

4. Contract Year means any period during the contract beginning on October 1 and ending on September 30 of the following year.

5. Acceptable Solid Waste means : (i) all wet or dry solid waste that is authorized to be disposed of at the Landfill under applicable federal, state, and local laws, regulations, ordinances, rules, permits, licenses, and governmental orders or directives; and (ii) other wet or dry Solid Waste that is not Unacceptable Solid Waste (as defined in Section 10 below). Acceptable Solid Waste does not include sludge, special waste, or material delivered by citizens served by other municipalities or corporations.

6. Delivery Procedures; Operation of the Landfill.

(a) Operation of the Landfill; Procedures. The delivery of Acceptable Solid Waste to the Landfill, which shall occur only during the Landfill's posted hours, shall be governed by the procedures applicable generally to haulers utilizing the Landfill. Contractor shall comply with all Landfill procedures established by City ordinance and promulgated by the Director in the disposal of Acceptable Solid Waste, as same may be amended from time to time. Notwithstanding anything in this Contract to the contrary, City shall have the right, in its sole discretion, to close its Landfill, in whole or in part, either temporarily or permanently, at any time for any reason. Upon any such permanent closure, this Contract shall be terminated by City as described in Section 17. Notwithstanding anything contained herein to the contrary, any unscheduled closure of the Landfill of more than two (2) days by City shall result in an equitable reduction in the Guaranteed Annual Tonnage owed by Contractor if requested in writing by Contractor. In addition, if City closes the Landfill for more than thirty (30) days during any three (3) month period, Contractor shall be entitled to terminate this Contract, and the obligations of both parties to deliver and to accept Acceptable Solid Waste shall terminate (including, without limitation, Contractor's obligation to provide the Guaranteed Annual Tonnage and the City's obligation to accept the tonnage at the Discount Disposal Fee rate).

(b) Compliance with Applicable Laws. This Contract is entered subject to and controlled by the Charter and ordinances of the City of Denton and all applicable laws, rules, and regulations of the State of Texas and the United States of America. Contractor and City shall, during the performance of this Contract, comply with all applicable City codes, ordinances, and regulations, as amended, and all applicable State and Federal laws, rules, and regulations, as amended.

(c) Title to Waste. Title to and risk of loss and responsibility for Acceptable Solid Waste delivered to the Landfill shall pass at the time such Acceptable Solid Waste is removed from the delivery vehicle at the Landfill. Title to Unacceptable Solid Waste shall remain with Contractor or its customer and shall never be deemed to pass to City. City shall have the right to reject Solid Waste determined to be Unacceptable Solid Waste at any time, and Contractor shall be required to immediately pick up and properly dispose at its own expense, in accordance with

Subsection 10(c) of this Contract, Solid Waste determined by the Director to be Unacceptable Solid Waste.

7. Term. Unless sooner terminated pursuant to Section 16, this Contract shall be for a term of three (3) years, commencing on October 14, 2019 (the "Contract Start Date") and terminating on September 30, 2022. Upon termination of this Contract, the obligations of both parties to deliver and accept Acceptable Solid Waste shall terminate; provided, however, that all other rights and obligations of the parties under this Contract which by their nature are intended to survive (including those with respect to payment and indemnification) shall survive termination.

8. Disposal Fees and Payments.

(a) Fees. In consideration of City's permission to dispose of Acceptable Solid Waste under this Contract, Contractor shall pay City thirty-four dollars (\$34.00) per ton. The Additional Acceptable Tonnage Fee shall be thirty-four dollars (\$34.00). Contractor agrees that the Discount Disposal Fee and the Additional Acceptable Tonnage Fee may be increased on October 1 of each calendar year beginning on October 1, 2020. The percentage increase will be determined by the Director using the Consumer Price Index for All Urban Consumers (CPI-U) for the South Region for All Items, published by the United States Department of Labor, Bureau of Labor Statistics. Any increase in the Discount Disposal Fee or the Additional Acceptable Tonnage Fee shall not exceed five percent (5%) in any single calendar year.

