsections 7.15.030.B.3., and 7.15.030.B.4., and 7.15.030B.5. be amended to read as follows:

7.15.030 - Groomer license application.

- B. 3. Proof of identification of groomer, in the form of a **valid** government-issued photographic identification;
- 4. A copy of the individual's animal groomer certificate **and pet CPR certificate**;
- 5. A sworn statement that the groomer is not under criminal investigation for, does not have pending criminal charges or a conviction for animal cruelty or a similar offense (e.g., battery, assault, domestic violence, any crime of a violent nature) in Texas or any other jurisdiction in the past **ten-seven** years;

Section 5. That Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.070 (Denial), Subsection 7.15.070.A.2.f. be amended to read as follows:

7.15.070 - Denial.

- A. 2. The permit official finds any of the following:
 - f. That the applicant has been convicted of animal cruelty or a similar offense (e.g., battery, assault, domestic violence, any crime of a violent nature) in Texas or any other jurisdiction in the past **ten-seven** years;

Section 6. That Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.080 (Groomer license suspension or revocation), Subsections 7.15.080.A.1. and 7.15.080.A.2., Subsections 7.15.080.C.4. and 7.15.080.C.6., Subsections 7.15.080.E.3. and 7.15.080.E.4., Subsection 7.15.080.G.7. be amended to read as follows:

ORDINANCE NO. _____

7.15.080 - Groomer license suspension or revocation.

- A. 1. The license holder is under ~~eriminal~~ investigation or has pending criminal charges for violating a provision of this chapter or a rule adopted under this chapter;
- 2. The license holder is under ~~eriminal~~ investigation or has pending criminal charges for having been intoxicated or under the influence of a mind-altering substance while providing grooming services;
- C. 4. ~~Ten calendar day Reasonable~~ time limit for the completion of the corrective measures;
- 6. Require the groomer license be surrendered in-person or by certified mail to the director within seven calendar days of receipt of notice of suspension. ~~For the purpose of this provision, notice is considered received upon the department's mailing the notice via regular mail to the address listed in the groomer's license application.~~
- E. 3. The license holder is ~~convicted of found to be~~ violating a provision of this chapter or a rule adopted under this chapter.;
- 4. The license holder is ~~convicted of having been found to have been~~ intoxicated or under the influence of a mind altering substance while providing grooming services;
- G. 7. Order that the groomer license be surrendered in-person or by certified mail to the director at ~~A~~animal ~~S~~services within seven calendar days of receipt of notice of suspension or revocation;

Section 7. That Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.090 (Shop registration required), Subsections 7.15.090.D.2. and 7.15.090.D.3. be amended and adding Subsection 7.15.090.M., to read as follows:

7.15.090 - Shop registration required.

- D. 2. The shop must perform a mandatory state-wide criminal background check on any groomer employed by or allowed to use the shop;
- 3. Any groomer with a conviction for animal cruelty or any similar violation (e.g., battery, assault, domestic violence, any crime of a violent nature) within the previous ~~ten~~seven years must not be employed by or allowed use of the shop;
- M. ~~All documents relevant to each groomer's application, criminal background check, and supporting documents shall be available on site for inspection.~~

ORDINANCE NO. _____

Section 8. That Title 7 (Animals), Chapter 7.15 (Grooming Services), Section 7.15.100 (Shop registration application), Subsection 7.15.100.A.5. be amended to read as follows:

7.15.100 - Shop registration application.

- A. 5. Copies of **all** groomers' current animal grooming licenses issued by the department; **shops will not be issued shop registration without licensed groomers;**

Section 9. That Title 7 (Animals), Chapter 7.08 (Animals Generally), Section 7.15.140 (Denial), to add Subsection 7.15.140.A.2.d. to read as follows:

7.15.140 - Denial.

- A. 2. The permit official finds any of the following:
- c. That the applicant has failed to pay the application fee; or
 - d. That the applicant does not have any licensed groomers employed to operate.

Section 10. That Title 7 (Animals), Chapter 7.28 (Animal Shelter Advisory Committee), Section 7.28.050 (Quorum and procedures), Subsection B., be amended to read as follows:

7.28.050 - Quorum and procedures.