(b) Payment. Contractor shall pay the Discount Disposal Fee on a monthly basis for Acceptable Solid Waste delivered to Landfill. The monthly bill shall be paid no later than thirty (30) days after receipt of a monthly invoice from the Director during the term of the Contract. If Contractor delivers its Guaranteed Annual Tonnage before the end of the one-year period, additional Acceptable Solid Waste delivered to Landfill shall be charged the Non-Resident Gate Rate set by the then current City of Denton Solid Waste Rate Ordinance. If at the end of a Contract Year, Contractor has failed to dispose of the Guaranteed Annual Tonnage, Contractor remains obligated under this Contract to pay the Discount Disposal Fee for the entire Guaranteed Annual Tonnage.

At the end of each Contract Year, the Director shall perform a reconciliation of the actual tonnage of solid waste disposed of at the landfill under this Contract in that Contract Year compared with the Guaranteed Annual Tonnage and the amount paid by Contractor during the Contract Year. The Director shall make the appropriate calculations and adjustments to determine the amounts finally due and owed by Contractor in each Contract Year. Contractor shall pay any amounts owed to City pursuant to the end-of-Contract Year reconciliation not later than thirty (30) days after receipt of an invoice from the Director. Late payments under this Contract shall earn simple interest at the annual rate of ten percent (10%), or such other rate as the City Council establishes pursuant to City of Denton Code of Ordinances Section 26-6 (k) as amended. In the event of a good faith dispute in the amount of the Discount Disposal Fee due, Contractor shall, at a minimum, pay the undisputed portion of the Discount Disposal

Fee due within the thirty (30) day period set forth above. The calculation of interest on any disputed payment or the pursuit of contractual remedies by City shall be suspended during any good faith dispute regarding payment until the dispute is either resolved or City otherwise determines that the dispute cannot reasonably be resolved. If it is determined that the disputed amount is owed by Contractor, such amount shall be subject to the late fees described herein. The parties reserve all legal rights and remedies if they cannot amicably resolve a dispute.

(c) Taxes and Other Charges. In addition to the Discount Disposal Fee, Contractor shall pay all other federal, state, local or other taxes, fees, surcharges, or similar charges related to the acceptance or disposal of Acceptable Solid Waste or related to the operations or activities of the Landfill that are imposed by law, ordinance, regulation, agreement with a governmental authority, governmental audit, or otherwise.

(d) Security Deposit. Upon execution of this Contract, Contractor shall provide a security deposit in an amount equal to one-sixth (1/6) of the annual guaranteed amount under this contract. The Director may approve a lesser deposit if Contractor receives an acceptable credit rating from a credit source available to the City. The cost to obtain the credit rating will be charged to the Contractor and will not exceed one hundred dollars (\$100.00). The security deposit may take the form of cash, a performance bond issued by a corporate surety or sureties licensed to issue bonds in the State of Texas and otherwise acceptable to City, or an unconditional, irrevocable standby letter of credit issued by and drawable at a financial institution located in Denton County, Texas. If other than cash, the form of the security deposit shall be approved by the Director and approved as to legal form. For multi-year contract, the security deposit will be reviewed annually to reflect an increase or decrease in the full Disposal Rate, and the amount of the security deposit will be increased or decreased to reflect the change.

(e) Remedies in the Event of Default. If Contractor, after thirty (30) days advance written notice and opportunity to cure from City, fails to make payment of amounts due under this Contract or breaches any term, condition, or covenant of this Contract, the Director may exercise any or all of the following remedies, without waiving any other remedies available to City at law or in equity: (1) suspend delivery of solid waste to the Landfill by Contractor; (2) terminate this Contract for default as provided in Section 14; or (3) draw upon the security deposit and require Contractor to furnish a replacement security deposit as provided in Subsection (d) above, except that the Director may require a greater amount of security than provided for in Subsection (d) in order to provide City with adequate assurance of performance by Contractor. If Contractor's delivery of solid waste to the Landfill is suspended for nonpayment, Contractor's obligation to pay the full payment for guaranteed annual tonnage remains in effect.

9. Liability and Insurance.

During the term of this Contract, Contractor shall procure, pay for, and maintain at least the minimum insurance coverages described in Exhibit A, attached to and made a part of

this Contract. Approval, disapproval or failure to act by City regarding any insurance supplied by Contractor or its subcontractors shall not relieve Contractor of full responsibility or liability for damages, errors, omissions, or accidents as set forth in this Contract. The bankruptcy or insolvency of Contractor's insurer or any denial of liability by Contractor's insurer shall not exonerate Contractor from the liability or responsibility of Contractor set forth in this Contract.