- B. The city shall provide support to the ASAC for the purpose of scheduling and giving notice of the meetings, the preparation of minutes of each meeting, and the provision of other reasonable support services. The city's director of the ~~d~~Department of ~~environmental services~~ **Animal Services** shall designate a city employee to serve as the secretary. The secretary shall have the right to attend meetings and speak on questions before the ASAC, but shall have no vote and shall not be counted for the purpose of making a quorum or determining the number

Section 11. Title 7 (Animals) amendments shall take **effect February 1, 2022.**

Section 12. Except as expressly herein amended, Title 7 (Animals), of the El Paso City Code shall remain in full force and effect.

ADOPTED this _____ day of _____, 2021.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Eric Gutierrez
Assistant City Attorney

APPROVED AS TO CONTENT:

Ramon Herrera, Director
Department of Animal Services

ORDINANCE NO. _____

Title 7 Amendments



Amendments Address:

- Allows veterinary clinic partners to exchange/return unused registration tags
- Clarifies definitions Grooming Ordinance
- Align with recently passed new Special State Session bill on Unlawful Restraint
- General language clean up



Customer Service Driven Amendment

7.12.020. - Registration, vaccination, and microchips required.

Sec B.... **A veterinarian may exchange or return up to 100 unused, expired from the previous year tags for current year tags annually. This section does not apply to lost tags.**

Grooming Ordinance Clarifications

7.15.030 - Groomer license application.

B .An individual seeking to perform animal grooming must submit a signed, verified application annually, with the appropriate application fee(s), to the permit official. Applications shall be on forms obtained from the permit official and must contain, at a minimum, the following true and correct information and documentation:

3. Proof of identification of groomer, in the form of a **valid** government-issued photographic identification;
4. A copy of the individual's animal groomer certificate **and pet CPR certificate**;
5. A sworn statement that the groomer is not under criminal investigation for, does not have pending criminal charges or a conviction for animal cruelty or a similar offense (e.g., battery, assault, domestic violence, any crime of a violent nature) in Texas or any other jurisdiction in the past ~~ten~~ **seven** years;

Grooming Ordinance Clarifications

7.15.070 - Denial.

- A. 2. The permit official finds any of the following:
- f. That the applicant has been convicted of animal cruelty or a similar offense (e.g., battery, assault, domestic violence, any crime of a violent nature) in Texas or any other jurisdiction in the past ~~ten~~ **seven** years;

7.15.080 - Groomer license suspension or revocation.

- A. 1. The license holder is under ~~criminal~~ investigation or has pending criminal charges for violating a provision of this chapter or a rule adopted under this chapter;
2. The license holder is under ~~criminal~~ investigation or has pending criminal charges for having been intoxicated or under the influence of a mind-altering substance while providing grooming services;
- C. 4. **Ten calendar day** ~~Reasonable~~ time limit for the completion of the corrective measures;
6. Require the groomer license be surrendered in-person or by certified mail to the director within seven ~~calendar~~ days of receipt of notice of suspension;
- E. 3. The license **holder** is ~~convicted of~~ **found to be** violating a provision of this chapter or a rule adopted under this chapter.;
4. The license holder is ~~convicted of having been~~ **found to have been** intoxicated or under the influence of a mind altering substance while providing grooming services;

Grooming Ordinance Clarifications

7.15.090 - Shop registration required.

- D. 2. The shop must perform a mandatory **state-wide criminal** background check on any groomer employed by or allowed to use the shop;
3. Any groomer with a conviction for animal cruelty or any similar violation (e.g., battery, assault, domestic violence, any crime of a violent nature) within the previous ~~ten~~ **seven** years must not be employed by or allowed use of the shop;

M. All documents relevant to the groomer's application, criminal background check, and supporting documents shall be available on site for inspection.

7.15.100 - Shop registration application.

- A. 5. Copy of **all** groomers' current animal grooming licenses issued by the department; **shops will not be issued shop registration without licensed groomers;**

7.15.140 - Denial.

- A. 2. The permit official finds any of the following:
- d. That the applicant does not have any licensed groomers employed to operate.**

Unlawful Restraint

Changes made as a result of Unlawful Restraint bill signed in October by Gov. Abbott.

- Amendments will update our ordinance definitions to match new State legislation

7.04.010 - Definitions.

X. "Inclement weather" includes rain, hail, sleet, snow, high winds, extreme low temperatures, or extreme high temperatures.

TEXAS LEGISLATURE 2021

Gov. Greg Abbott signs dog tethering bill after vetoing similar proposal over the summer

Abbott criticized an earlier proposal as "micro-managing." But advocates say the differences between the original bill and the new law won't affect its impact.

BY JAMES POLLARD OCT. 25, 2021 4 PM CENTRAL

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Questions