10. Unacceptable Solid Waste.

(a) For the purposes of this Contract, "Unacceptable Solid Waste" means: (i) any material that is not Acceptable Solid Waste; (ii) any material that by reason of its composition, characteristics or quantity is defined as a "hazardous material," "hazardous waste," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "toxic substance," "toxic waste," "toxic pollutant," "contaminant," "pollutant," "infectious waste," "medical waste," "radioactive waste," or "sewage sludge" under any Applicable Law; (iii) any material that requires other than normal handling, storage, management, transfer or disposal; or (iv) any other material that may present a substantial endangerment to public health or safety, may cause applicable air quality or water effluent standards to be violated by the normal operation of the Landfill, or because of its size, durability or composition cannot be disposed of at the Landfill or has a reasonable possibility of otherwise adversely affecting the operation or useful life of the Landfill.

(b) Contractor agrees that it shall not deliver any Unacceptable Solid Waste to City's Landfill. If Contractor delivers waste that contains both Acceptable Solid Waste and Unacceptable Solid Waste, the entire delivery shall constitute Unacceptable Solid Waste if the Unacceptable Solid Waste cannot be separated from the Acceptable Solid Waste through the reasonable efforts of City, with the cost of such separation to be paid by Contractor. City shall have the right, but not the obligation, to inspect any of Contractor's trucks to determine whether the waste delivered is Acceptable Solid Waste or Unacceptable Solid Waste. Any failure by City to perform any such inspection or to detect Unacceptable Solid Waste despite such inspection shall in no way relieve Contractor from its obligation to deliver only Acceptable Solid Waste or from its other obligations under this Section, or to retrieve such Unacceptable Solid Waste as required under Subsection 6(c).

(c) If Contractor delivers Unacceptable Solid Waste to City's Landfill, City may, in its sole discretion: (i) reject such Unacceptable Solid Waste at Contractor's sole expense; or (ii) if City does not discover such Unacceptable Solid Waste in time to reject and reload such Unacceptable Solid Waste, inform Contractor by telephone of the problem and require pickup of the Unacceptable Solid Waste within twenty-four (24) hours, unless the Unacceptable Solid Waste is deemed by City to be a threat to the health and safety of its employees or the general public, in which case Contractor shall respond and remove the Unacceptable Solid Waste immediately. If Contractor fails or refuses to timely remove or properly dispose of such Unacceptable Solid Waste, City may dispose of such Unacceptable Solid Waste at a location authorized to accept such Unacceptable Solid Waste in accordance with all applicable laws, ordinances, and regulations and to charge Contractor all direct and indirect costs incurred due

to removing, handling, transporting, and disposing of such Unacceptable Solid Waste. Notwithstanding the foregoing, no notice to Contractor shall be required for City to dispose of Unacceptable Solid Waste at Contractor's sole expense in emergency situations where, in the Director's judgment, a delay in such disposal could constitute a hazard to the Landfill or any person on, about, or near the Landfill premises.

11. Environmental Compliance. Contractor and City shall comply with all federal, state and local environmental laws and regulations, including, but not limited to, the Resource Conservation and Recovery Act (RCRA), the Safe Drinking Water Act (SDWA), the Clean Water Act (CWA) and the Clean Air Act (CAA) in their performance under this Contract. Contractor shall ensure that its agents, subcontractors and employees have received training or information appropriate to the environmental aspects and impacts of their activities in connection with performance of this Contract. Contractor and City shall ensure that any spills or other releases of materials into the environment that may result from performance under this Contract are responded to and reported adequately and in compliance with applicable environmental laws.

12. Notices. Except as otherwise provided in Section 13, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. 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 intended for City, to:

Brian Boerner
Director of Solid Waste
City of Denton
1527 S. Mayhill Rd.
Denton, TX 76208

If intended for Contractor, to:

Joey Highfill
P.O. Box 899
2901 S. FM 51 Bldg 100
Decatur, Texas 76234

13. Assignment. Contractor shall not sell, assign, transfer, or convey this Contract, in whole or in part, without the prior written consent of City's Director, which consent will not be unreasonably withheld.

14. Independent Contractor. Contractor's status shall be that of an independent contractor and not an agent, servant, employee, or representative of City in the performance of the Services. Contractor shall exercise independent judgment in performing its obligations under

this Contract and is solely responsible for setting working hours, scheduling or prioritizing and determining how its obligations under this Contract are to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which City provides its employees.

15. **Indemnity.** *To the extent authorized by the Constitution and the laws of the state of Texas, Contractor agrees to defend, indemnify and hold City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs, fines, penalties, and expenses for personal injury (including death), property damage, violations of state or federal environmental laws or regulations, or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, wrongful, or strictly liable act or omission of Contractor, its officers, agents, employees or subcontractors, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting solely from the negligence, wrongful act, or fault of City, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of Contractor and City, responsibility and indemnity, if any, shall be apportioned in accordance with the law of the State of Texas, without waiving any governmental immunity available to City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties to this Contract and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.*

16. **Termination.** This agreement may be terminated in whole, or in part, by the City or the Contractor upon thirty (30) days written notice to the other party. In the event of termination, Contractor shall pay all contract fees for Solid Waste delivered to City's landfill up to and including the date of termination.

17. **Venue.** The obligations of the parties to this Contract shall be performable in Denton County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Denton County, Texas.

18. **Governing Law.** This Contract 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.

19. **Legal Construction.** In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

20. Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

21. Captions. The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

22. Successors and Assigns. This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and, except as otherwise provided in this Contract, their assigns.

23. Entire Agreement; No Oral Modifications. This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

24. Non-appropriation. Notwithstanding anything in this Contract to the contrary, all obligations of Wise County to make payments hereunder are subject to the appropriation of sufficient funds for such payments by Wise County. Failure to make payments under the contract shall terminate the contract.

Executed this the 0th day of October, 2019 by City, signing by and through its City Manager, duly authorized to execute same by Ordinance 19-2267 approved on October 8, 2019.

CITY OF DENTON, TEXAS

BY: Todd Hileman
TODD HILEMAN, CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: Rosa Rios



THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

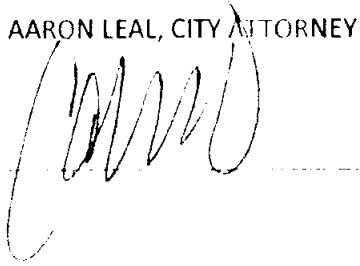
David Wash
Signature

Director of Solid Waste
Title


Department

Date Signed: 10-8-19

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY



WISE COUNTY, TEXAS

BY: 
J.D. CLARK, COUNTY JUDGE

ATTEST:
SHERRY LEMON, COUNTY CLERK



 Sherry Lemon, Knox,
Chief Deputy

APPROVED AS TO LEGAL FORM:
JAMES STANTON, COUNTY ATTORNEY

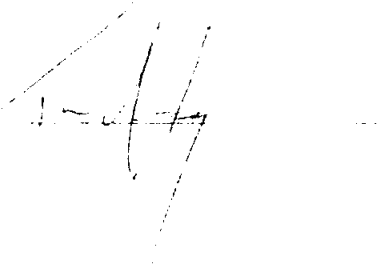


EXHIBIT A
INSURANCE REQUIREMENTS

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain for the term of the Contract, the minimum insurance coverage as indicated herein.

Contractor shall file with the Solid Waste Department satisfactory certificates of insurance including any applicable addendum or endorsements. Contractor may ask for clarification of any insurance requirements at any time, upon written request to the Solid Waste Department.

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or longer, if so noted:

- I. Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A or better.
- II. Liability policies shall be endorsed to provide the following:
 - A. Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.
 - B. That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
- III. ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***
 - A. Should any of the required insurance be provided under a claims made form, CONTRACTOR shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
 - B. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
 - C. Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this contract effective on the date of the lapse.

IV. SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:

A. General Liability Insurance:

1. General Liability insurance with combined single occurrence limits of not less than ~~\$300,000.00~~ shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.
2. If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:
 - a. Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
 - b. Coverage B shall include personal injury.
 - c. Coverage C, medical payments, is not required.
3. If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and ISO Form GL 0404) is used, it shall include at least:
 - a. Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.
 - b. Broad form contractual liability (preferably by endorsement) covering this contract, personal injury liability and broad form property damage liability.

B. Automobile Liability Insurance:

1. Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than ~~\$300,000~~ either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.
2. Satisfaction of the above requirement shall be in the form of a policy endorsement for:
 - a. any auto, or
 - b. all owned hired and non-owned autos.

V. The Contractor's failure to comply with any of these provisions is a breach of contract by the contractor, which entitles the City to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the City